

(2019) 08 CHH CK 0232

Chhattisgarh High Court

Case No: Second Appeal No. 122 Of 2008

Rajkumar Pandey

APPELLANT

Vs

Parijat Grih Nirman Samiti
Maryadit And Ors

RESPONDENT

Date of Decision: Aug. 29, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 100

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Somnath Verma, Ravi Bhagat

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiff under Section 100

of the CPC.

2. Mr. Somnath Verma, learned counsel for the plaintiff would submit that both the Courts below have concurrently erred in holding that defendant

No. 1 has not encroached upon the land of the plaintiff admeasuring 0.17 acre, which he has purchased from Uderam by a registered sale deed dated

04/05/1968, which being perverse, gives rise to substantial question of law for determination in this second appeal.

3. Plaintiff filed a civil suit for recovery of possession stating inter alia that he has purchased a land bearing Khasra No. 371/1, admeasuring 0.85 acre

from Uderam by a registered sale deed dated 04/05/1968. He then sold 0.45 acres of the said land and out of the remaining land, 0.17 acre has been

encroached by defendant No. 1, which learned trial Court has not found favour with and reasoned that plaintiff has neither filed and proved the sale

deed dated 04/05/1968, which could show him to be the title-holder of the alleged encroached land, nor has he been able to establish the extent of

encroachment made by defendant No. 1 upon the suit land by filing the demarcation report.

4. Learned first appellate Court agreed with the finding recorded by the trial Court and held that admittedly and undisputedly, plaintiff did not prove on

record the sale deed dated 04/05/1968 to establish his title over the alleged encroached area of 0.17 acre and neither filed the demarcation report and

nor has he sought appointment of the Revenue Commissioner to get the land measured which has been allegedly encroached by defendant No.1. As

such, the finding recorded by the two Courts below that plaintiff has failed to prove his title over the suit land and has also not established the extent of

encroachment that has been made by defendant No. 1 is a finding of fact based on evidence available on record in which I do not find any perversity

or illegality that gives rise to any substantial question of law for determination.

5. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No order as to cost(s).