

**(2023) 03 CHH CK 0024**  
**In the Chhattisgarh High Court**  
**Case No : First Appeal No. 259 Of 2019**

Rajulal

APPELLANT

Vs

Hemant Kumar

RESPONDENT

**Date of Decision :** 09-03-2023

**Acts Referred:**

Specific Relief Act, 1963 — Section 34

**Citation :** (2023) 03 CHH CK 0024

**Hon'ble Judges :** Goutam Bhaduri, J;N.K. Chandravanshi, j

**Bench :** Division Bench

**Advocate :** Prafull N. Bharat, Anil S. Pandey, Viprasen Agrawal, Vivek Kumar Agrawal, Ashutosh Mishra

**Final Decision :** Dismissed

## Judgement

1. This appeal is preferred against the judgment and decree dated 16-5-2019 passed by the District Judge, Bemetara in Civil Suit No. 01-A/2015, CIS No. 6200001/2015 (Rajulal Vs. Hemant Kumar and ors.) whereby the suit filed by the appellant/plaintiff for declaration of title, nullity of sale deed dated 21-9-2011 executed in favour of respondents/ defendants No. 1 to 4, possession and permanent injunction was dismissed.

(Hereinafter parties shall be referred to as per their description before the trial Court.)

2. Brief facts of the case are that plaintiff filed a civil suit stating therein that he has purchased a land bearing Khasra No. 744 and a piece of Khasra No. 745/1 admeasuring 0.01 and 0.11 ½ hectare respectively, situated at village Berla, Patwari Halka No. 14/15, Revenue Circle, Berla, Tahsil Berla, Distt. Bemetara from Akash, Puja, Suryaprakash, Dipak Prakash, Satya Prakash, Durgabai, Durgesh, Sumitra Bai, by registered sale deed 24-12-2007 for sale consideration of Rs. 10,00,000/-, market value Rs. 22,48,900/-. The land bearing Khasra No. 745/8 area 0.04 hectare was also purchased by him in the name of his wife for

sale consideration of Rs. 7,20,000/-. After mutation, Khasra No. 745/1 area 0.11 ½ hectare has been amended as Khasra No. 745/11, but area has remained intact (Henceforth this piece of land shall be referred to as the "suit land"). It is further stated that some doubt arose to him that possession of the area of suit land i.e. 0.11 ½ hectare has not been handed over to him by the sellers. Hence, he applied for demarcation of suit land, demarcation was conducted, report of which was submitted on 12-2-2009 before the Tehsildar, wherein it was reported that area of suit land possessed by the plaintiff is only 0.08 hectare, thus there is shortage of 0.03 ½ hectare of Khasra No. 745/1 on the spot, of which sellers have not handed over possession to him. It has been further averred by the plaintiff that defendant No. 5 to 11 and 13 have sold remaining land of Khasra No. 745/1 area 0.05 hectare by registered sale deed dated 21-9-2011 in favour of defendant No. 1 to 4 which also contains 0.03 ½ hectare of suit land purchased by the plaintiff, hence sale deed dated 21-9-2011 executed in favour of defendant No. 1 to 4 is neither binding on the plaintiff nor any right is accrued in their favour on aforesaid 0.03 ½ hectare, on the basis of that sale deed and the same is null and void. Hence, he filed instant suit against the defendants for declaration of title, possession and permanent injunction in respect of suit land and further prayed that sale deed dated 21-9-2011 executed by defendant No. 5 to 11 and 13 in favour of defendant No. 1 to 4 be declared null and void.

3. The defendant No. 1 to 4 in their reply have pleaded that they have purchased land adjoining to the land of plaintiff which is Khasra No. 745/1 area 0.05 hectare vide registered sale deed dated 21-9-2011 for sale consideration of Rs. 15 lakhs, thus they are bona fide purchasers. It is further averred that plaintiff has constructed house and Pacca boundary wall over the land which he purchased from defendant No. 5 and others and he has also occupied some adjacent land by fencing it by barbed wire. Thus, defendants have not occupied any of the land purchased by the plaintiff.

4. Defendants No. 7 to 11 have pleaded in their reply that they had sold a piece of land of Khasra No. 745/1 area 0.11 ½ hectare to the plaintiff. In this regard, initially agreement to sell was executed by them in favour of plaintiff, in which, it was specifically stated that in the land being sold there exists a dilapidated kachcha house, Badi, Kchcha boundary wall. After looking all these and boundary of the same, plaintiff had agreed to purchase that piece of Khasra No. 745/1, but since it was stated by the plaintiff that, in mentioning aforesaid facts, there will be excessive expenditure in registration of the sale deed, hence it was not mentioned in the sale deed. It is further averred that after purchase of aforesaid land, plaintiff is in possession of the same and he has constructed boundary wall over the land. There is no shortage of aforesaid land, possession of which is left to be given to the plaintiff. It is further stated that before selling of land to the plaintiff, 0.05 hectare land of Khasra No. 745/1 was kept out of total area sold to the plaintiff. Thus, barring 0.05 hectare of Khasra No. 745/1, rest piece of land of aforesaid Khasra no. was sold to the plaintiff, which he purchased after inspection of the spot. It is further averred that defendant No. 5 to 11 have sold

that remaining 0.05 hectare to defendant No. 1 to 4 by registered sale deed which they have right to sell. Hence plaintiff is not entitled to get any relief as sought for by him.

5. On the basis of rival pleadings by both the parties, learned trial Court framed as many as 6 issues, provided opportunity to respective parties to adduce evidence and after considering evidence and material available on record, vide impugned judgment and decree dated 16-5-2019 dismissed the suit. Hence this appeal.

6. Learned counsel for the plaintiff would submit that learned trial Court, in spite of giving positive finding on Issue No. 1 and 3 in favour of the plaintiff, has dismissed the suit, whereas if it was held by learned trial Court that after demarcation, plaintiff was found in possession of only 0.08 hectare of Khasra No. 745/1 and there is short of 0.03 ½ hectare of total area (0.11 ½ hectare) of sale deed, which he had purchased from defendant No. 5 to 11 and 13, hence it ought to have been held by learned trial Court that shortage of aforesaid land i.e. 0.03 ½ hectare has been sold out by defendant No. 5 and others in favour of defendant No. 1 to 4, but learned trial Court has failed to appreciate the fact that plaintiff is the first purchaser therefore, he is entitled to get possession of the land which he has purchased through registered sale deed and subsequent sale deed executed in favour of defendants No. 1 to 4 is null and void, so far as 0.03 ½ hectare is concerned.

7. It is argued by learned Sr. counsel appearing for the plaintiff that, defendant Akash and others sold the suit land and did not give possession of 0.03 ½ hectare land to the plaintiff, hence they have no right to sell such portion of land to defendant No. 1 to 4 as registration of sale deed, transfer the ownership and all interest in the property to the transferee. Since plaintiff is earlier purchaser of the suit land in respect of 0.03 hectare, then defendants Akash and others have no right to sell such land in favour of defendant No. 1 to 4. In this regard, learned counsel for the appellant relied on judgment of Hon'ble Supreme Court in the case of Atla Sidda Reddy Vs. Busi Subba Reddy and others [(2010) 6 SCC 666] and Bishundeo Narain Rai (dead) by Lrs. And others Vs. Anmol Devi and others [AIR 1998 SC 3006]. It is further submitted that impugned judgment is based on the agreement Ex. P-12 which is not relevant to the instant case as it was executed in respect of the land bearing Khasra No. 745/8, hence boundary mentioned in Ex. P-12 in the impugned judgment is irrelevant to consider instant case, inspite of that, learned Distt. Judge has unnecessarily relied on that document.

8. It is further submitted by learned Sr. Counsel that pursuant to order of trial Court, the suit land has been got demarcated but in demarcation report, it has not been specifically mentioned that plaintiff is in physical possession of 0.11 ½ hectare of Khasra No. 745/11 (earlier Khasra No. 745/1), thus since demarcation report is not clear hence he prayed in alternate that case may be remanded to the trial Court with a direction to obtain clear demarcation report as to whether

plaintiff is in actual possession of 0.11 ½ hectare area or not.

9. On the other hand, learned counsel for the respondents No. 1 to 4 & 6 would submit that before purchase of suit land, plaintiff himself had inspected the spot and in the agreement Ex. P-12 dated 5-6-2007 executed in respect of said sale, area of sold land has been specifically mentioned as including House, Badi, Nahar Tak and Kanji house, and plaintiff is in possession of the land which he had purchased. Further, before selling of suit land to the plaintiff, 0.05 hectare of Khasra No. 745/1 had been excluded and rest land was sold in which he has constructed house and boundary wall, that rest 0.05 hectare land has been sold to defendant No. 1 to 4. It is further submitted that in demarcation report Ex. P-1 to P-7, Revenue Officer P.P. Dwivedi (P.W. 1) has reported that as per map of boundaries, plaintiff is in possession of Khasra No. 745/11 (earlier Khasra No. 745/1). This report was not challenged by plaintiff before the trial Court. Plaintiff has not adduced any evidence to prove the fact that land sold by defendant No. 5 and others contained 0.03 ½ hectare of land which they sold to the plaintiff. It is vehemently objected by learned counsel for the defendants that remand of the case would be an abuse of process of law as it would create unnecessary dispute/ hardship to adjoining owners, more over allegation in instant case is against defendants only. It is further submitted that burden to prove his case lies on the plaintiff. He cannot take benefit of any weakness of defendants. It is further submitted that learned trial Court has considered all the aspects of the case on the basis of evidence adduced by the parties, which is well merited hence impugned judgment and decree cannot be interfered with.

10. Learned counsel for the respondents No. 7, 9, 10 and 11 and State extended their support to the submission made by learned counsel for respondents No. 1 to 4 and 6.

11. We have heard learned counsel for the parties, perused the impugned judgment, record of the trial Court and the material available on record.

12. From undisputed plea averred and evidence adduced by both the parties, which is well supported by the registered sale deed Ex. P-14 dated 24-12-2007 executed by Akash, Puja, Surya Prakash, Deepak Prakash, Satya Prakash, Durga Bai, Durgesh, Sumitra Bai in favour of plaintiff in respect of suit land bearing Khasra No. 745/1 (amended Khasra No. 745/11), it is found that a piece of 0.11 ½ hectare land of Khasra No. 745/1 was sold to the plaintiff. This fact has held proved by learned trial Court also, which has not been challenged by defendants by filing appeal/cross-appeal. It is also not in dispute that defendant No. 5 to 11 & 13 vide registered sale deed dated 21-9-2011 have sold remaining piece of land of Khasra No. 745/1 area 0.05 hectare in favour of defendant No. 1 to 4, which is also supported by registered sale deed Ex. P-15. This fact has also not been disputed by both the parties.

13. As per Khasra Panchshala of land Khasra No. 745/1 of the year 2001-2002 Ex. P-13 and Khasra Panchshala of the year 2007-2008 which is part of sale deed

Ex. P-14, area of Khasra No. 745/1 was 0.16 ½ hectare. Plaintiff Raju Lal Jain (P.W. 2) has admitted in his cross-examination that when he purchased suit land, at that time also, he had seen that aforesaid area was recorded in the name of seller (defendant No. 5 and others). Vide sale deed Ex. P-14 plaintiff had purchased a piece of land i.e. 0.11 ½ hectare of Khasra No. 745/1, thus it is apparent that seller Akash and others were having title over remaining land i.e. 0.05 hectare, which they sold vide registered sale deed Ex. P-15 in favour of defendant No. 1 to 4 which is well within the ambit of their right in respect of remaining 0.05 hectare of Khasra No. 745/1.

14. Plaintiff has raised claim that after purchasing of suit land by him, defendant Akash and others had not handed over possession of 0.03 ½ hectare of land, which they have sold to defendant No. 1 to 4 and he (plaintiff) is only in possession of 0.08 hectare of Khasra No. 745/1. Hence, burden lies upon him to prove his aforesaid claim.

15. Plaintiff Raju Lal Jain (P.W. 2) has stated in his deposition that defendant Akash and others (sellers) have put him in possession of only 0.08 hectare of Khasra No. 745/1, whereas vide sale deed Ex. P-14, he had purchased 0.11 ½ hectare, thus possession of 0.03 ½ hectare land was not given by them. But he has admitted in his cross-examination that before execution of sale deed Ex. P-14, agreement to sell (Ex. P-12) was executed by said defendants, in which area of sold land is mentioned as "Makan, Badi, Nahar tak, Kanji House". He has also admitted that he purchased land up-till Kanji House, therefore, area of land was not mentioned in Ex. P-12. He has also admitted that he has constructed house on the land whatever he had purchased. He has also admitted that he has got possession of the land as has been mentioned in agreement Ex. P-12 and after consent of both the parties, sale deed was executed between them.

16. Jogiram Verma (P.W. 3) is witness of agreement to sell (Ex. P-12). This witness has also admitted in his cross-examination that agreement between the parties had been done to sell land up-till Nahar. He has also admitted that the plaintiff has constructed house/ shop on the land which he had purchased.

17. Deepak Prakash Poddar (D.W.2) who is one of the sellers of the suit land, has also stated in his deposition that immediately after purchase of suit land, plaintiff has constructed boundary wall over that land. In cross-examination, in suggestion given by learned counsel for the plaintiff, this witness has admitted that in agreement, it was mentioned that "Makan, house, Badi, Kanji house, Nahar, Nali Tak ki jamin ka souda Hua Hai". Hemant Kumar Sahu (D.W. 1) has deposed that after purchase of 0.05 hectare of Khasra No. 745/1, they have constructed a house uptill boundary of plaintiff's house.

18. Perusal of aforesaid ocular evidence of plaintiff himself, his witness Jogiram Verma (P.W. 3) and statement of defendants' witnesses shows that after purchase of piece of land of Khasra No. 745/1 area 0.11 ½ hectare, plaintiff had got possession of that land and he has constructed house/shop, boundary wall on

that land, in which earlier there existed house, Badi, up-till Kanji house, Nahar, which is also mentioned in agreement to sell Ex. P-12.

19. During argument, learned Sr. counsel for the appellant submitted that agreement Ex. P-12 was in respect of land bearing Khasra No. 745/8, area 0.04 hectare which plaintiff has purchased in the name of his wife for sale consideration of Rs. 7,20,000/-. Since Khasra No. 745/8 was not purchased in sum of Rs. 17,00,000/- as is the price mentioned in Ex. P-12, therefore, it cannot be said that it was executed in respect of only Khasra No. 745/8, rather as per plaintiff, he had purchased 3 land i.e. Khasra No. 744 and 745/1, area 0.01 and 0.11 ½ hectare respectively in his own name for the sale consideration of Rs. 10,00,000/- and Khasra No. 745/8 area 0.04 hectare for sale consideration of Rs. 7,20,000/- in the name of his wife. Conjoint reading of aforesaid fact and statement of witnesses shows that total sale consideration of all the 3 lands purchased by plaintiff is little higher than Rs. 17,00,000/-, hence it seems that Ex. P-12 was executed between the parties including 2 lands purchased by plaintiff also, therefore sale consideration Rs. 17,00,000/- was mentioned in it. Due to such facts, plaintiff had later on amended his petition and incorporated amendment as para 6(B), therefore, submission made by learned Sr. counsel appearing for the plaintiff that agreement Ex. P-12 was not executed in respect of suit land is not sustainable. Thus, aforesaid evidence including statement of plaintiff Raju Lal Jain (P.W. 2) shows that he had occupied over the land which he had purchased from defendants Akash and others as per agreement Ex. P-12 followed by registered sale deed Ex. P-14 and after taking possession up-till Nahar and Kanji House, he has constructed house, shop, boundary wall.

20. Although plaintiff has denied in his cross-examination para 23 that he had got possession of suit land as per agreement Ex. P-12 and has deposed that in the year 2009, he had got demarcated the land bearing Khasra No. 745/1 (amended Khasra No. 745/11) by which he came to know that he is in possession only of 0.08 hectare of suit land and possession of 0.03 ½ hectare land has not been given to him by defendant No. 5 and others, and they have sold that 0.03 ½ hectare to defendant No. 1 to 4, but to prove this fact, he has not filed/proved that demarcation report which was said to be given on 17-9-2009 to Tahsildar Berla by Revenue Inspector, Berla. Plaintiff has admitted that at the time of alleged demarcation conducted on 17-9-2009, defendants Akash and others were not present, hence only on the basis of statement of plaintiff, it cannot be held that in alleged demarcation held in the year 2009, he was found only in possession of 0.08 hectare.

21. It is evident from record that, during pendency of instant suit, demarcation of suit land was got conducted pursuant to order of the trial Court which was conducted by Assistant Superintendent Land Revenue P.P.Dwivedi (P.W. 1) who has submitted and proved his demarcation report - document Ex. P-1 to Ex. P-7 which he had prepared. He has deposed that land purchased by plaintiff has been mutated and renumbered as Khasra No. 745/11, area 0.115 hectare and on

due demarcation of the land, plaintiff was found in possession as per boundaries of Khasra No. 745/11. His statement is well supported by aforesaid demarcation report given by him. His report has neither been challenged by the plaintiff before the trial Court nor challenged before this Court by raising ground of appeal. In appeal, plaintiff has made one of the ground that shortage of 0.03 ½ hectare land was found in demarcation report, which has neither got corroboration from statement of P.P. Dwivedi (P.W.1 ) nor demarcation report Ex. P-1 to P-7 prepared by him. Such ground raised by the plaintiff is based on alleged demarcation report of 2009, but that report has not been proved by plaintiff in the instant case. Hence, only on the basis of statement of plaintiff, it cannot be held proved that he is in possession only on 0.08 hectare land of Khasra No. 745/1 (amended Khasra No. 745/11) and defendant No. 5 and others have sold any part of his land to defendant No. 1 to 4.

22. Learned trial Court has held proved issue No. 3 in favour of plaintiff that, in demarcation report of the suit land Khasra No. 745/1 area 0.11 ½ hectare, it is reported that he is in possession of 0.08 hectare and there is shortage of 0.03 ½ hectare, but it has not discussed any evidence in this regard. Further, plaintiff has stated this fact on the basis of alleged demarcation report of 2009, but, as has been observed earlier that, he has not filed and proved such demarcation report, therefore, only on the basis of statement of plaintiff, it cannot be held that he is in short possession of 0.03 ½ hectare of suit land, hence we hold that positive finding given by learned trial Court in respect of issue No. 3 is found to be perverse.

23. So far as submission of learned Sr. Counsel appearing for the plaintiff to remand the case is concerned, demarcation report given by P.P. Dwivedi (P.W. 1) was neither objected by plaintiff before the trial Court nor it has been challenged before this Court by making ground of appeal. Further, plaintiff has directly alleged the defendant No. 5 to 11 & 13 that they have sold his 0.03 ½ hectare land to defendant No. 1 to 4, thus allegation is not against other persons/ owners, hence onus rests on plaintiff to prove his aforesaid allegation, which has not been proved by him, hence in such a situation, we do not find any reasonable force in aforesaid submission made by learned Sr. Counsel appearing for the plaintiff.

24. It is apparent from record that total area of Khasra No. 745/1 was 0.16 ½ hectare, out of which defendant No. 5 and others have sold 0.11 ½ hectare to the plaintiff in the year 2007, thus 0.05 hectare of aforesaid land was left with them which they have right to sell and which they have sold to defendant No. 1 to 4, hence the sale deed Ex. P-15 executed in this regard cannot be held illegal. Since land sold by defendant No. 5 to 11 & 13 in favour of defendant No. 1 to 4 was not similar to which they sold to plaintiff, hence, plaintiff does not get any support from the case law of Atla Sidda Reddy (supra) and Bishundeo Narain Rai (supra) as the facts of those cases are not similar to that of instant case.

25. Although in-spite of positive finding given in respect of Issue No. 1 by the

trial Court, it has not declared title of plaintiff over the suit land. In this regard, provision of Section 34 of the Specific Relief Act, 1963 is apt to be noted here which reads thus :-

"34. Discretion of court as to declaration of status or right.- — Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

26. In the instant case, defendants have not disputed in their pleadings that plaintiff has purchased a piece of land, area 0.011 ½ hectare of Khasra No. 745/1 from respondent No. 5 (Akash) and others vide registered sale deed dated 24-12-2007. They have not challenged aforesaid fact in their deposition also. Thus, ownership of plaintiff in aforesaid piece of land is not in dispute. As has been discussed in preceding paragraphs that plaintiff has utterly failed to prove that defendant No. 5 and others have sold 0.03 ½ hectare of plaintiff's above land to defendant No. 1 to 4, hence, in view of provision contained in Section 34 of the Specific Relief Act, 1963, we do not find any infirmity or illegality in not granting only declaratory relief in favour of the plaintiff in respect of Issue No. 1, by the trial Court.

27. In view of above aforesaid discussion, we do not find any merit in this appeal. The appeal being devoid of merit, deserves to be and is hereby dismissed.

28. A decree be drawn up accordingly.