

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 256 of 2010**

- Kisaan Singh S/o Lal Singh Kanwar, aged about 43 years, R/o Vill.- Narra/Ratapali, Distt.-Mahasamund

---- Appellant/Plaintiff**Versus**

1. Dukal S/o. Dhansingh Kanwar, (Dead and Deleted) thro Lrs.
1(A) Dharam Singh Diwan S/o Dukal Aged About 44 Years R/o Village Tamora, Tehsil Bagbahara, District Mahasamund, Chhattisgarh
1(B) Sukhbai Diwan D/o Dukal Aged About 40 Years R/o Village Jhitki, Tehsil Bagbahara, District Mahasamund, Chhattisgarh
1(C) Kalam Singh Diwan S/o Dukal Aged About 38 Years R/o Village Narra, Tehsil Bagbahara, District Mahasamund, Chhattisgarh
1(D) Dayaram Diwan S/o Dukal Aged About 35 Years R/o Village Narra, Tehsil Bagbahara, District Mahasamund, Chhattisgarh
1(E) Bodhan Singh Diwan S/o Dukal Aged About 32 Years R/o Village Narra, Tehsil Bagbahara, District Mahasamund, Chhattisgarh
2. State Of Chhattisgarh Through Collector, Mahasamund, District Mahasamund, Chhattisgarh

---Respondents/Defendants

For Appellant	: Shri Manoj Paranjpe, Advocate
For Respondent No.1	: None present though represented
For Respondent No.2/State	: Shri Sunil Otvani, Additional Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****03.02.2021.**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein/plaintiff against the impugned judgment and decree dated 24.6.2010 passed by First Additional District Judge, Mahasamund in Civil Appeal No.47-A/2010 affirming the judgment and decree dated 06.3.2009 passed by Second Civil Judge – Class-I, Mahasamund in Civil Suit No.15A/2008 by which the trial Court

dismissed the suit of the plaintiff.

2. Learned counsel for the appellant/plaintiff submits that both the courts below have concurrently erred in holding that the plaintiff has failed to prove encroachment of the defendants upon the land belonging to him, by recording a finding which is perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellant and went through the record with utmost circumspection.

4. The plaintiff has filed suit for possession and permanent injunction, inter alia stating that he is the owner of Khasra No.69 and 76 area 0.6 hectare and 0.26 hectare situated at village Narra/Ratapali, Distt. Mahasamund. On 04.02.2006 defendant No.1 has harvested the crop of the plaintiff as shown in red ink in the map annexed with the plaint and also encroached some part of the abadi land situated at Khasra No.1234 and raised construction thereon. Therefore, he is entitled for possession of the said land after dismantling the said construction. The defendant No.1 filed written statement opposing the allegations made in the plaint stating inter alia that he has not encroached the land of the plaintiff and he is in possession of his own land, as such, the suit filed by the plaintiff be dismissed.

5. The trial Court after appreciating oral and documentary evidence on record dismissed the suit holding that the plaintiff had failed to establish encroachment by defendant No.1 and no demarcation report has been filed by the plaintiff to prove the encroachment. Even no revenue officer has

been examined to prove the factum of encroachment by the defendant. The said finding of the trial Court was affirmed by the first appellate Court. Both the Courts below have rightly concluded that in absence of demarcation and in absence of evidence of encroachment by the defendant No.1, the plaintiff is not entitled for decree for possession and permanent injunction, as such, the concurrent finding of both the courts below is based on valid ground which is neither perverse nor contrary to the record and the appeal does not involve any substantial question of law .

6. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)

JUDGE