

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.290 of 2010**

**Tulsi, S/o Late Somra, aged about 35 years, R/o Village Lipti,
Tahsil Dharamjaigarh, Distt. Raigarh (C.G.)**

**(Defendant)
---- Appellant**

Versus

**1. Parmanand, S/o Sukru, aged about 40 years, Caste Mahkul, R/o
Lipti, Tahsil Dharamjaigarh, Distt. Raigarh (C.G.)**

(Plaintiff)

2. State of Chhattisgarh, through Collector, Distt. Raigarh (C.G.)

**(Defendant)
---- Respondents**

For Appellant / Defendant: **Mr. Manoj Kumar Sinha, Advocate.**

For Respondent No.1 / Plaintiff: -

Mr. Abhishek Saraf, Advocate.

For Respondent No.2 / State: -

Mr. Vinod Kumar Tekam, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

17/02/2021

**1. This second appeal preferred by defendant No.1 under Section
100 of the CPC has been admitted for hearing by formulating the
following substantial question of law:**

**“Whether the First Appellate Court is justified in
reverting the judgment and decree of the Trial Court
by holding that the defendant has encroached upon
the plaintiff’s suit land by recording a finding perverse
to the record, particularly when the Revenue Officer,
who has demarcated the suit land vide Ex.P-1, has not
been examined?”**

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

2. The plaintiff filed suit that he is owner and title holder of the land

bearing Khasra No.201/3-Ka, area 0.223 hectare, of which defendant No.1 has encroached upon eastern side to the extent of 5 decimals on 8-11-1999 and has also made some construction thereon which was refuted by defendant No.1 by filing written statement and submitted that he has not encroached upon the plaintiff's land, therefore the plaintiff's suit is liable to be dismissed. During the course of trial, the plaintiff filed copy of demarcation report Ex.P-1 demarcated on 10-1-2000 and panchnama Ex.P-2 on record.

3. The trial Court after appreciating oral and documentary evidence available on record, did not rely upon Exs.P-1 & P-2 and dismissed the suit holding that the revenue officer who has demarcated the land ought to have been examined and even the demarcation appears to have not been conducted in accordance with law in absence of field book, boundary marks, etc..
4. On appeal being preferred by the plaintiff, the first appellate Court interfered with the judgment & decree of the trial Court and granted the appeal and decreed the suit on the basis of Exs.P-1 & P-2 holding that defendant No.1 has encroached upon the suit land owned by the plaintiff and accordingly granted decree for declaration of title and consequent recovery of possession which has been called in question in the instant appeal 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.
5. Mr. Manoj Kumar Sinha, learned counsel appearing for the appellant herein / defendant No.1, would submit that the first

appellate Court is absolutely unjustified in granting the appeal by relying upon Ex.P-1 without meeting the finding recorded by the trial Court as admittedly and undisputedly, the revenue officer, who has demarcated the land vide Ex.P-1 and prepared panchnama Ex.P-2, has not been examined and even otherwise, the demarcation report is of 10-1-2000 which was filed on 17-10-2003, as such, examination of the revenue officer who demarcated the said land was absolutely necessary which the first appellate Court ignored and simply decreed the suit.

6. Sounding contra-note, Mr. Abhishek Saraf, learned counsel appearing for the plaintiff / respondent No.1 herein, would submit that defendant No.1 has encroached upon the suit land which is apparent from oral evidence and therefore decree has rightly been granted by the first appellate Court.
7. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through entire records with utmost circumspection.
8. Undisputedly, the plaintiff is owner of land bearing Khasra No.201/3-Ka, area 0.223 hectare, and it is his case that defendant No.1 has encroached upon 5 decimals of his aforesaid land on eastern side and in order to prove encroachment, he brought Exs.P-1 & P-2 – demarcation report and panchnama, respectively, which has been conducted on 10-1-2000. The trial Court doubted the said report holding that demarcation has not been conducted in accordance with law and in absence of boundary marks and field book and further recorded a finding that the revenue officer who has conducted demarcation has not been examined, who ought to have been

examined to prove the said demarcation report, but the first appellate Court reversed the said finding relying upon Exs.P-1 & P-2 and decreed the suit of the plaintiff.

9. In the matter of Laxman Singh v. Jagannath¹, in similar fact-situation, it has been held by the M.P. High Court that in order to prove the demarcation report, examination of the officer who has demarcated the land is necessary and rejected the plaint at the second appeal stage. It was observed as under: -

“12. The plaintiff alone has entered the witness box. In his deposition, he has not specified the specific portion encroached upon by the defendant. He has submitted a document Ex. P-1 which is a certified copy of demarcation of the lands at village Bamuliya-Uda sent by the Office of Revenue Inspector to the Naib-Tahsildar. Ex. P-2 is a certified copy of Panchanama. Original documents and records were not called from the Revenue Courts. The Revenue Officers, who measured the land were also not examined. The plaintiff in his deposition has stated that he does not remember the survey number of suit land and has stated that it must be recorded in the map. In the plaint, sufficient specifications of the land encroached is not mentioned and no map is furnished.”

10. Reverting to the facts of the case in the light of the aforesaid position of law, it is quite vivid that the plaintiff, whose case is that defendant No.1 has encroached upon the suit land, though rightly brought on record the demarcation report Ex.P-1 and panchnama Ex.P-2, has failed to examine the revenue officer who has conducted demarcation and prepared the demarcation report, particularly, it is said to have not been conducted in accordance with law and there is absence of boundary marks and field book while the demarcation was conducted. Non-

¹ 2000(1) M.P.L.J. 79

examination of revenue officer is fatal to the plaintiff's case as it could have been proved by examination of revenue officer that defendant No.1 has encroached upon the suit land of the plaintiff. Other oral evidence available is not sufficient to conclude that defendant No.1 has encroached upon the plaintiff's land. The first appellate Court without meeting with the said reasons recorded by the trial Court that examination of revenue officer is must, simply granted decree which is not supported either on facts or on law. Accordingly, judgment & decree of the first appellate Court are set aside and that of the trial Court are restored. The plaintiff's suit stands dismissed and the substantial question of law is answered accordingly.

11. The second appeal is allowed to the extent indicated herein-above. No order as to cost(s).

12. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma