

**(1959) 01 MP CK 0013**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** S.A. No. 160 of 1955

Laxmichand Shitabrai and  
another

APPELLANT

Vs

Nemichand Hukumchand

RESPONDENT

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**Date of Decision:** Jan. 5, 1959

**Citation:** (1959) MPLJ 687

**Hon'ble Judges:** H.R. Krishnan, J

**Bench:** Single Bench

**Advocate:** Bhagwandas Gupta, for the Appellant; G.P. Palankar, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

H.R. Krishnan, J.

This is an appeal by the Plaintiff from the concurrent decisions of the lower Courts dismissing his suit. The question is whether, in a case, where the subject-matter of the dispute is altogether unascertainable, a suit may at all be entertained.

The parties are neighbours at Bhilsa, running two contiguous shops. It is said that many years ago, a pillar had been put on the road some feet away from the shops, and more or less in front of the dividing line; a rafter said to be about 3 inches thick was put on that pillar and rested on the houses. The Plaintiff further alleges that both the parties had thatches projecting into the street, which, besides being supported on other pillars, were on this side supported by the rafter, each thatch going half way i. e. one and a half inches. Sometime before 1945, according to the Plaintiff, the thatches were burnt completely though some things of the pillar and the rafter remained. Then the Plaintiff served a registered postal notice on the Defendant, stating that the rafter and the pillar were joint property as also a three inch strip of land falling immediately below the rafter. He now wanted to raise his new thatch upon it, but apprehending some difficulty was making sure by this notice. The Defendant, for his part replied by asserting that the pillar, the rafter, and

the strip of land just below the latter were his property and that the Plaintiff had nothing to do with it.

After this first round, the Plaintiff brought a suit in 1945 claiming that the pillar and the rafter and the strip of land immediately below it, were joint property and that the Defendant was wrong in claiming exclusive title. As the Defendant has obstructed him from making use of this strip of land in continuation of his own house-front, the Plaintiff claimed damages at the rate of Rs. 15 every month. When the suit had been pending for 4 years, the Presiding Officer made a local inspection and found that there was no pillar and no rafter. The land of 3" width below the rafter, and up to the pillar, was obviously unascertainable. Thereupon, the Plaintiff petitioned for the withdrawal of the suit, with leave to bring a fresh one, though it was not clear how a fresh suit would lie for the non-ascertainable "strip of land" below the non-existent rafter. Anyway the Court allowed this.

Accordingly, in 1950, the Plaintiff brought the present suit for injunction and for damages. He said that from some line on the side far away from the Defendant's house, his house-front is stretching to 7 ft. and 10 inches; the Defendant was wrongfully preventing him from making use of it. The Defendant for his part replied that he was not obstructing the Plaintiff from using his house-front, but he was not prepared to concede that the house-front was 7 ft-and 10 inches measured in the Plaintiff's own way. The trouble was that the Plaintiff wanted to encroach on his house-front, at a small width of about 1/2 inches and a few feet length. To be sure the Plaintiff deems this to be his portion, measured upto the middle thread, of the 3 inches strip of land, that was under the rafter and extended up to the pillar, which has been there before 1945. In effect it was a suit for declaration that he was entitled to 1 /2" more in that direction; further, Defendant not being prepared to allow this, the Plaintiff claimed damages at the rate of Rs. 15 a month.

The whole thing Bounds like a page from "Alice in Wonder Land". But the lower Court took it seriously, and did not apparently exercise their minds as to how this strip of 3" width and the half of it 1/2" wide were going to be demarcated; only after this would be proper to consider whether the suit could be brought for the 1/2" width, or it should be for a declaration in regard to the 3" width and one for partition of it into two halves. Not only is there no standard survey map or any other basis for measurement and demarcation, but also is there no physical object under which or near which the 3 inches strip of land could be located. Actually, the Plaintiff had himself been aware of this difficulty in 1945, and had introduced a pillar and a rafter, at least in his plaint; but the two materials were non-existent when the Presiding Officer went to have a look there. Even in the best of circumstances a width of 1/2" inches (or 3" for that matter) can never be ascertained on the ground by using a standard map of anything less than 256" to the mile. Actually, the standard maps used in these areas are 8 or 16 inches to a mile. To say that there is a dispute about a strip of 1 /2" or 3" where the two house-fronts meet is of no

significance, unless that demarcating line can be located by measurement within an accuracy atleast of so many inches. The accuracy should be even greater considering the possibility of a margin of error.

The trial Court dismissed the suit inter alia on the ground that whereas in the suit of 1945 the Plaintiff had alleged that he was jointly interested in a strip 3" wide, now he averred that he was the exclusive owner of 1 1/2" on his side of the middle thread. On appeal by the Plaintiff the first appellate Court also did not think of the possibility or otherwise of ascertaining this land in dispute, but considered the question of jointness and separateness and dismissed the suit. Hence the second appeal.

In the meantime, the Plaintiff sold this house to one Champalal; but he did not think fit to retire from this litigation. He had a claim for damages at the rate of Rs. 15 per month during his time. Champalal for his part filed a petition which was allowed. However, he never turned up afterwards and was not present at the time of hearing. The Plaintiff-Appellant wanted to pursue the suit presumably for the damages.

This bare statement of facts shows that the so-called strip of land 3" or 1" wide, as the case may be, is property whose identity and location is altogether unascertainable, by any process of measurement known to us. It is perfectly easy for a quarrelsome person to imagine that his neighbour is committing the outrage of encroaching on his land to the width of 1 or 2 inches, but he cannot pursue that matter in the law Courts, unless he is in a position to get it demarcated fairly and with some reasonable degree of accuracy. Certainly, it is(sic) equally easy for the other person either intentionally or inadvertently to encroach by an inch or two on a neighbour's land, but till such an encroachment is ascertainable by measurement the Plaintiff cannot put one's finger on it and bring the dispute into a law Court. Thus the plaint itself should have been rejected on the ground that it does not show an ascertainable cause of action.

After we are told how this 3" strip of land is going to be demarcated we might consider whether a suit would lie in the present form, it should be one for declaration of joint title.

In the result, the appeal is dismissed. In the special circumstances of the case no costs in this appellate Court.