



2025:CGHC:39163

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****FA No. 428 of 2017**

1. Bhagwani Sahu S/o Mohan Sahu, Aged About 42 Years R/o Village Rawabhata, Raipur, Police Station Khamtari, District Raipur Chhattisgarh
2. Bhaiyaram Sahu, S/o Mohan Sahu, Aged About 36 Years R/o Village Rawabhata, Raipur, Police Station Khamtari, District Raipur, Chhattisgarh
3. Harikishan Sahu, S/o Mohan Sahu, Aged About 33 Years R/o Village Rawabhata, Raipur, Police Station Khamtari, District Raipur Chhattisgarh
4. Thakurram Sahu, S/o Mohan Sahu, Aged About 30 Years R/o Village Rawabhata, Raipur, Police Station Khamtari, District Raipur Chhattisgarh.

... Appellants**versus**

1. The Gram Panchayat Kachlon Through Sarpanch Santram Nishad, Aged About 50 Years, Janpad Panchayat Simga, District Balodabazar Bhatapara Chhattisgarh
2. The Sub Divisional Officer (Pradhikaran Takniki Swikriti), Rural Engineering Services, Simga, Janpad Panchayat Simga, District Balodabazar Bhatapara Chhattisgarh
3. The Chief Executive Officer (Prashasnik Swikriti), Zila Panchayat, Raipur, Now Balodabazar District Balodabazar Bhatapara Chhattisgarh.
4. The Collector, District Balodabazar Bhatapara Chhattisgarh
5. The Chief Executive Officer, Janpad Panchayat Simga, District Balodabazar Bhatapara Chhattisgarh
6. The Sub Engineer, Janpad Panchayat Simga, District Balodabazar Bhatapara Chhattisgarh

... Respondents



For Appellants : Mr. Rakesh Thakur, Advocate
For State : Mr. Kalpesh Ruparel, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Judgment on Board

06.08.2025

1. The appellants have filed this first appeal against the judgment and decree dated 29.03.2017 passed by the learned Additional District Judge, Bhatapara, District - Balodabazar-Bhatapara (C.G.) in Civil Suit No. 10-A/2013 to the extent the trial Court has declined relief of removal of stage and permanent injunction restraining the defendant from construction of stage on the disputed land, but decreed the suit to the extent of declaration of title.
2. For the sake of convenience, the parties shall be referred to in terms of their status in Civil Suit No. 10-A/2013 which was filed for declaration.
3. Brief facts as reflected from the plaint averment are that the plaintiff has filed a suit for declaration of title, permanent injunction and restraining the defendant for construction of stage in the suit property mainly contending that the land bearing Khasra No. 549 area 1.118 hectare situated at Village Kachlon, Patwari Halka No. 14, Rajsva Nirikshak Mandal Simga, Tehsil Simga, District Balodabazar which has been purchased by the plaintiffs through registered sale deed on 22.01.2009 from the seller Laxminarayan S/o Dayaram (hereinafter referred to as "suit property"). It is also the case of the plaintiffs that after purchase of the suit property they are in possession of it and doing agricultural work. The plaintiffs when visited to inspect their land it was found that the Sarpanch has illegally encroached over $\frac{1}{4}$ of the



suit property ad measuring 6.2 meter x 5.80 meter total 35.95 sq. meter and intended to construct a stage and they have also started digging in the nearby areas causing encroachment into the suit property of the plaintiffs. When they raised objection before the Sarpanch of that Panchayat, he told that the land is a government land, therefore, construction will be carried out. It is also the case of the plaintiffs that the Chief Executive Officer has suggested for construction of stage at different land bearing Khasra No. 476/1 in 18x18 sq. feet which is different from the plaintiffs land but the Sarpanch in place of permission granted for construction in Khasra No. 476/1 has started construction in the land owned by the plaintiffs bearing Khasra No. 549. It is the case of the plaintiffs that they have submitted an application before the Collector/Chief Executive Officer, District Balodabazar and demarcation was conducted in which it was found that the defendant has illegality encroached the part of the suit property which has necessitated them to file the suit.

4. The defendants No. 2 to 5 have filed written statement denying the allegations made in the plaint mainly contending that alleged demarcation is **illegal** as no information before demarcation was communicated to them by the plaintiffs, therefore, on the basis of this alleged demarcation no right has been accrued to the plaintiffs. It has also been contended that the stage has been constructed after obtaining permission from the State Government and have prayed for dismissal of the suit.
5. Learned trial Court on the basis of pleadings of the parties has framed as many as 05 issues out of which 1 to 3 are relevant which reads as



under:-

“1. क्या वादी वादग्रस्त भूमि खसरा नंबर 549 रकबा 1.118 हैक्टेयर भूमि का स्वामी है?

2. क्या प्रतिवादीगण द्वारा वादग्रस्त भूमि के 6.20 मीटर गुणित 5.80 मीटर कुल 35.95 वर्गमीटर में अनधिकृत रूप से कब्जा कर रंगमंच निर्माण किया जा रहा है?

3. क्या वादी वादग्रस्त भूमि पर किये गये निर्माण को हटाकर कब्जा प्राप्त करने का अधिकारी है?”

6. The plaintiffs to substantiate their case have examined Bhagwani Sahu (PW-1) & Mannu Vaishnav (PW-2) and exhibited documents namely Registered deed dated 22.01.2009 (Ex. P/1), Rin Pustika No. 0783204 (Ex. P/2), Demarcation report of disputed land (Ex. P/3), Certified copy of demarcation panchnama (Ex. P/4), Certified copy of fieldbook (Ex. P/5), Certified copy of map (Ex. P/6), Khasra Panchshala (Ex. P/7), Certified copy of B-1 (Ex. P/8), Receipt under RTI (Ex. P/9), Information under the Notice (Ex. P/10), Legal notice sent under Section 80 CPC (Ex. P/11), Photographs of the suit property (Ex. P/12(a) to 12(f)).
7. The plaintiff has examined himself as (PW-01) wherein in his examination-in-chief has reiterated the stand taken in the plaint. The plaintiff in his cross-examination has admitted that he has not objected before the Panchayat or Janpad Panchayat, Simga regarding building of stage and he has not received any notice from the Patwari to remain present at the site during demarcation. He also admitted that at the time of demarcation no **drum was played or munadi** was done in the village regarding demarcation and also stated that at the time of



demarcation Sarpanch Santram, the plaintiff and his father Mohanlal only 03-04 persons were present. He also admitted that according to his information the Patwari demarcated the site and told that a stage has been constructed in the land bearing Khasra No. 549 and none of the defendants were present.

8. The plaintiff has examined Mannu Vaishnav (PW-02) wherein he has also stated that they have moved an application for demarcation before the Collector and in the cross-examination he has admitted the fact that at the time of demarcation none of the Officers of the defendants or any Officer from the Panchayat Department was present.
9. Learned trial Court on the basis of the evidence and material placed on record has recorded its finding that the plaintiffs are declared to be title holder of the suit property but further prayer for permanent injunction restraining the defendant from construction of stage is rejected as construction of stage on the disputed land is not proved.
10. Being aggrieved with this judgment and decree to the extent that his relief for permanent injunction restraining the defendant from construction of stage is denied is assailed by the plaintiff in this appeal.
11. Learned counsel for the appellants would submit that the finding recorded by the trial Court to the extent that demarcation is illegal is contrary to the evidence and material available on record as all the formalities which is required to carry out demarcation has been done. He would further submit that even in the case of demarcation is found to be illegal and unjustified there is provision under Order 29 Rule 9 of the C.P.C. by which commission can be issued for demarcation of the land and would pray for allowing the appeal. Alternatively he also



prayed for remanding the matter with a direction to trial Court to issue writ of commission for identification of suit property as the demarcation is the only way to resolve the issues.

12. Per contra learned counsel for the State opposing the submission would submit that since demarcation has been found to be illegal and contrary to law there will be no justifiable reason for this Court to interfere in the well reasoned and meritorious finding of the trial Court and would pray for dismissing the appeal.
13. I have heard learned counsel for the parties and perused the record.
14. From bare perusal of the record, it is not in dispute that the plaintiff himself has admitted in the cross-examination that at the time of demarcation none of the Officers were present and no notice was given by the Patwari and in absence of any **Officers** demarcation has been done which cannot fall within the ambit of legal demarcation of the property unless and until all the affected parties are given an opportunity for appearance at the time of demarcation in view of Section 110(4) of Chhattisgarh Land Revenue Code, 1959 which mandate compulsory notice to all the effected persons. Thus, the finding recorded by the trial Court to that extent the Panchnama is not in accordance with law cannot be found faulty.
15. Learned trial Court has also recorded its finding that the person who has conducted the demarcation has not been examined, this reason assigned by the trial Court is legal and justifiable ground for disbelieving the report as it is not a public document as it has been done on request of the plaintiffs, as such, the Officer who has conducted the demarcation should have been examined before the trial



Court.

16. Similarly, the submission of the plaintiffs for remanding the matter for demarcation through Commissioner, is being considered by this Court. This submission is not liable to be considered in view of the facts and circumstances of the case, as no such application was filed by the plaintiffs before the learned trial Court. On the contrary, before filing of the suit property demarcation was adduced which is not in accordance with law, therefore I am of the view that it will amount to collection of evidence on behalf of the plaintiff which is not in accordance with the provisions of Order 26 Rule 9 of the C.P.C. as it cannot be utilized when the plaintiffs are unable to establish that alleged construction was carried out in the suit property owned by the plaintiffs or there is material which may be able to establish that the alleged construction was carried in the suit property owned by the plaintiffs, therefore I am of the view that the application under Order 26 Rule 9 of CPC filed by the plaintiffs before this Court deserves to be rejected and accordingly it is rejected.
17. Consequently, the First Appeal is *sans merit* liable to be dismissed and it is dismissed.
18. No order as to cost.
19. A decree be drawn up accordingly.

Sd/-
(Narendra Kumar Vyas)
Judge