

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.309 of 2011****Judgment reserved on: 15-2-2021****Judgment delivered on: 2-3-2021**

Smt. Devkinandan Sahu, W/o C.L. Sahu, aged about 54 years,
R/o Kailash Nagar, Durg, Titurdeeh, Tahsil and District Durg
(C.G.)

(Defendant)
---- Appellant

Versus

1. Smt. Kushila Devi, W/o Bhagwan Singh, aged about 64 years,
R/o Borsi Colony, Tahsil and District Durg (C.G.)

(Plaintiff)

2. State of Chhattisgarh, Through Collector, Durg (C.G.)

(Defendant)
---- Respondents

For Appellant/Defendant: Mr. Parag Kotecha, Advocate.

For Respondent No.1 / Plaintiff: -

Mr. Uttam Pandey, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Dy. Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This defendant's second appeal was admitted for hearing by
formulating the following substantial question of law: -

“Whether finding of both the Courts below relating to
identity of disputed property without appointing
commission for local investigation is perverse?”

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

2. The plaintiff filed suit stating inter alia that she has purchased
the suit land bearing Khasra No.318/2, area 1250 sq.ft. by
registered sale deed dated 18-6-1987 for consideration of

Rs.6,250/- (Ex.P-1). It is further case of the plaintiff that taking advantage of her absence for medical reasons, the defendant encroached upon her land which was identified in the demarcation report Exs.P-7 & P-9 and therefore she is entitled for declaration of title and possession of the suit land which the defendant opposed by filing written statement stating inter alia that she has not encroached upon the plaintiff's land and she is owner of Khasra No.318/1 (part), area 1375 sq.ft. which she has purchased vide Ex.D-1 and as such the plaintiff's suit deserves to be dismissed.

3. The trial Court after appreciating oral and documentary evidence available on record relying upon Exs.P-7 & P-9, decreed the suit holding that the plaintiff is entitled for declaration of title and permanent injunction which in turn, the first appellate Court affirmed by dismissing the appeal preferred by the defendant, questioning the same, this second appeal has been preferred by the defendant in which substantial question of law has been formulated and which has been set out in the opening paragraph of this judgment for the sake of completeness.
4. Mr. Parag Kotecha, learned counsel appearing for the appellant herein / defendant, would submit that both the Courts below concurrently erred in holding that the defendant has encroached upon the plaintiff's land bearing Khasra No.318/2, whereas the defendant is title holder of Khasra No.318/1 (part), area 1375 sq.ft. and therefore both the Courts below went wrong in decreeing the suit ignoring the settled position that when the dispute is relating to identity of land, the issue could

have been resolved by appointing Commissioner for local inspection as held by the Supreme Court in the matter of Shreepat v. Rajendra Prasad and others¹ and the M.P. High Court in the matter of Durga Prasad v. Parveen Foujdar and others². As such, judgment and decree of both the Courts below deserve to be set aside and the appeal deserves to be allowed.

5. Mr. Uttam Pandey, learned counsel appearing for the plaintiff / respondent No.1 herein, would support the judgments and decrees of both the Courts below and would submit that in Exs. P-7 & P-9, it has clearly been held that both the lands are different lands held by the plaintiff and the defendant and the defendant has encroached upon Khasra No.318/2, therefore, decree has rightly been passed in favour of the plaintiff and as such the appeal deserves to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. Both the Courts below have concurrently recorded a finding that the plaintiff is title holder of the suit land bearing Khasra No.318/2, area 1250 sq.ft. and it has also been recorded, especially by the first appellate Court, that though the defendant has claimed title on the basis of Ex.D-1 on Khasra No.318/1, but it is not the title deed. That finding is also a correct finding, as a careful perusal of Ex.D-1 would show that it is only an agreement for transfer of land in favour of the defendant, but agreement to sale does not confer any title in whose favour it has been executed. As such, the defendant has failed to

1 JT 2000(7) SC 379

2 1975 JLJ 340

establish that she is title holder of Khasra No.318/1 on the basis of Ex.D-1.

8. Both the Courts below have recorded a finding that the defendant has encroached upon the plaintiff's land bearing Khasra No.318/2 on the basis of Ex.P-9 that is demarcation by the Assistant Superintendent of Land Records who has also been examined as PW-3 Chandan Das on behalf of the plaintiff. Vide Ex.P-9 it has clearly been recorded that the defendant has encroached upon the plaintiff's land i.e. Khasra No.318/2. The said witness (PW-3) has been subjected to lengthy cross-examination on behalf of the defendant, but nothing has been elicited to hold that Ex.P-9 is not reliable and demarcation has not been conducted in accordance with law. As such, it has duly been proved that the defendant / appellant herein has encroached upon the plaintiff's land bearing Khasra No.318/2, area 1250 sq.ft.. The demarcation report is already on record vide Ex.P-9. As such, both the Courts below are justified in granting decree in favour of the plaintiff and therefore identity of the suit property has clearly been established. Further, in view of the fact that the defendant has failed to prove her title of land bearing Khasra No.318/1, the first appellate Court is justified in dismissing the appeal filed by the defendant / appellant herein. The substantial question of law is answered accordingly and the second appeal is dismissed. Parties to bear their own cost(s).
9. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge