

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 188 of 2008****Judgment reserved on 09.10.2020****Judgment delivered on 27.10.2020**

Ramesh Puri Goswami (Since deceased) through LRs:-

1. Smt. Saraswati Goswami, aged 57 years, wife of late Shri Ramesh Puri Goswami
2. Sarita, aged 38 years, daughter of late Shri Ramesh Puri Goswami,
3. Sharda, aged 30 years, daughter of late Shri Ramesh Puri Goswami
4. Madhvi, aged 24 years, daughter of late Shri Ramesh Puri Goswami,

All are resident of New Chandaniyapara, Janjgir,
Tehsil Janjgir and District Janjgir-Champa (C.G.)

----- Appellants/Plaintiff**Versus**

1. Smt. Meera Goswami, aged 50 years, wife of late Shri Krishna Kumar Puri Goswami, Occupation Service, resident of New Chandaniyapara, Janjgir, tehsil Janjgir, and district Janjgir-Champa (C.G.)
2. State of Chhattisgarh, through the District Collector, Janjgir, District Janjgir-Champa (C.G.)

----- Respondents/Defendants.

For Appellants	: Shri Somnath Verma, Advocate
For Respondent No. 1	: Shri Puneet Ruparel, Advocate.
For Respondent No. 2	: Shri Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment [C.A.V.]**

(1) Proceedings of the matter have been taken-up for final hearing through Video Conferencing.

(2) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiff states as under:

"Whether both the Courts below are justified in relying upon Ex-D-2 demarcation report, thereby dismissing the suit without examination of the Revenue Inspector, who conducted the demarcation Ex-D-2 by recording a finding which is perverse and contrary to the record ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(3) The imperative facts required to be noticed for adjudication of this appeal are as under:

(3.1) Original plaintiff -Ramesh Puri Goswami and defendant No. 1 both are closely related to each other. Plaintiff purchased the part of the land bearing Khasra No. 3927, area 8.50 decimal by separate registered sale deed in the year 1982. In the map attached with the plaint described as Schedule 'A', plaintiff's land is shown as D,E,A,G,K,L,H,B,F,C, in which the plaintiff's house and courtyard is constructed *whereas* house of defendant No. 1 is shown as D,I,M,N,J,C and the area marked as I,E,F,J is the common land left by both the parties. It is the case of the plaintiff that defendant No. 1 on 25.6.2001 encroached upon suit way mentioned in the map as A,B,C,D

and started constructing in the area A,B shown in the map annexed with the plaint by laying foundation-stone, as such, the area A,B,C,D shown in the map attached with plaint is the suit way and area A,B shown in the map attached with the plaint is a suit wall, for which decree for eviction and consequent possession and decree for permanent injunction has been sought by the plaintiff on the ground that defendant No. 1 has unnecessarily encroached upon the suit way & suit wall without authority of law.

(3.2) Resisting the suit, defendant No. 1 has filed written statement stating inter alia that she has constructed the Wall on the land, which is owned and possessed by her and the plaintiff has no right and title over it and the plaintiff has *nistar* right over the land situated as southern side of her land and on the western side, the plaintiff has no land, and it is only the land held by her, which has duly been demarcated by Tahsildar vide order dated 1.5.2001 passed by the Tahsildar vide Ex. D-8 after hearing both the parties.

(3.3) The trial Court, upon appreciating the oral and documentary evidence available on record, dismissed the suit holding that the land shown as A,B,C,D, in the map annexed with the plaint was not left by plaintiff and defendant No.1 jointly for the suit way and on 25.6.2001 the defendant No. 1 has not encroached upon

part of the land shown as A,B,C,D and, therefore, the plaintiff is not entitled for eviction and possession of the land held by defendant No. 1, which the first appellate Court by its impugned judgment & decree dated 20.2.2000 has also affirmed by dismissing the appeal filed by the plaintiff dismissing the suit, against which second appeal has been preferred by the plaintiff, in which substantial question of law has been framed and set out in the second paragraph of the judgment for sake of completeness.

(4) Mr. Somnath Verma, learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in dismissing the suit of the plaintiff by relying upon demarcation report (Ex.D-2), which has not been proved in accordance with law as the Revenue Officer, who made the demarcation, has not been examined as a witness in the Court and, therefore, the demarcation report (Ex.D-2) is not proved in accordance with law, as such, the second appeal deserves to be allowed by decreeing the suit of the plaintiff. He would rely upon decision of the Madhya Pradesh High Court in the matter of Kamal Singh v. Roop Singh¹ in support of his submission.

(5) Shri Puneet Ruparel, learned counsel appearing for the defendant No.1 would submit that Ex.D-2 is the demarcation report, by which it has duly been proved that the suit way

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is held by defendant No. 1 and it is not the plaintiff's land and examination of Revenue Officer, who has made the said demarcation report, was not required to be examined as the plaintiff has not challenged that demarcation report.

(6) I have heard learned counsel appearing for the parties and perused the record of both the courts below and went through the record with utmost circumspection.

(7) It is not in dispute that plaintiff purchased part of land bearing Khasra No. 3927, area 8.50 decimal by separate registered sale deed in the year 1982, in which, he has constructed the house & courtyard etc and in the western side, house of defendant No. 1 is situated. It is also the case of plaintiff that it was agreed between plaintiff and defendant No. 1 that in between his house and house of defendant No. 1, there will be 8 feet wide road and, therefore, four feet area of their land was left by both of them.

(8) The trial Court and first appellate Court has also relied upon diversion certificate (Ex.P-1) to hold that in the diversion certificate (Ex.P-1) there is no mention of the common road. It is also the case of defendant No. 1 that the plaintiff has already constructed his house and courtyard on his entire 8.50 decimal of the land and there is no land left after construction, as such, after appreciation of oral and documentary evidence on record

vide Exs.P-1 to P-3 , both the courts below have come to the conclusion that plaintiff has failed to establish that the suit way shown as A,B,C,D in the map annexed with the plaint is a part of land to be used by the plaintiff for his way and, as such, dismissed the suit holding that plaintiff has failed to prove his title and possession over the land shown as A,B,C,D, in the map annexed with the plaint. That finding is a finding of fact based on material available on record.

(9) It is true that a person making demarcation report (Ex.D-2) has not been examined and he was required to be examined but pursuant to the regular revenue case was registered and order dated 1.5.2001 was passed by the Tahsildar vide Ex. D-8 and demarcation report is Ex. D-2, which the plaintiff has not challenged and it ought to have been challenged to get rid of that Report, in which the plaintiff was found in possession of Khasra No.3927/3, area 8.50 decimal whereas defendant No. 1 was found in possession of Khasra No. 3927/4, area 8.34 decimal, as such, both the courts below have found that the plaintiff did not object to the demarcation report (Ex.D-2) and as the order of demarcation was not challenged further, that order has attained finality and the revenue courts have exclusive jurisdiction with respect to demarcation under Section 129 of the C.G. Land Revenue Code, 1959 (henceforth "Code, 1959") read with Section 257 (g) of the Code, 1959, it ought to have been challenged by the

plaintiff either before the further higher revenue officer or by questioning that orders in the suit, which he has not challenged further in any proceedings and, as such, order making demarcation and the demarcation report has attained finality and, therefore, it cannot be challenged now by the plaintiff and non-examination of the officer making demarcation does not mean that demarcation was not in accordance with law. In view of that, I do not find any illegality or perversity in the judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court, dismissing the suit. Substantial question of law is answered accordingly in favour of defendant No. 1.

(10) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed leaving the parties to bear their own costs.

(11) A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

