

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 39 of 2010**

Danteshwari Devi Mandir Public Trust, 1951 a trust duly registered under the relevant provisions of the C.G. Public Trust Act, acting in the premises through its president Shri S.K. Agrawal, S/o Late Khanjan Lal, Aged about 70 years, R/o Purani Basti, Raipur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Gendi Bai, Wd/o Late Shankarlal Marar.
 2. Smt. Dhanmati Bai Patel, Aged about 61 years, Wd/o Late Gajadhar Patel.
 3. Ashwini Kumar Patel, Aged about 41 years, S/o Late Gajadhar Patel.
- No. 2 and 3 are legal representatives of defendant No. 2 Late Gajadhar Patel and residents of Purani Basti, Raipur, Tahsil and District Raipur, Chhattisgarh.
4. Ugendra Kumar, S/o Late Shankarlal Marar, Aged about 40 years.
 5. Naraan, S/o Late Shankarlal Marar, Aged about 38 years.
 6. Jeevanlal, S/o Late Shankarlal Marar, Aged about 36 years.
 7. Smt. Saraswati Bai, D/o Late Shankarlal Marar, Aged about 37 years.
 8. Ku. Meera Bai, D/o Late Shakaralal Marar, Aged about 35 years.
 9. Ku. Pushpa Bai, D/o Late Shankarlal Marar, Aged about 31 years.

10. Ku. Tarini Bai D/o Late Shankarlal Marar, Aged about 30 years.

All R/o Gopiyapara, Raipur, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

09/03/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff 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 finding no merits.

2. Mr. B. P. Sharma, learned counsel for the appellant/plaintiff, would submit that both the courts below have committed legal error in holding that plaintiff has failed to prove that defendant has encroached upon his land bearing Khasra No. 1153/2 by constructing a wall upon it by recording a finding which is perverse to record, as such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3. The plaintiff trust filed a suit that it is the owner and title holder of Khasra No. 1153/2 area 0.09 decimal in which defendant has encroached/dispossessed the plaintiff in the year 1965 and constructed a wall therein and thereby, got the land demarcated and thereafter, filed the suit in which defendant set up a plea that he has not made construction on the land held by the plaintiff, as such, suit filed by the plaintiff deserves to be dismissed.

4. Learned trial court disbelieved the demarcation report made by Patwari pursuant to the order of Tahsildar dated 30.04.1965 and dismissed the suit which the first appellate court has affirmed in the appeal filed by the plaintiff.

5. Both the courts below have held that plaintiff has failed to establish the demarcation report (Ex. P/4) and he has also failed to establish that defendant is in possession of suit land i.e. Khasra No. 1153/2. The demarcation report (Ex. P/4) is prior to the filing of the suit i.e. on 30.05.1965 whereas the suit was filed on 24.12.1976. The demarcation report is only the report submitted by concerned revenue officer to the Tahsildar on the said date. The competent officer has to accept the demarcation report of Tahsildar as per Section 129

of the Chhattisgarh Land Revenue Code, 1959. It has not been shown that demarcation report (Ex. P/4) was accepted by the Tahsildar. Furthermore, since the demarcation is prior to the filing of suit as the suit was filed on 24.12.1976, the revenue officer who conducted the demarcation report ought to have been examined to prove the correctness of said report. As such, both the courts below are absolutely justified in holding that the plaintiff has failed to prove that defendant has encroached/dispossessed on the suit land held by him and is in possession of suit land which is a part of Khasra No. 1153/2. The said finding recorded by two courts below is a finding of fact based on evidence available on record. It is neither perverse nor contrary to the record.

6. I do not find any substantial question of law involved in this second appeal and it is accordingly dismissed at the admission stage without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge