

HIGH COURT OF CHHATTISGARH, BILASPURFA No. 593 of 2018

- Smt. Koushilya Devi, W/o Shri Jhallu Ram Soni, aged about 60 years, R/o Patwari Halka No.14, Indrawati Nagar, Bajrang Para, Kohka, P.S. Supela, Bhilai, Tahsil and District- Durg, Chhattisgarh. (***Defendant No. 1***) **---Appellant**

Versus

1. Baldeo Singh, S/o late Shri Bela Singh, aged about 65 years, R/o Plot No. 118, Street No. 13, Smriti Nagar, P.S. Supela, Tahsil and District Durg, Chhattisgarh. (***Plaintiff***)
2. Municipal Corporation Bhilai, through Commissioner, Office at G.E. Road Supela, P.S. Supela Bhilai, Tahsil and District- Durg, Chhattisgarh.
3. State Of Chhattisgarh, through the Collector, Durg, District- Durg, Chhattisgarh **---Respondents**

For Appellant	:	Mr. Shikhar Sharma, Mr. Raghvendra Pradhan, Advocates.
For Respondent No.1	:	Mr. Uttam Pandey, Advocate.
For State	:	Mr. Aditya Bhardwaj, PL.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

14.02.2020

This first appeal is directed against impugned judgment and decree dated 22.09.2018 in Civil Suit No. 99-A/2014, Sixth Additional District Judge, Durg by which, the learned lower Appellate Court has decreed the suit of the plaintiff as against the appellant/defendant.

2. Respondent No.1/plaintiff filed a suit praying for a decree of declaration of title, possession and injunction on the pleadings *inter alia*, that the plaintiff had purchased a parcel of land

admeasuring 2040 Sq.ft. vide sale deed dated 05.03.1981, Ex. P-5, containing descriptions as stated in the sale deed. Further case of the plaintiff is that the aforesaid land was situated in Khasra No.169 and along the boundaries there was 20 ft wide road in the north, Plot No.23 in the south, Plot No.21 in the east and 40 ft. wide road on the west. Later on, the Khasra number of the plot was changed to Khasra No.1224/02, Patwari Halka No.14, Revenue Circle No.1 and the name of the plaintiff was recorded in the revenue records. According to the respondent/plaintiff – Baldeo Singh, Defendant No.1/appellant – Koushaliya Devi is owner of nearby plot situated in Khasra No.168, admeasuring 2500 Sq.ft. with new Khasra No.1180, but defendant No.1/appellant illegally occupied the plaintiff's land and raised construction. When the plaintiff came to know, the appellant/defendant No.1 was requested to remove the illegal construction, whereupon, defendant No.1/appellant accepted that the house was wrongly constructed on the plot of the plaintiff and that the appellant/defendant No.1 would transfer her land in favour of the plaintiff but this was not done. The plaintiff, thereafter, applied for demarcation in Tahsil office, pursuant to which, a direction was issued and Revenue Inspector conducted demarcation on 25.04.2011 in which, it was revealed that the defendant No.1 had constructed her house on the land of the plaintiff. Thereafter, the plaintiff gave notice to the defendant to vacate the plot and handover vacant possession which was

contested in the reply and therefore, the plaintiff filed suit seeking relief as prayed for.

3. The appellant/defendant No.1 filed written statement denying the plaintiff's pleading and pleaded that she had purchased the disputed land, bearing old Khasra No.168, with present Khasra No.1180, admeasuring 2500 Sq.ft., vide sale deed dated 16.09.1981, from original owner Ramwati and on that basis, she has remained in the possession of the property. Further pleading made by the appellant/defendant No.1 was that, later on, defendant No.1, desirous of constructing house, applied for demarcation and a demarcation was properly conducted by competent authority on 22.05.2000 and on that basis, she obtained building permission and constructed her own house in which she is residing with her own family. Defendant No.1 disputed plaintiff's claim that the land claimed to have been purchased by the plaintiff vide sale deed dated 05.03.1981 he has been encroached and house constructed by defendant No.1. According to defendant No.1, plaintiff's land lies elsewhere and not the plot where the defendant No.1 has raised construction.

4. The learned trial Court framed following issues.

क्रमांक	वाद-प्रश्न	निष्कर्ष
01	क्या वादी, वादभूमि ख. न. 169, वर्तमान ख.न. — 1224/2 का रकबा टुकड़ा 2040 वर्गफीट जो मौजा कोहका पटवारी हल्का नंबर — 69 वर्तमान पटवारी हल्का न.—14, रा.नि.मं.—01, बंदोबस्त नंबर—66, भिलाई तहसील व जिला दुर्ग में स्थित है और जो वाद पत्र के साथ संलग्न नक्शे में लाल स्याही से अंकित है, के स्वत्व की घोषणा करा पाने का अधिकारी है ?	हां

02	क्या वादी, वाद भूमि का रिक्त आधिपत्य प्रतिवादी क्र.01 से प्राप्त करने का अधिकारी है ?	हां
03	क्या वादी स्थायी निषेधाज्ञा की सहायता प्राप्त करने का अधिकारी है ?	हां
04	क्या वादी ने अपने दावे का उचित रूप से मूल्यांकन कर उचित रूप से न्यायशुक्ल चर्चा किया है ?	नहीं
04	सहायता एवं वाद व्यय ?	निर्णय की कंडिका क्र.24 के अनुसार।

5. In order to prove its case plaintiff and defendants both led their oral and documentary evidence. While plaintiff relied upon a demarcation report dated 25.04.2011 and oral evidence of the Revenue Inspector (PW-4) who had conducted demarcation, defendant No.1 has also relied upon a demarcation report dated 22.05.2000. Learned trial Court upon scrutiny of evidence placed reliance upon the oral and documentary evidence with regard to location and identification of the land of the plaintiff, marked as Plot No.25 in Khasra No.1224/02 and came to the conclusion that on the basis of demarcation report proved by the plaintiff, it is proved that defendant No.1 has constructed her house on the land of plaintiff. On that basis, a decree was passed in favour of the plaintiff/respondent No.1.

6. Assailing legality and validity of impugned judgment and decree passed by the trial Court, learned counsel for the appellant/defendant No.1 would argue that the learned trial Court has granted decree without there being any clinching and reliable evidence led by the plaintiff that the land, on which, defendant No.1 has constructed house is situated on Khasra No.1180, old

Khasra No.168, Plot No.25 which is proved from the demarcation report dated 22.05.2000 (Ex.D-5) proved by the defendant No.1. It is submitted that this report was prepared long back in the year 2000 which was never disputed by the plaintiff. Further submission of learned counsel for the appellant is that the learned trial Court has committed grave error of law and fact both in relying upon demarcation report dated 25.04.2011 (Ex.P-7), led in evidence by the plaintiff. The said demarcation report is vague and it does not reveal as to in what manner the demarcation was carried out by the Revenue Inspector. The evidence of concerned Revenue Inspector (PW-4) in this regard, is equally vague because he has not clearly stated as to in what manner and by using which measuring formula and instruments, he carried out demarcation at the spot so as to identify that the land on which defendant No.1 constructed house is Plot No.22, situated in Khasra No.1224/02, old Khasra No.168 claimed to be that of the plaintiff. He would further argue that the witness also does not clearly states that such demarcation was made so as to include the location of the plot of defendant No.1 situated in Khasra No.1180, Plot No.25. Thus, the demarcation report is clearly one sided report and the same could not be relied upon to grant decree in favour of the plaintiff. Next submission of learned counsel for the appellant is that the Court below has recorded a finding that suit was not properly valued. Once such finding was

recorded, the suit filed by the plaintiff was liable to be dismissed only on this count.

7. On the other hand learned counsel for plaintiff/respondent would argue that the learned trial Court has granted decree in favour of plaintiff after taking into consideration oral and documentary evidence led by the plaintiff. He would submit that the plaintiff led in evidence a demarcation report dated 25.04.2011 which was prepared by PW-4 – the Revenue Inspector. The Revenue Inspector has proved its demarcation report. He would further submit that in comparison to the demarcation report dated 22.05.2000 relied upon by the defendant No.1, the demarcation report relied upon by the plaintiff stands on a very high probative value. The demarcation report relied upon by the plaintiff was prepared after giving notice to nearby residents, including presence of Mr. Jhallu Ram Soni, husband of defendant No.1/appellant. The owner and occupier of Plot No.23, Dharamchand Jain has also been examined as Plaintiff Witness No.2 and he has fully supported the case of the plaintiff. He would further submit that even though, the husband of defendant No.1 was present at the time of demarcation, he did not raise any objection. Even after preparation of report and passing of order by Tahsildar subsequent to the report, no dispute was raised by the defendant No.1 before any Revenue Court. Defendant No.1 did not even apply for any fresh demarcation pointing out any defect in the demarcation report dated 25.04.2011. Learned counsel for

respondent/plaintiff would further argued that the evidence of Jitendra Uppal (PW-2) and Dharamchand Jain (PW-3) that the defendant No.1 had accepted her mistake in raising construction on the plot of the plaintiff and had stated that she would transfer her plot in favour of the plaintiff, has remain uncontroverted. This therefore, supports the case of the plaintiff that the defendant had raised construction on the plot owned by the plaintiff. He would also submit that as far as the demarcation report dated 22.05.2000 (Ex.D-5) relied upon by the defendant No.1 is concerned, neither the concerned Revenue Inspector who prepared the report has been examined nor any evidence has been led that this report was prepared after giving notice to nearby residents. On the other hand, the demarcation report relied upon by the plaintiff has been proved by its maker, prepared in presence of the witnesses and supported by the witness to demarcation report and not objected to by the husband of defendant No.1 who was present at the time of demarcation and signed the demarcation report.

It is lastly submitted that as far as valuation part is concerned, the judgment and decree was passed by the learned trial Court directing that the decree will be prepared after depositing the court fee for demolition the construction, which has been accepted by the plaintiff and additional proper court fee has also been paid.

8. Following points arise for determination in this appeal.

A. Whether the learned trial Court committed any error of law and fact in relying upon demarcation report dated 25.04.2011 (Ex.P-7) and in disbelieving and rejecting demarcation report dated 22.05.2000 (Ex.D-5) led by the defendant ?

B. Whether the learned trial Court after having recorded finding that the plaintiff suit was under value was legally correct in decreeing the suit of the plaintiff ?

9. In the present case the plaintiff – Baldeo Singh as well as the defendant No.1 – Koushaliya Devi both have come out with defence that their respective title is in respect of lands purchased by them. According to plaintiff's pleading and evidence he purchased land admeasuring 2040 Sq.ft., vide sale deed dated 05.03.1981, Ex.P-5C. The description of plaintiff's land as per Ex.P-5C is situated in Khasra No.169 admeasuring 2040 Sq.ft. and bears Plot No.22. The boundaries as stated in the sale deed are that in the North 20 Ft., In the south Plot No.23, In the East Plot No.21 and 40 Sq.ft. vide road on the West.

The pleading and evidence of the defence is that the defendant purchased a piece of land admeasuring 2500 Sq.ft. In the registered sale deed dated 16.09.1981, Ex.D-1. As per this document, the details of the land are that it is situated in Khasra No.168, admeasuring 2500 Sq.ft. bearing Plot No.23. The boundaries stated in the sale deed are that there is Plot No.30 in the North, Plot No. 24 on South, Plot No.34 in East, Plot No.25 in West.

10. The pleadings and evidence of both the parties do not dispute respective title of each other. Both the parties do not dispute acquisition of total land as stated in their respective sale deeds. However, the dispute centers around as to whether the land, on which, the appellant/defendant No.1 constructed house, is the one which was purchased by the plaintiff or the one which was purchased by the defendant. Thus, the dispute is more with regard to the exact location of the land of the respective parties.

11. Both the parties have come out with specific documentary and oral evidence with regard to location of the plot. The learned trial Court has relied upon the oral and documentary evidence with regard to the location of the plot of the plaintiff in preference to that, which has been led by the defendant. We have to see whether the said finding of the learned trial Court suffers from any error of law or fact.

12. In order to establish its case, the plaintiff has led clinching and documentary evidence in the form of a demarcation report dated 25.04.2011 (Ex.P-7). This demarcation report has been prepared by plaintiff's witness namely S.L. Mankar (PW-4). This witness, who is Retired Naib Tahsildar has deposed that at the relevant time, he was posted as Revenue Inspector in Revenue Circle Durg No.1. He has further deposed that in compliance of order dated 01.02.2010 of Additional Tahsildar, Bhilai Nagar he had reached the spot on 17.03.2011 in Village Kohka, Patwari Halka No.19, Khasra No.1224/2, admeasuring 0.02 hectare

recorded in the name of Baldeo Singh. He has deposed that he had prepared Spot Panchnama in the presence of the concerned Halka Patwari and the witnesses and has proved Spot Panchnama in Ex.P-2 and his signatures thereon. In the said Panchnama (Ex.P-2), it has been recorded that at the spot, in the presence of the applicant and nearby *Bhumi Swamis* and with Halka Patwari, on the basis of records, spot inspection was carried out. This document contains signature of various persons including Baldeo Singh (plaintiff) and Dharamchand Jain (PW-3). PW-4 further deposed that after preparation of Panchnama of demarcation, the same was submitted in the office of Additional Tahsildar. In order to impeach his credibility, he has been subjected to cross-examination. Though he states that he does not remember the name of concerned Halka Patwari, he remained present along with Khasra Panchshala Map and *Kishtbandi Khatoni*. Upon being elicited that in his report, Khasra Panchshala and B-1 has not been mentioned, he clarifies by stating that word “अभिलेख” (Records) has been mentioned in this report. Though, he admits that Khasra No.1224/2 has not been shown as divided in the Government records, nor has mentioned regarding such division of plots, he has stated that at the time of demarcation, he had used instrument of measuring namely *Jarib*, of which, measurement has also been stated. He admits that on the application of the plaintiff and under the orders of the Tahsildar he had gone to the spot for demarcation. The suggestion that

demarcation was done without following proper parameters and in his own way and that it has been prepared to extend benefit to the plaintiff, has been denied.

The demarcation report, as relied upon by the plaintiff has been stated to have been prepared by PW-4, Revenue Inspector in the presence of various witnesses.

13. PW-1 (plaintiff) has stated in paragraph 11 of his evidence that the Spot Panchnama was prepared vide Ex.P-12 on 17.03.2011, in which, not only he, but Dharamchand also signed. He also states regarding signature being put by one Arjun Singh Bais. He has categorically stated that the husband of defendant Kaushaliya Devi, namely Jhallu Ram Soni has also signed the document. In the cross-examination of this witness PW-1, there is no suggestion given that the demarcation report dated 25.04.2011 does not bear the signature of Jhallu Ram Soni. Thus it is proved that the demarcation was done in the presence of Jhallu Ram Soni, the husband of defendant No.1.

14. The demarcation report prepared by PW-4 apart from being proved from the evidence of PW-4 is also supported from the evidence of Dharamchand Jain (PW-3) who was deposed that his plot is adjacent to the plot of the plaintiff and that the defendant No.1 has encroached upon plaintiff's land. He has also stated that the demarcation was carried out on 21.04.2011 in which it was disclosed that the defendant has encroached upon plaintiff's land. He has also deposed that defendant has also encroached upon

his Plot No.23. In the cross-examination, this witness has reiterated that his plot number is 23. He has further stated that plot number of plaintiff Beldeo Singh is 22. From the evidence of this witness, two things are clearly proved. Firstly, he is the owner of adjacent Plot No.23. Secondly, demarcation was also carried out. He was witness to the demarcation proceedings. This witness is an independent witness and nothing has been elicited in his evidence as to why he would give false evidence in support of the plaintiff and against the defendant No.1.

15. From the evidence of PW-1, PW-3 and PW-4, it is proved that demarcation report dated 25.04.2011 was prepared on the basis of demarcation carried out by PW-4 in the presence of plaintiff (PW-1) as well as Dharamchand Jain (PW-3). This demarcation was carried out after notice to the *Bhumi Swamis* of nearby lands. It also proves that this demarcation report contains signature of the husband of defendant No.1. Lastly, the demarcation report which was prepared by PW-4 had never been objected to either by the defendant No.1 or the defendant No.2 and she did not ever examine her own husband, Jhallu Ram Soni, in support of her case with regard to dispute or correctness of demarcation report dated 25.04.2011.

16. As against this demarcation report, the defendant's case is based on demarcation report dated 22.05.2000. This demarcation report has not been proved by its maker and the defendant No.1 has not examined the concerned Revenue Inspector who had

prepared this demarcation report. This demarcation report does not contain any recital that demarcation was carried out after giving notice to the nearby residents or *Bhumi Swamis*. Thirdly, no independent witness other than the party or the Revenue Officer has been examined by the defendant No.1 to support her demarcation report. This demarcation report Ex.D-5, dated 22.05.2000, does not contain any recital that demarcation was carried out along with the records and in the presence of the Patwari, whereas demarcation report dated 25.04.2011 (Ex.P-7), relied upon by the plaintiff was prepared in the presence of Patwari and it is in the records as stated in the evidence of PW-4.

17. Apparently, the demarcation report relied upon by the plaintiff/respondent No.1 is much more weighty and reliable as compared to the demarcation report relied upon by the defendant No.1/appellant.

18. There is yet another aspect of the case. PW-2 and PW-3 both have clearly stated in their deposition that defendant No.1 admitted having committed mistake in raising construction on the plot of the plaintiff and had assured that she would transfer her land in favour of the plaintiff. This evidence of both the witnesses has remained uncontroverted in the cross-examination. Thus, the uncontroverted testimony of these two witnesses also supports the case of the plaintiff and goes against the defendant/appellant.

19. In that view of the matter, we are unable to hold that the learned trial Court had committed any error of law or fact and in

relying upon the demarcation report dated 25.04.2011 and rejecting demarcation report relied upon by the defendant dated 22.05.2000.

20. An argument has also been raised that even according to the finding recorded by the learned trial Court on the fourth issue that the suit is under valued, is in favour of the plaintiff, it is submitted, on such finding itself, the suit was liable to be dismissed.

We are unable to accept this submission. The finding of the learned trial Court is that the cost of removal of construction has not been included in the valuation which ought to be included and appropriate court fee ought to be paid. The learned trial Court has stated that if upon proper valuation, proper Court fee is paid by the plaintiff, decree would be prepared. The plaintiff, thereafter has paid additional court fee and decree has also been prepared in his favour, therefore, this argument of the learned counsel for the appellant is liable to be rejected.

21. In the result, we do not find any good ground to interfere with the impugned judgment and therefore, appeal is dismissed.

Parties to bear their respective costs. Let appellate decree be drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge