

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 371 of 2004**

1. Dwarika Prasad S/o Late Sada Sao, Aged About 55 Years R/o Near Railway Station Post Office Bilaspur, Distt. Bilaspur, Chhattisgarh
2. Amrit Lal S/o Late Narsingh Maharana, R/o Kaserpara College Road Champa P.S. Champa Distt. Janjgir-Champa, Chhattisgarh

---- Appellants**Versus**

- Vishnu Prasad Dead Through LRs

- 1.1. Smt. Sukanti Bai aged 80 years Wd/o Late Vishnoo Prasad, R/o Kaserpara, Mahadeo Ghat, Champa, Distt. Janjgir-Champa, Chhattisgarh
- 1.2 - Gulapi W/o Jairam Sao Kaser, Aged About 60 Years D/o Late Vishnoo Prasad, R/o Pusore, Distt. Raigarh, Chhattisgarh
- 1.3 - Smt. Sulochana Kaser W/o Bhagwano Kaser, Aged About 58 Years D/o Late Vishnoo Prasad, R/o Purana College Road, Champa, Distt. Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Shri Hanuman Prasad Agrawal, Advocate
For Respondent	:	Shri H.V.Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/02/2020**

Heard on admission.

This appeal is directed against impugned judgment and decree dated 27/02/2004 passed in Civil Appeal No.32-A/2002 by which, the appellant / plaintiff's appeal has been dismissed affirming judgment and decree of the Trial Court by which, appellant's suit was dismissed.

2. Learned counsel for the appellant argued that the finding of the Courts below, though may be concurrent finding of fact on the aspect of alleged encroachment, the

finding suffers from gross perversity in as much as the Courts below have relied upon an order passed by the Revenue authority / Tahsildar which was liable to be rejected as that order lost its efficacy in view of subsequent orders passed. That order of Tahsildar, passed on the basis of demarcation report, was illegal because the report was prepared in the absence of the appellant.

He would further submit that an application for bringing on record additional evidence has also been filed in support of the aforesaid plea of the appellant taken before the Court below that the spot inspection report and order of Tahsildar could not be relied upon. He would also submit that later on, after the judgment was delivered by learned lower Appellate Court, the spot inspection reports were again prepared on 27/07/2004 and 26/10/2004 which supports the case of the appellant and therefore, this additional evidence may also be allowed to be taken on record in support of the plea of the appellant / plaintiff.

3. The plaintiff came out with the case that the defendant encroached upon a portion of land acquired by the plaintiff. Both the parties led oral and documentary evidence. Learned Courts below, after appreciating the oral evidence of the parties, preferred to rely upon the case of the defendant mainly on the basis that the defendant's case is based on order (Ex.D/2) passed by the Revenue authority which was also passed on the basis of spot inspection report. The appellant failed to bring on record, by way of evidence, any order passed by the Revenue authority which set aside that order. The appeal of the appellant was also dismissed by the learned lower Appellate Court on 14/03/2002 relying upon the evidence, oral and documentary in nature, led by both the parties. At the time when this appeal was filed, the appellant firstly sought to bring on record by moving an application under Order 41 Rule 27 CPC, certain order sheets which existed much prior to passing of judgment by the Trial Court and even the Appellate Court. Nothing has been stated in the application as to why those documents could not be filed before the Trial Court

or even before the Appellate Court to bring those additional evidence on record.

4. Before this Court, some additional documents / orders have been filed said to have been passed in the year 2004 and prayer has been made to take those documents on record.

5. The judgment of the Courts below are based purely on finding of fact which are concurrent in nature that the plaintiff failed to prove defendant's encroachment on the land of the plaintiff. In order to come to the conclusion, learned Courts below relied upon documentary evidence in the form of order passed by the Revenue authority that upon enquiry, the plaintiff's case that a portion of his land was encroached upon by the defendant, was not not found correct. The attempt made by the appellant / plaintiff to improve upon its case at the second appellate stage by seeking to bring on record certain documents for which no justification could be provided as to why those documents could not be filed before the Trial Court or in any case, before the Appellate Court, no indulgence can be granted.

6. The appeal does not involve any substantial question of law and is, accordingly, dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge