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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 369 of 2018

{Arising out of judgment and decree dated 9-5-2018 in Civil Suit No.38A/2013 of the 5th Additional District Judge, Raipur}

Judgment reserved on: 23-9-2026

Judgment delivered on: 28-10-2026

Judgment (Full) uploaded on: 28-10-2026

D. Uma Maheshwar Rao, S/o Late D. Jagga Rao, aged about 47 years, presently resident of Shivanand Nagar, Srinagar, Gudhiyari, (earlier resident of Vijay Nagar, Bhanpuri) Raipur, Tehsil & District Raipur, Chhattisgarh.

(Defendant)
... Appellant

versus

Ramprasad Bhakt, S/o Late Jagannath Bhakat, aged about 64 years, R/o Shrinagar, Khamtarai, Raipur, Tehsil & District Raipur, Chhattisgarh.

(Plaintiff)
... Respondent

For Appellant	:	Mr. Manoj Paranjpe, Senior Advocate with Mr. Sandeep Patel, Advocate.
For Respondent	:	Mr. Shalvik Tiwari, Advocate.

Single Bench: -
Hon'ble Smt. Sushma Sawant, J.

C.A.V. Judgment

1. Invoking the appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, the appellant herein/defendant has preferred this appeal challenging the judgment & decree dated 9-5-2018

passed by the **5th Additional District Judge, Raipur in Civil Suit No.38A/2013**, by which the learned Additional District Judge has decreed the suit filed by the respondent herein/plaintiff, for declaration of title, permanent injunction, vacant possession and damages.

2. The aforesaid challenge has been made on the following factual backdrop: -

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

Factual Matrix

-: Case of the Plaintiff/Respondent before the trial Court :-

3. Case of the **respondent/plaintiff Ram Prasad**, in brief, is that he purchased the diverted land bearing **Khasra No.67/10**, admeasuring about **1755 sq. ft.**, situated at Village **Gudhiyari**, Patwari Halka No.**107**, Tehsil and District **Raipur** (hereinafter referred to as 'the suit property'), from Shri Satyaprakash Jha and Shri Shivkaushal through a registered **sale deed dated 22-4-2004 (Ex.P-2C)**, by taking a loan. Thereafter, he got his name mutated in the revenue records. The said vendors had previously purchased the suit property from Shri Mantram, Shri Kashiram and Chamarin Bai through a registered **sale deed dated 24-1-2003 (Ex.P-5)**.

4. It is the further case of the **respondent/plaintiff Ram Prasad** that, after purchasing the suit property, he went to Kolkata with his family on 5-12-2008. Upon returning on 24-12-2008, he found that **appellant/ defendant D. Uma Maheshwer Rao** had raised columns and

constructed a house over the suit property, thereby encroaching upon his land. Consequently, a dispute arose between the parties, compelling the **respondent/plaintiff Ram Prasad** to initiate civil proceedings against **appellant/defendant D. Uma Maheshwer Rao**.

5. It is further stated that, initially, **respondent/plaintiff Ram Prasad** instituted a civil suit in the year 2009 seeking the reliefs of declaration and injunction. However, upon completion of the construction of the house by the defendant, the plaintiff sought the additional relief of vacant possession. As the valuation of the suit for the additional relief exceeded the pecuniary jurisdiction of the Court, the earlier suit was withdrawn with liberty to institute a fresh suit. Accordingly, **respondent/plaintiff Ram Prasad** instituted the present suit on 12-5-2010, seeking declaration of title, permanent injunction, vacant possession of the suit property and damages against **appellant/ defendant D. Uma Maheshwer Rao**.

-:Written Statement of the Defendant/Appellant before the trial Court:-

6. While denying the adverse averments made in the plaint, **appellant/ defendant D. Uma Maheshwer Rao** has stated in the written statement that house has been constructed over Khasra **No.67/15**, area admeasuring **1584 sq.ft**. and not over Khasra No.67/10. It has further been stated that **appellant/defendant D. Uma Maheshwer Rao** has purchased Khasra No.67/15 vide registered **sale deed dated 23-8-2006 (Ex.D-2C)** from one Shri Pradeep Baran, who had earlier purchased the same on **14-12-1989 (Ex.D-1)** from Shri Mantram and

others. It has also been stated that the house was constructed after lawfully obtaining due permission from the Municipal Corporation **on 28-11-2008 vide Ex.D-4** and the area mentioned in the sanctioned layout plan matches with the purchase area of the defendant.

-: Proceedings before the learned Trial Court :-

7. The Trial Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

S.No.	Questions for Consideration	Finding
1.	क्या वादग्रस्त वादी के स्वामित्व व आधिपत्य का था ?	"प्रमाणित हॉ"
2.	क्या प्रतिवादी ने उक्त भूमि में अनाधिकृत रुप से मकान का निर्माण कर लिया है, प्रभाव ?	"प्रमाणित हॉ" कण्डिका 30 के अनुसार ।
3.	क्या वादी, प्रतिवादी से हर्जाना प्राप्त करने का अधिकार है, यदि हॉ तो कितना ?	"प्रमाणित नहीं"
4.	क्या वादी ने दावे का समुचित मूल्यांकन कर उचित न्याय शुल्क चस्पा किया है ?	"प्रमाणित नहीं "
5.	सहायता एवं व्ययं ?	वादी का दावा स्वीकार किया गया । निर्णय कण्डिका 33 के अनुसार

-:Details of evidence and documents available before the Trial Court:-

Evidence led by the respondent/plaintiff Ram Prasad:-

8. Before the Trial Court, **Rameshwar Kumar Dhruw (PW-1), Ramprasad Bhakt (PW-2), Rahul Bhakt (PW-3), Shivkumar Kaushal (PW-4), Kriparam Sinha (PW-5) & Mantram Sahu (PW-6)** have been examined on behalf of the respondent/plaintiff. In support of his oral testimony, appellant/plaintiff Ram Prasad has exhibited 8 documents as **Exs.P-1 to P-8**.

Evidence led by appellant/defendant D. Uma Maheshwer Rao:-

9. Whereas **B. Chandrashekhar Naidu (DW-1)** & **D. Uma Maheshwar Rao (DW-2)** have been examined on behalf of appellant/defendant D. Uma Maheshwer Rao. Appellant/defendant D. Uma Maheshwer Rao has exhibited four documents **Exs.D-1 to D-4C**.

-:Judgment of the trial Court:-

10. Upon completion of the trial, the learned Trial Court, vide **judgment and decree dated 9-5-2018**, decreed the suit in favour of **respondent/plaintiff Ram Prasad**, declaring his title over the suit property and granting the relief of vacant possession after demolition of the defendant's house, along with a decree of permanent injunction. Aggrieved by the said judgment and decree, **appellant/plaintiff D. Uma Maheshwer Rao** has preferred the present appeal on the following grounds:-

(i) The impugned judgment and decree of the trial Court are perverse and not sustainable under the law.

(ii) The impugned judgment and decree of the trial Court have failed to appreciate the facts and law on record.

(iii) The trial Court ought to have seen the evidence given by the erstwhile owner of Khasra No.67/10 who has clearly stated that on 14-12-1989, the property was sold to one Shri Pradeep Baran Saha by Mantram, Kashiram and Chamarin Bai and thereafter, sold the property to him through registered sale deed dated 24-1-2003 which was executed by power of attorney (Shyamlal Sahu).

(iv) The trial Court has erred in holding the opinion of the Revenue Inspector as a report and even the Revenue Inspector in his evidence

has stated that the opinion was given by comparing the map attached to the sale deed.

(v) There is an apparent error on the face of the record, which needs interference by this Court in exercise of its jurisdiction as the first appellate court i.e. as court of facts and law both.

(vi) The trial Court has failed to appreciate the evidence in accordance with the principles applicable in civil cases i.e. preponderance of probabilities.

-:Proceedings before the Appellate Court:-

11. Both the parties were heard on this appeal. The evidence and documents available in the record of the trial Court have been perused.

-:Questions to be considered in this Appeal:-

1. Whether the learned Trial Court was justified in holding that the defendant/appellant had encroached upon the suit property bearing Khasra No.67/10, admeasuring 1755 sq. ft., situated at Village Gudhiyari, Patwari Halka No.107, Tehsil and District Raipur, by constructing a house thereon?

2. Whether the learned Trial Court was justified in decreeing vacant possession of the suit property after demolition of the house constructed by the defendant/appellant and in granting the relief of permanent injunction in favour of the plaintiff/ respondent?

3. Whether the judgment and decree passed by the learned Trial Court warrant interference by this Court in the present appeal?

-:Argument of Appellant/Defendant D. Uma Maheshwer Rao:-

12. On behalf of the appellant/defendant, detailed written submissions have been advanced on behalf of Mr. Manoj Paranjpe, learned Senior Counsel, in consonance with the pleadings contained in the written statement. The principal contention is that the evidence led by the plaintiff was not sufficient for granting the decree of title and possession and the demarcation report relied upon by the learned trial Court was not lawful as the demarcation was not conducted lawfully. Learned Senior Counsel relying upon the decision of the Supreme Court in the matter of **Union of India and others v. Vasavi Cooperative Housing Society Limited and others**[1] has contended that the plaintiff has to prove his own case and so far as the demarcation procedure and the identity dispute of land and demarcation.

13. Learned Senior Counsel further relied upon the decision of this Court in the matter of **Ashok Kumar Tiwari v. Mohit Kumar and others**[2] and that of the Supreme Court in the matter of **Ram Lal and others v. Salig Ram and others**[3] as also upon the decision of the Madhya Pradesh High Court in the matter of **Ramlal v. State of Madhya Pradesh through Collector and others**[4]. It is further contended that the learned trial Court has erred in not appreciating the building layout (Ex.D-4), which shows that the house of the defendant has been constructed over 1,584 sq.ft. of land, which exactly matches with the sale deed of the defendant. It is also contended that the learned trial

1 (2014) 2 SCC 269
2 2019 SCC OnLine Chh 129
3 (2020) 11 SCC 590
4 2024 SCC OnLine MP 2334

Court was not justified in recording a finding that since the sale deed of the plaintiff was executed prior in time, there are chances that the defendant's seller has sold him the land showing the boundaries of the plaintiff's land.

14. In respect of subsequent sale deed, reliance has been placed upon the decision of this Court in the matter of **Leela Bihari Mishra v. Rahul Sinha and others**[5]. Finally, learned Senior Counsel relying upon the decision rendered by this Court in the matter of **Rameshwar Prasad Gupta and another v. Bhagwan Das (Died) through LR**[6] would submit that handing over of the suit property after demolition of the defendant's house would not be just and proper. It is, therefore, submitted that the impugned judgment and decree cannot be sustained.

-:Argument of Respondent/Plaintiff Ram Prasad:-

15. Per contra, Mr. Shalvik Tiwari, learned counsel appearing for the respondent/plaintiff, while supporting the judgment and decree passed by the learned Trial Court, submitted that the finding of the trial Court on identity/location of the suit land is a finding of fact resting on a correct and detailed appreciation of (i) the registered sale deeds of both parties compared boundary-for-boundary; (ii) an independent, contemporaneous inspection carried out by a Revenue Inspector at the joint instance of both parties; and (iii) an admission by the appellant/defendant himself in his own cross-examination. Such a

5 F.A.No.54/2023, decided on 13-10-2025
6 S.A.No.321/2002, decided on 11-12-2019

finding being neither perverse nor against the weight of the evidence, calls for no interference by this Court in a first appeal.

16. It is further contended that the impugned judgment rests on a correct and detailed appreciation of the entirety of the evidence: two internally consistent registered sale deeds constituting the respondent's chain of title; an internally inconsistent, unexplained chain on the appellant's side; the report of the Revenue Inspector **(Ex.P-7)** and panchanama **(Ex.P-8)** – obtained at the joint instance of both parties, grounded in a rational and duly explained method, tested by full cross-examination, and never challenged by the appellant until this appeal; and the appellant's own admission that his construction follows the site-map of the respondent's land.

17. He relied upon the decision of the Supreme Court in the matter of **Subhaga and others v. Shobha and others**[7], the decisions rendered by this Court in the matters of **Shiekh Nasruddin v. Sarveshwar Dayal Mishra and another**[8] & **Ghanshyam Prasad Dewangan v. Naresh and others**[9] and that of the M.P. High Court in the matter of **Murlidhar and another v. Board of Revenue, M.P. and others**[10] to buttress his submission. It was, therefore, submitted that the impugned judgment and decree call for no interference in the present appeal.

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7 (2006) 5 SCC 466
8 WP227 No.932 of 2025, decided on 20-3-2026
9 FA No.323 of 2019, decided on 19-3-2026
10 WP No.18150 of 2012, decided on 29-1-2013

-:Analysis of the Appellate Court:-

Points for determination No.(i) to (iii)

18. All three questions are interconnected and, therefore, they are taken up together for consideration.

19. From the arguments advanced by both parties, their pleadings and the evidence adduced, the following undisputed facts emerge indirectly from the record. The respondent/plaintiff, Ram Prasad Bhakt, purchased land bearing **Khasra No.67/10** admeasuring **1,755 sq. ft**. from Satyaprakash Jha and Shivkaushal Parghania by way of registered sale deed dated **22-4-2004 (Ex.P-2)**, the four boundaries of which are as follows:-

Direction	Boundary
North	Land of Verma
South	Road
East	Land of Hanuman Trust
West	Land of Sahu

20. Similarly, appellant/defendant D. Uma Maheshwer Rao also purchased land bearing **Khasra No.67/15**, admeasuring **1,584 sq. ft.** from **Pradeep Baran Shah** by way of sale deed dated **23-8-2006 (Ex.D.-2)**, the four boundaries of which are as follows:-

Direction	Boundary
North	Land of any person
South	Road
East	Shiv Temple
West	Land of Sahu

21. It is also undisputed that the respective vendors of the respondent/ plaintiff and the appellant/defendant, namely, Satyaprakash Jha, Shivkaushal Parghania and Pradeep Baran Shah, had purchased the lands from their original owners, namely, **Mantram, Kashiram and Chamarin Sahu**. It is further undisputed that, prior to the institution of the present suit, appellant/defendant D. Uma Maheshwer Rao had already constructed his house.

22. The only dispute in the present case is, whether the house of appellant/ defendant D. Uma Maheshwer Rao has been constructed over the land purchased by respondent/plaintiff Ramprasd Bhakt vide sale deed **(Ex.P.2)**? The learned Trial Court, while answering this question in favour of respondent/plaintiff Ramprasad Bhakt, passed the impugned decree directing appellant/defendant D. Uma Maheshwer Rao to deliver vacant possession of the suit land to the respondent/plaintiff.

23. A first appellate court exercises powers co-extensive with those of the Trial Court in respect of the re-appreciation of evidence and adjudication of questions of fact and law. In the matter of **Shasidhar v. Ashwini Uma Mathad, (2015) 11 SCC 269,** the Supreme Court has held that a first appeal under Section 96 read with Order XLI Rule 31 of the Code of Civil Procedure, 1908, is a valuable right, and the entire case is ordinarily open for rehearing on both questions of fact and law. The first appellate court is, therefore, required to independently consider the pleadings, contentions and evidence on record and record its own reasoned findings. Accordingly, it would be appropriate to

examine the evidence available on record and determine whether the aforesaid finding recorded by the learned Trial Court is sustainable in law.

24. Although respondent/plaintiff Ramprasad Bhakt has raised the contention that appellant/defendant D. Uma Maheshwer Rao did not examine his vendor, who could have disclosed which particular piece of land had been sold to appellant/defendant D. Uma Maheshwer Rao, and that an adverse inference should, therefore, be drawn against appellant/defendant D. Uma Maheshwer Rao, it is pertinent to observe that respondent/plaintiff Ramprasad Bhakt has approached the Court seeking relief and, therefore, the burden lies upon him to establish his own case. Any weakness in the case of the appellant/defendant, or the fact that he has not examined a particular witness, cannot, by itself, endure to the benefit of the respondent/plaintiff.

25. The same principle has been affirmed by the Supreme Court in **Vasavi Co-operative Housing Society Limited's** case (supra), wherein, with reference to Sections 101 to 103 of the **Indian Evidence Act, 1872,** the Supreme Court reiterated that the plaintiff must establish his own case by adducing sufficient evidence, and that any weakness in the case set up by the defendant cannot, by itself, constitute a ground for granting relief to the plaintiff.

26. The settled principle governing the burden of proof is that, if neither party adduces any evidence, the party upon whom the burden of proof lies must fail. The present case also attracts the same principle. If

respondent/plaintiff Ramprasad Bhakt fails to adduce evidence in support of his case, he must fail, as the burden of proof rests upon him.

27. Therefore, respondent/plaintiff Ramprasad Bhakt is required to establish that the house constructed by appellant/defendant D. Uma Maheshwer Rao encroaches upon the land purchased by the respondent/plaintiff under sale deed **(Ex.P-2)**. The failure of the appellant/defendant to examine his vendor cannot, by itself, relieve the respondent/plaintiff of this burden.

28. Although the respondent/plaintiff examined the bank employee Ramesh Kumar Dhruw **(PW-1)**, himself as **(PW-2)**, his son Rahul Bhakt **(PW-3)**, the vendor under Ex.P-2, namely, Shivkumar Kaushal **(PW-4)**, and Mantram Sahu **(PW-6)**, {though wrongly mentioned as P.W.-5)}. On the other hand, appellant/defendant D. Uma Maheshwer Rao examined himself as **(DW-2)** and B. Chandrashekher Naidu **(DW-1)** in relation to the bank loan.

29. The bank witnesses examined by both parties are largely formal in nature. Similarly, the testimonies of the respondent/plaintiff and his son, as well as that of the appellant/defendant, are confined to the fact that they had purchased the respective lands under sale deeds **(Exs.P-2 & D-2)** and do not assist in determining the identity of the land over which the appellant/defendant has constructed his house.

30. Now, upon examining the testimony and cross-examination of the respondent/plaintiff's vendor, Shivkumar Kaushal **(PW-4)**, and the original vendor, Mantram Sahu **(PW-6)**, it emerges that the original

vendor, Mantram Sahu **(PW-6)**, has merely stated that they owned land bearing Khasra No.67/1-2, which they had sold to various persons through their power-of-attorney holder, Shyamlal Sahu. He was unable to state which particular piece of land had been sold to which purchaser. Thus, his testimony does not establish the identity of the particular parcel of land sold to the respondent/plaintiff or the appellant/ defendant.

31. On examining the testimony of the respondent/plaintiff's vendor, Shivkumar Kaushal **(PW-4)**, it appears from **paragraph 6** of his cross-examination that he is a **broker engaged in the business of purchase and sale of land**. He admitted that he had purchased the land in question without conducting any survey and that no layout plan had been approved. **He further admitted, in paragraph 2 of his cross-examination, that he had purchased the land merely by placing reliance on Shyamlal Sahu,** which indicates that he had purchased the land without properly verifying its identity and particulars. These admissions indicate that the vendors of the respondent/plaintiff had purchased the land without proper inquiry or verification and subsequently transferred it further, apparently for profit. Therefore, the testimonies of these witnesses do not materially assist the respondent/plaintiff in establishing the identity of the land purchased by him under **Ex.P-2**.

32. The learned Trial Court has erred in arriving at its conclusion on the basis of the boundaries mentioned in the sale deeds and the admission

regarding construction over the land, while overlooking the aforesaid material aspects of the case. In this regard, it is pertinent to note that Shivkumar Kaushal **(PW-4)**, the previous vendor of respondent/ plaintiff Ramprasad Bhakt, also admitted in the **last line of paragraph 6 of his cross-examination** that the land which he had purchased from Shyamlal, i.e., Mantram Sahu, the original owner, through his power-of-attorney holder, had already been purchased by Pradeep Baran Shaha, the vendor of the appellant/defendant.

33. This admission is material, as it indicates that Pradeep Baran Shaha had purchased the land prior to its subsequent purchase by Shivkumar Kaushal (PW-4). If the land had already been sold to Pradeep Baran Shaha, the question arises as to how the same land could subsequently have been sold to Shivkumar Kaushal (PW-4) by or on behalf of the original owner. Thus, the evidence on record indicates that the respondent/plaintiff's previous vendors may have misrepresented the facts concerning the land, while the respondent/plaintiff himself also purchased the land without properly verifying its identity and title.

34. The learned Trial Court has overlooked all these aspects, as the material on record indicates that appellant/defendant D. Uma Maheshwer Rao purchased the land under **Ex.D-2** from a vendor who had already acquired title to the land. If the lands covered by Ex.P-2 and Ex.D-2 are one and the same, the appellant/defendant would have a better title to the disputed land, having purchased it from the prior title-holder. This

material aspect has not been properly considered by the learned Trial Court.

35. As regards the demarcation reports **(Exs.P-7 & P-8)** and the testimony of the witness who conducted the demarcation, **Kriparam Sinha (PW-5)**, it also emerges that the demarcation was carried out without any identifiable fixed reference points, as such reference points were not available. With regard to the admissibility and validity of the demarcation proceedings, learned counsel for the appellant/defendant has relied upon **Ashok Kumar Tiwari** (supra); **Ram Lal v. Salig Ram (supra)**; and **Ramlal v. State of Madhya Pradesh** (supra).

36. On the other hand, learned counsel for the respondent/plaintiff has relied upon the decisions in **Subhaga** (supra); **Shiekh Nasruddin** (supra); **Ghanshyam Prasad Dewangan** (supra); and **Murlidhar** (supra).

37. The aforesaid decisions were rendered in the context of the facts and circumstances of the respective cases. The general principle emerging from the judicial precedents relied upon by the parties is that demarcation may, in appropriate circumstances, be carried out even in the absence of fixed reference points, provided that the applicable legal requirements are duly satisfied. Therefore, the validity and evidentiary value of the demarcation reports in the present case must be examined in the light of the circumstances in which the demarcation was conducted and the evidence adduced in support thereof.

38. In the present case, it may be accepted that, in the absence of fixed boundary markers, demarcation could have been carried out with reference to other available identifiable points. However, upon examination of **Ex.P-6**, it emerges that the respondent/plaintiff submitted an application for demarcation on **11-5-2009** before the Tahsildar and the Tahsildar, on the same day, directed the Revenue Inspector to carry out the demarcation. Thereafter, on **17-8-2009**, the Revenue Inspector submitted the demarcation report **(Ex.P-7)** before the Tahsildar, which was approved by the latter on **10-6-2010.**

39. The respondent/plaintiff has contended that, as the appellant/ defendant did not challenge the demarcation report, the same attained finality. This contention cannot be accepted for two reasons. **Firstly**, from the initial order sheet of the Tahsildar dated **11-5-2009** until the final order sheet dated **10-6-2010**, no notice appears to have been served upon **appellant/defendant D. Uma Maheshwer Rao**, and his signatures are not found anywhere in the proceedings. Even at the time of demarcation, only the sale deed was apparently called for from him; no actual measurement was conducted at the spot to ascertain the extent of the land occupied by the house or the extent of the vacant land. A perusal of **Ex.P-7** further indicates that the report was prepared by treating the land identified by the respondent/plaintiff as the disputed land and proceeding on that basis.

40. **Secondly,** upon examining the boundaries mentioned in the sale deeds, it is pertinent to note that, when **Shivkumar Kaushal (PW-**

4), the previous vendor of the respondent/plaintiff, along with his associate, purchased the land under sale deed **(Ex.P-5)**, the four boundaries were as follows:-

Direction	Boundary
North	Land belonging to other
South	Road
East	Temple
West	Land of Sahu

41. However, when the said land was subsequently sold to the respondent/ plaintiff under sale deed **(Ex.P-2)**, the four boundaries were described as follows:-

Direction	Boundary
North	Land of Verma
South	Road
East	Land of Hanuman Trust
West	Land of Sahu

42. A perusal of the aforesaid boundaries also indicates that the land purchased by the previous vendors was not the same land that was subsequently sold by them, as the boundaries mentioned in the two sale deeds do not correspond with each other. In the sale deed relating to the land allegedly purchased by the previous vendors, **a temple is mentioned towards the eastern side**, whereas, in the sale deed executed in favour of the respondent/plaintiff, **the eastern boundary is described as the land of the Hanuman Trust**, without any reference to a temple. Had the temple itself been situated on the eastern side, it would ordinarily have been described as a temple rather than merely as the land of the Trust.

43. As regards appellant/defendant D. Uma Maheshwer Rao, the difference in the boundaries of the land purchased by him may be attributable to the fact that he had purchased only a part of the land from his previous vendor. Therefore, such a difference in the boundaries is understandable and does not, by itself, carry any adverse significance.

44. In the present case, respondent/plaintiff Ramprasad Bhakt neither undertook any demarcation nor got the land surveyed after its purchase, instead, he purchased the land without proper inquiry from vendors who themselves had not adequately verified the identity of the land before purchasing it. It is also material that the respondent/plaintiff's previous vendors had come to know that the land had already been sold to another person, namely, Pradeep Baran Shaha, prior to their purchase. Despite these circumstances, the respondent/plaintiff proceeded with the transaction without properly verifying the identity and title of the land.

45. One of the significant aspects of the present case is that respondent/ plaintiff Ramprasad Bhakt has not made specific pleadings, as required under Order VII Rule 7 of the Code of Civil Procedure, 1908, specifying the extent of the land allegedly encroached upon by the appellant/ defendant. Further, the Commissioner, Kriparam Sinha (PW-5), has also not carried out any measurement to determine the extent of the alleged encroachment, which was necessary for proper adjudication of the dispute. The learned Trial Court has overlooked all these material

aspects, thereby committing a serious error. Consequently, its finding directing delivery of possession cannot be sustained.

46. The respondent/plaintiff may have purchased the land under sale deed **(Ex.P-2)**; however, he has failed to establish that the appellant/ defendant has encroached upon that very land. Therefore, the learned Trial Court has erred in granting relief of possession in favour of the respondent/plaintiff. In terms of the judgment of this Court in **Leela Bihari Mishra** (supra), the respondent/plaintiff may initiate appropriate proceedings in respect of any fraud or misrepresentation allegedly practised upon him in the transaction against the persons responsible, in accordance with law. However, in the absence of proof that the appellant/defendant is in possession of the land purchased by him, the respondent/plaintiff is not entitled to a decree for recovery of possession against the appellant/defendant.

-:Final Conclusion:-

47. In view of the foregoing discussion and the findings recorded herein above, this Court is of the considered opinion that the learned Trial Court has erred in directing delivery of possession in favour of the respondent/plaintiff, despite the failure of the respondent/plaintiff to establish that the appellant/defendant had encroached upon the land purchased by him under sale deed **(Ex.P-2)**. Consequently, the impugned judgment and decree passed by the learned Trial Court cannot be sustained and are liable to be set aside.

48. Accordingly, the appeal is **allowed.** The impugned judgment and decree dated **9-5-2018** passed in **Civil Suit No.38A/2013, Ramprasad Bhakt v. D. Uma Maheshwer Rao**, are hereby set aside. Parties shall bear their own costs.

49. Decree be drawn up accordingly.

Sd/-
(Sushma Sawant)
JUDGE

Soma