

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.193 of 2011**

Shobhit Ram, S/o Sonaie Ram, Aged about 61 years, R/o Village Karaji, Thana Patna, Tahsil Baikunthpur, Distt. Korea (C.G.) Died Through Legal heirs

1. Suhano Bai, W/o late Shibhit Ram, Aged about 60 years,
2. Bahalo Bai, W/o late Laxman, Aged about 35 years,
3. Satyanarayan, S/o Laxman, aged about 17 years (minor),
4. Devnarayan, S/o Laxman, aged about 15 years (minor),

From 3 to 4 are the minors through their mother Bahalo Bai, W/o late Laxman

5. Samay Lal, S/o Shobhit Ram, aged about 40 years,
6. Ram Bilas, S/o Shobhit Ram, aged about 35 years,

All are the R/o Village Karji, Rajswa Nirikshak Mandal Patna, Tahsil Baikunthpur, Distt. Korea (C.G.)

7. Sunaro, W/o Samay Lal, D/o Shobhit Ram, aged about 45 years, Caste Rajwar, R/o Village Jharanapara, Tahsil Baikunthpur, Distt. Korea (C.G.)
 8. Fulkunwar, W/o Mohelal, D/o late Shobhit Ram, Caste Rajwar, R/o Village Jharanapara, Tahsil Baikunthpur, Distt. Korea (C.G.)
- Appellants

Versus

1. Ramlal, S/o Dasrath, aged about 51 years, R/o Village Karji, Thana Patna, Distt. Korea (C.G.)
- (Defendant)
2. State of Chhattisgarh, Through Collector, Korea, Baikunthpur (C.G.)
- Respondents

For Appellants / LR's of the original plaintiff: -

Mr. Sanjay Patel, Advocate.

For Respondent No.1 / Defendant: -

Mr. Vijay Kumar Sahu, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board20/01/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the LR's of the original plaintiff.
2. By the impugned judgment, the first appellate Court has reversed the judgment & decree of the trial Court and dismissed the suit of the plaintiff finding no merit.
3. Mr. Sanjay Patel, learned counsel appearing for the appellants herein / LR's of the original plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that the demarcation report Ex.P-2 has not been proved in accordance with law and the defendant has not encroached over the suit land held by the plaintiff as the plaintiff is admittedly the owner of Khasra No.339, area 0.06 R.A., by recording a finding which is perverse to record and the appeal involves substantial question of law for determination.
4. Admittedly, the original plaintiff was owner and title holder of Khasra No.339, area 0.06 R.A., and according to him, the defendant has encroached over 0.90 kadi x 0.05 kadi = 450 sq. kadi and has constructed boundary wall to which he made application for demarcation and vide Exs.P-2, P-3 & P-4 – demarcation report and maps, the defendant is said to have encroached on the plaintiff's land and on the basis of said demarcation report, the trial Court decreed the suit, but the first appellate Court reversed the finding of the trial Court and dismissed the suit holding that demarcation report has not been

proved in accordance with law, as neither the defendant was present at the time of demarcation nor the revenue officer who has conducted demarcation was examined and oral evidence led in this behalf is contradictory.

5. This Court in the matter of S.A.No.726/2003 (Radhey Shyam v. Shankar Lal Gupta and another), decided on 25-1-2019, has clearly held that in order to prove the demarcation report, the officer who has made demarcation is required to be examined particularly when the demarcation report has been questioned.
6. In this case, admittedly, the revenue officer who has conducted demarcation has not been examined and oral and documentary evidence are quite contradictory and examination of revenue officer was must, but the said revenue officer has not been examined and therefore the fact of encroachment or the fact that the encroachment has been made by the defendant is not established and as such, the first appellate Court has rightly set aside the decree for declaration of title and possession granted in favour of the plaintiff, as the fact of encroachment was not proved by the plaintiff, which is strictly in accordance with law. I do not find any substantial question of law for formulation in this second appeal. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge