

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 354 of 2008**

Sukhdeo Prasad, Aged about 58 years, S/o Kanhaiyalal, Caste Brahmin, R/o Pathankpara, Mungeli, District Bilaspur, Chhattisgarh.

**---Appellant/Plaintiff No. 1**

**Versus**

1. Rajjan Yadav, Aged about 48 years, S/o Manglu Yadav.

2. Prakash Yadav, Aged about 41 years, S/o Manglu Yadav.

3. Ramkumar, Aged about 38 years, S/o Manglu Yadav.

4. Smt. Laxmin Bai, Aged about 73 years, Wd/o Manglu Yadav.

All are R/o Jawahar Ward, Mungeli, District Bilaspur, chhattisgarh.

5. Smt. Dhela Bai, Aged about 61 years, Wd/o Vyas Narayan.

6. Rajendra Kumar, Aged about 43 years, S/o Bhola Prasad.

Respondents No. 5 and 6 by Caste Brahmin, R/o Pathakpara, Mungeli, District Bilaspur, Chhattisgarh.

**--- Respondents/Defendants**

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For Appellants :- Mrs. Indira Tripathi and  
Mr. Vivek Tripathi, Advocates

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**13/02/2020**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff No. 1 under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court dismissed the suit of the plaintiff finding no merit.
2. Mr. Vivek Tripathi, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff by recording a finding which is perverse and contrary to the record holding that defendant has not encroached upon the suit land bearing Khasra No. 678/2 area 0.02 acre, as such, the second appeal deserves to be admitted by formulating substantial question of law. He would rely upon the decision rendered by the Supreme Court in the matter of **Karnataka Board of Waqf v. Government of India and Ors.**<sup>1</sup>.
3. The three plaintiffs filed a suit that they are title-holders of land bearing Khasra No. 678/2 total area 0.80 acre out of which 0.02 acre (suit land) has been encroached upon by the defendants, therefore, decree for declaration of title and possession be granted in favour of the plaintiffs.

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<sup>1</sup> (2004) 10 SCC 779

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit holding that plaintiffs have failed to prove their title over the suit land and defendants are in the possession of the suit land on the basis of the sale deed (Ex. D/9) which shows that defendants' father namely Manglu Yadav purchased the suit land from one Gondiya Bai on 04/11/1963 and the plea of adverse possession was not accepted. On appeal being preferred by the plaintiffs, learned first appellate Court affirmed the findings recorded by the trial Court and held that though plaintiffs have claimed title over the suit land and stated that defendants have encroached upon their land and according to P.W. 2 Kartik and P.W. 3 Dhannulal, suit land was demarcated, but the demarcation report has not been produced by the plaintiffs.

5. In a suit for declaration of title and possession, plaintiffs as well as P.W. 2 Kartik and P.W. 3 Dhannulal have accepted that suit land was demarcated, but the demarcation report has not been produced before the Court to demonstrate that defendants have in fact, encroached upon plaintiffs' land whereas defendants have filed sale deed dated 04/11/1963 (Ex. D/9) which shows that their father Manglu Yadav purchased the suit land

pursuant to which they have been in possession of the suit land.

6. Both the Courts below have concurrently recorded a finding that plaintiffs have failed to prove their title over the suit land and they have also not established the encroachment allegedly made by the defendants upon the suit land and despite the fact that suit land was demarcated, but the demarcation report was not produced by the plaintiffs before the Court. The said finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet