

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.311 of 2010****Judgment reserved on :29.01.2021****Judgment delivered on:15.02.2021**

1. Vishwanath, S/o Late Kashi Prasad Soni, Aged about 42 years, Caste-Soni, Occupation – Service and Agriculture,
2. Shivnath, S/o Late Kashi Prasad Soni, Aged about 39 years, Caste Soni, Occupation Service and Agriculture,

Both are R/o Village Patna, P.S.-Patna, Tahsil-Baikunthpur, District-Koriya (CG)

**----- Appellants/Plaintiffs****Versus**

1. Rajkishor Pandey, S/o Ghirau Ram Pandey, Aged about 65 years,
2. Krishna Kumar Pandey, S/o Rajkishore Pandey, Aged about 40 years, Caste-Brahman, Occupation Service,  
Both are R/o Vilage Patna, P.S.-Patna, Tahsil-Baikunthpur, District-Koriya (CG)
3. State of Chhattisgarh, through the Collector, Koriya, Baikunthpur, District Koriya (CG)

**----- Respondents/Defendants**


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For Appellants/Plaintiffs:

Mr.Ashok Kumar Shukla, Advocate

For Respondent No.1/defendant No.2:

None present

For Respondent No.2/defendant No.1:

Krishna Kumar Pandey in person

For Respondent No.3/State:

Mr.Ravi Bhagat, Dy.G.A.

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**Hon'ble Shri Justice Sanjay K. Agrawal****C.A.V. Judgment**

1. The substantial question of law involved, formulated  
and to be answered in this second appeal preferred by

the appellants/plaintiffs is as under:-

“Whether the first appellate Court is justified in reversing the judgment and decree of the trial Court by recording a finding which is perverse to the record particularly the identity of the suit land and that too without complying the provisions of Order 41 Rule 31 of the CPC ?”

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

2. It is the case of the plaintiffs that their father late Shri Kashi Prasad Soni has purchased the suit land i.e. 50 decimal, which is part of Khasra No.729/11 area 0.405 hectare as shown in map attached with the plaint stating inter-alia that defendant No.2 started claiming the said land necessitating the filing of the suit for declaration of title, confirmation of possession and permanent injunction stating inter-alia that their father late Shri Kashi Prasad Soni has purchased the suit land by registered sale deed dated 19.10.1965 from Lakhraj Kumari, which they have inherited and they are in possession of the suit land and the defendants have no right and title over the suit land.

3. Resisting the suit, defendant No.2 filed his written

statement stating inter-alia that defendant No.1 is owner and title-holder of Khasra No.729/13 area 0.605 hectare which he has purchased by registered sale deed in the year 1991 and he is in possession over the suit land. He has already got his land demarcated and the plaintiffs are not in possession of the suit land. They have no title over the suit land.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 24.3.2007, decreed the suit holding that the plaintiffs are in possession of the suit land and the defendants attempted to take possession of the suit land. In appeal preferred by the defendants, the first appellate Court by the impugned judgment and decree reversed the judgment and decree of the trial Court and dismissed the suit by granting appeal, against which, this second appeal has been preferred by the plaintiffs, in which one substantial question of law has been formulated by this Court, which has been set-out in opening paragraph of this judgment of sake of completeness.

5. Mr. Ashok Kumar Shukla, learned counsel for the appellants/plaintiffs, would submit that the first appellate Court went wrong in reversing the well

merited judgment and decree of the trial Court holding that the plaintiffs have failed to demarcate their land and demarcation report (Ex.P-5) has not been proved by examining the officer who has demarcated the suit land. He would further submit that the first appellate Court in very cryptic order set-aside the judgment and decree of the trial Court as Ex.P-5 is a copy of demarcation report which was done at the instance of the defendants, therefore, the defendants cannot take an objection that it has not been made in accordance with law and the revenue officer, who has conducted demarcation, ought to have been examined, as such, the judgment and decree of the first appellate Court deserves to be set aside.

- 6.** On the other hand, respondent No.2/defendant No.1-Krishna Kumar Pandey would submit that the judgment and decree passed by the first appellate Court is in accordance with law. He would specifically submit that photocopy of demarcation report has been filed and original declaration report has not been filed. He would further submit that the revenue officer who has conducted demarcation even not been examined and that demarcation has been made only to the land of the defendants and as such, the plaintiffs cannot

make capital out of their demarcation report and he is not in possession of any land held by the plaintiffs, as such, the second appeal preferred by the plaintiffs deserves to be dismissed with cost(s). He would also submit that demarcation report has even not been produced in this case and the demarcation report, if any, of other case cannot be relied upon to decide the dispute. The plaintiffs ought to have filed separate demarcation report, if any, to support their case.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

8. The plaintiffs claimed that they have purchased the suit land bearing Khasra No.729/11 area 0.405 hectare by registered sale deed dated 19.10.65 (Ex.P-1) and out of which 50 decimal of the suit land defendants are disturbing their title and possession claiming to be they are owners and therefore, decree for declaration of title and permanent injunction be granted in their favour, which was eventually granted by the trial Court, but finally it was reversed by the first appellate Court and the suit was dismissed

and now the plaintiffs are before this Court in this second appeal.

9. The first appellate Court dismissed the suit by granting appeal by holding that the suit land, which the plaintiffs claimed to have purchased vide Ex.P-1 was the part of Khasra No.729/11. Total area of Khasra No.729/11 was 22 acres 48 decimal and the plaintiffs could not establish which part of Khasra No.729/11 they have purchased by registered sale deed dated 19.10.65 (Ex.P-1). The first appellate Court has also recorded a finding that sale deed (Ex.P-1) only states that the plaintiffs have purchased the suit land bearing Khasra No.729/11 area 0.405 hectare, but it does not mention any boundaries of the land purchased, no existing revenue map of the said land was appended with the sale deed and even no revenue documents are attached with sale deed and therefore, in absence of boundaries mentioned in the sale deed and further in absence of revenue map, revenue documents and description of the suit land mentioned in para-2 of the plaint, it is clear case that the plaintiffs could have got their land demarcated which has not been done by them. The first appellate Court further held that demarcation

report which is conducted at the the instance of defendant No.1, only photocopy of covering memo has been filed and other documents like demarcation, map, khasra panchshala, B-1 etc. have not been filed and the revenue officer who has demarcated the land of the defendants has also not been examined.

**10.** A careful perusal of sale deed (Ex.P-1) would show that the plaintiffs have purchased the land bearing Khasra No.729/11 area 0.405 hectare, but surprisingly sale deed does not mention any boundaries of the said land purchased by the plaintiffs. No revenue map of Khasra No.729/11 has been attached and even otherwise, no revenue records were appended with the plaint and when the suit was filed by the plaintiffs, the plaintiffs have claimed Khasra No.729/11, whereas they have purchased the suit land of Khasra No.729/11 by sale deed dated 19.10.65 (Ex.P-1).

**11.** It is correct to say that even during the course of the trial, no revenue map has been filed indicating the boundaries of the suit land and even the old existing revenue map at the time of purchase on 19.10.65 (Ex.P-1) has also not been filed. Demarcation report which was conducted at the

instance of defendant No.1, in which only photocopy of covering page has been filed. Detailed demarcation report, field map, khasra panchshala etc. have not been filed and even the revenue officer who has conducted demarcation has not been examined.

12. In that view of the matter, the first appellate Court has rightly held that the plaintiffs ought to have got their land demarcated before the revenue authorities. The first appellate Court has clearly recorded a finding that the defendants have purchased Khasra No.729/13 and they are in possession of the said land, which is duly marked and shown in revenue records, as such, the first appellate Court has rightly concluded that in absence of demarcation, the plaintiffs have failed to establish that they have purchased the suit land and came in possession over the suit land and rightly declined to grant decree in favour of the plaintiffs, which is neither perverse nor contrary to record.

13. In view of the finding recorded hereinabove, the judgments cited by Mr.Ashok Kumar Shukla i.e. Venkata Swamy v. H.N.Shhivanna (Dead by Legal Representative and another<sup>1</sup>), Municipal Council Bawal and another v.

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<sup>1</sup> (2018) 1 SCC 604

Babul Lal and others<sup>2</sup>, Executive Officer Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v. Chandran and others<sup>3</sup>, Union of India v. K.V.Lakshman and others<sup>4</sup>, Shasidhar and others v. Ashwani Uma Mathad and another<sup>5</sup>, Jaswant Singh v. Gurdev Singh and others<sup>6</sup>, Vithaalbhai Pvt. Ltd. v. Union of India<sup>7</sup>, Rukhmani Bai and others v. Samaru and others<sup>8</sup>—and Koirbiha S/o Maniram v. Sammelal S/o Moharsai<sup>9</sup> are clearly distinguishable and not applicable to the facts of the present case.

**14.** I do not find any merit in this second appeal.

The substantial question of law is answered in favour of the defendants and against the plaintiffs. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

**15.** A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-

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2 (2018) 4 SCC 369  
3 (2017) 3 SCC 702  
4 (2016) 13 SCC 124  
5 (2015) 11 SCC 269  
6 (2012) 1 SCC 425  
7 AIR 2005 SC 1891  
8 CGLJ 43(4) 2014 267  
9 2016 CJ(Chh) 433