

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.320 of 2010****Judgment reserved on :29.01.2021****Judgment delivered on:15.02.2021**

1. Ashwani Kumar Sahu, S/o Late Ramdin Sahu, Aged about 50 years, Occupation Service and Agriculturist, R/o Village Patna, Thana Patna, Tahsil Baikunthpur, District-Koriya (CG)
2. Shivbachan, S/o Late Ramsudin Sahu, Aged about 48 years, Occupation Service and Agriculturist, R/o Village Patna, Thana Patna, Tahsil-Baikunthpur, District-Koriya (CG)

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

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

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

---

**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.

---

**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 setting aside the judgment and decree of the trial Court by recording perverse finding on the ground of dispute about the identity of the suit land ?

[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 they have purchased the suit land i.e. 62.5 decimal, which is part of Khasra No.729/9 area 0.809 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 the plaintiffs father Ramsudin has purchased the suit land by registered sale deed dated 26.2.1973 from Girdhari Lal 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 plaintiff, 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 was not 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 Ex.P-5 only the covering letter has been filed and contents of the attachment, which they said demarcation 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).

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.729/9 area 0.809 hectare by registered sale deed dated 26.2.73 (Ex.P-1) and out of which 0.62 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.729/9. Total area of Khasra No.729/9 was 22 hectares and the plaintiffs could not

establish which part of Khasra No.729/9 they have purchased by registered sale deed dated 26.2.73 (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.729/9 area 0.809 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 (Ex.P-5) which is conducted at the instance of defendant No.1, only a copy 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 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.729/9tha area 0.809 hectare, but surprisingly sale deed does not mention any boundaries of the said land purchased by the plaintiffs. No revenue map of Khasra No.729/9tha 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.729/9, whereas they have purchased the suit land of Khasra No.729/9tha by sale deed dated 26.2.73 (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 26.2.73 (Ex.P-1) has also not been filed. Ex.P-5 is demarcation report which was conducted at the instance of defendant No.1, in which only 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. 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

---

1 (2018) 1 SCC 604

2 (2018) 4 SCC 369

3 (2017) 3 SCC 702

4 (2016) 13 SCC 124

5 (2015) 11 SCC 269

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/-

---

6 (2012) 1 SCC 425  
7 AIR 2005 SC 1891  
8 CGLJ 43(4) 2014 267  
9 2016 CJ(Chh) 433