SAGRIKA AGRAWAL
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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 25/04/2026

Judgment Delivered on : 15 /06/2026

WP227 No. 1181 of 2024

1 - Smt. Durgesh Sharma W/o Rajendra Sharma Aged About 50 Years Occupation - House Wife, R/o Lal Tanki Road Raigarh, Tahsil And District - Raigarh Chhattisgarh (Defendant No. 1)

2 - Rajendra Alias Suresh Sharma Aged About 55 Years Occupation - Business, R/o Lal Tanki Road Raigarh, Tahsil And District - Raigarh Chhattisgarh (Defendant No. 2)

... Petitioner(s)

versus

1 - Smt. Radhabai Chauhan W/o Meghu Ram Chauhan Aged About 60 Years Occupation - Labourer R/o Beladula Vinoba Nagar Raigarh, Tahsil And District Raigarh Chhattisgarh (Plaintiff)

2 - The Tahsildar Raigarh Tahsil Dist. - Raigarh Chhattisgarh (Defendant No. 3)

3 - State Of Chhattisgarh Through Collector Raigarh, Raigarh Chhattisgarh (Defendant No. 4)

... Respondent(s)

For Petitioner(s)	:	Mr. Mahesh Kumar Mishra, Advocate
For State	:	Ms. Supriya Upasne, Govt. Advocate
For Respondent No. 1	:	Mr. Devendra Kumar Swarnkar, Advocate on

behalf of Mr. Jitendra Gupta, Advocate

Hon'ble Shri Ravindra Kumar Agrawal, Judge

CAV Judgment

1. The present is a writ petition under Article 227 of Constitution of India filed by the petitioners against the impugned order dated 30.09.2024 passed by learned 1st Civil Judge, Junior Division, Raigarh, in Civil Suit No. A/101/2018, whereby the application filed by the petitioners under Order XIV Rule 5 of CPC has been dismissed.

2. The facts of the case are that the petitioners are the defendants No. 1 and 2 before the learned trial Court. The Respondent No. 1/ plaintiff has filed a civil suit for declarations of title, declaring the sale-deed dated 28.03.2011 as null and void and also to set aside the order dated 12.03.2013 passed by Tahsildar- Raigarh, for permanent injunction and also for damages. The plaintiffs had pleaded in the plaint that in the revenue record of Village-Boirdadar, Patwari Halka No. 13, Tahsil and District- Raigarh, the land of Khasra No. 251, Area-2.24 Acre recorded as grazing land/ government land. On a demarcation conducted on 12.12.2001 with respect to the government land, 3 Acres of land were found encroached by Nathu Lal, Prem Kumar, Ganesh, Surjit singh, Mahendra singh and Suresh Kumar. Thereafter, an order was passed on 28.02.2018 by SDO, Revenue, Raigarh for removal of the encroachment from the encroached land. The land of Khasra No. 291/2/क–2, and 291/2/ख–2 Area 0.036 Hectare out of the said 3 acres of the encroached land of the suit property of the present suit. The land of Khasra No. 291 earlier comes under the Gram Panchayat, Boirdadar, however, a resolution dated 29.01.1999 passed by Gram Panchayat, Boirdadar, which was passed for correction of the land of Khasra No. 66 in place of Khasra No. 291/1, 2 and 3. The lease was earlier granted to Smt. Rukmani Devi on 15.04.1981 with respect to 654 Sqft of the land. It is also the pleading of the

plaintiff that there was a dispute between the plaintiff and Uday Singh Tomar with respect to the suit land in which vide order dated 15.06.2004, an order of removal of encroachment was passed by Tahsildar, Raigarh. Uday Singh Tomar had prosecuted civil suit bearing Civil Suit No. 132/1996 before the learned 3rd Civil Judge, Raigarh in which an ex parte order of injunction was passed on 08.02.1999. in the said civil suit, Raghunath Singh and Radha Bai were not the party. Radha Bai is in possession of the suit land since 30-35 years and residing thereon after constructing her house. She is regularly paying the municipal taxes and peacefully possession of the same. In order to evict the plaintiff from the suit land, a sale-deed was executed by Inderpal Singh in favour of the defendant No. 1 through, registered sale deed dated 20/09/2010 and since, the said sale-deed is with respect to the government land, the sale-deed itself is liable to be cancelled. The defendant No. 1 has filed an application under Section 250 of the Chhattisgarh Land Revenue Code, 1959 before the Tahsildar, Raigarh on 19.02.2013 in which an order of stay was passed by Tahsildar and ultimately the final order was passed on 12.03.2013 and order was removal of encroachment and failing which a fine of Rs. 15,000/- and penalty of Rs. 1500/- was imposed upon the plaintiff. The defendants No. 1 and 2 pressurized the plaintiff for removal her possession from the suit land and an Istagash was submitted by the Chakradhar Nagar Police, Raigarh.

3. It is also the pleading of the plaintiff that against the order dated 12.03.2013 passed by Tahsildar, Raigarh, an appeal was filed before the SDO, Revenue, Raigarh which was dismissed vide order dated 07/06/2013 and the second appeal was filed before the Addl. Commissioner, Bilaspur which was also dismissed on the ground of limitation. Thereafter, the plaintiff has filed a revision before the Chhattisgarh Board of Revenue, Bilaspur which was also dismissed on 24.10.2016 on the ground of limitation and thereafter, a WP227 250/2017 was filed by the plaintiff before this Court and the writ petition was

decided on 25.09.2018 directing the plaintiff to file civil suit within two months and till then status-quo order was passed by this Court. In the meantime, the defendant No. 2 filed a case before the Chhattisgarh Board of Revenue, Bilaspur on behalf of the defendant No. 1 against the plaintiff which has also been dismissed on 06.11.2015, however, the said order dated 06.11.2015 has not been challenged further and it is attains its finality. Thereafter, the defendant No. 1 filed a WP227 No. 284/2016 before this Court for compliance of the order passed by Tahsildar, Raigarh in which a direction was issued in favour of the defendant No. 1 on 03.02.2016 that the order passed by Tahsildar, Raigarh shall be complied with if there is no impediment. In compliance of the said order, on 19.01.2018, the defendants No. 1 and 2 forcefully removed the possession of the plaintiff and demolished her house and threw the utensils from there, yet the plaintiff remain in possession by raising on Tarpaulin Shade. Considering the grievance and the manner in which the defendants No. 1 and 2 is acted for removal of the possession of the plaintiff, she filed a civil suit before the learned trial Court.

4. The defendants No. 1 and 2 filed their written statement, denied the contents of the plaints in detail and submitted that the plaintiff has no right or title over the suit land and she is an encroacher. They have purchased the suit property from Inderpal Singh and title holder of the suit property. They have also disclosed the various litigation between the parties, however, the plaintiff could not acquire title by any deed of transfer of title. They would also submit that merely by paying municipal taxes or electricity charges, the title of the plaintiff could not be established and therefore, the plaintiff has no right or title over the suit property and her suit is liable to be dismissed.

5. Based on the pleadings of the parties, the learned trial Court has framed issues on 03.08.2023. On 06.12.2023, the defendant No. 1 filed an application under Order XIV Rule 5 of CPC for framing of additional issues in which she proposed 23 additional issued to be framed in the suit. The said

application of the defendant No. 1 filed under order XIV Rule 5 of CPC has been rejected by the learned trial Court vide order dated 30.09.2024 which is under challenge in the present writ petition.

6. Learned counsel for the petitioner would submit that the framing of proper issues would goes to the root of the matter on the basis on which the parties are required to lead their evidence. The learned trial Court has framed 03 issues which does not cover the entire dispute between the parties and in absence of any specific issue on a particular point, the plaintiff may be deprived from leading evidence in support of her case. Apart from the issues framed by the learned trial Court, there are other several other issues which are required to be framed or are required to be considered for its determination. The proposed issues are essential for adjudication and just decision of the dispute between the parties. Yet, the learned trial Court has rejected the application holding that all the relevant issues are already been framed and there is no need to frame any additional issues.

7. Learned counsel for Respondent No. 1 opposes the submissions made by learned counsel for the petitioners and has submitted that the learned trial Court has rightly considered the provisions of Order XIV Rule 5 of CPC and the pleadings of the parties. Based on the pleadings of the parties, the relevant issues have already been framed which does not require any modification or framing of additional issues. He would also submit that the defendant No. 1 has proposed several issues which is not the subject matter of the present suit. He would also submit that the defendant No. 1 proposed the issues without raising the counter claim and therefore, the rejection of the application filed by defendant No. 1 is justified and the writ petition is liable to be dismissed.

8. I have heard learned counsel for the parties and perused the material annexed with the petition.

9. The controversy in the present writ petition is with respect to the framing of additional issues as has been proposed by the defendant No. 1 through her application dated 06.12.2023 (Annexure-P/5) in which she proposes 23 additional issues to be framed in the suit. The suit of the plaintiff is for declaration of title, declaring the sale-deed dated 28-03-201 is null and void and setting aside the order dated 12.03.2013 passed by Tahsildar, Raigarh, permanent injunction and for damages. It is necessary to notice the relief claimed by the plaintiff in her suit which reads as under :-

1. ग्राम – बोईरदादर विनोबानगर स्थित भूमि खसरा नम्बर 291/2/क–2 एवं 291/2/ख–2 रकबा 0.036 हे0 वादग्रस्त भूमि व उस पर बने मकान जिस पर आवेदिका का 30–35 वर्षो से हक कब्जा व अधिकार है उसे वादिनी का घोषित किया जावे।

2. बेजा कब्जा प्रकरण के लंबन काल में आवेदक सुरजीत सिंह व महेन्द्र सिंह द्वारा जो अन्य बेजा कब्जा प्रकरण चालू करने के दुराशय से वाद ग्रस्त भूमि श्रीमती दुर्गेश शर्मा के पास पंजीकृत विकय पत्र दिनांक 28.03.11 को की गई है उससे वादिनी के पक्ष में निष्प्रभावी घोषित किया जावे।

3. प्रतिवादीगण के उक्त अवैध व गलत प्रकियाओ के विरूद्ध कार्यवाही से वादिनी को विभिन्न प्रकार से क्षति हुई है जिसे वादिनी का प्रति वादीगण से क्षतिपूर्ति दिलायी जाये।

4. प्रतिवादीगण के उक्त अनियमित, गलत व अवैध कार्यो से वादकारण उत्पन्न हुआ है जिससे वाद व्यय एवं अन्य खर्चे वादिनी को प्रतिवादियो से दिलायी जावें।

5. अन्य अनुतोष जो माननीय न्यायालय उचित समझे वादिनी को प्रतिवादियो से दिलायी जावे।

10. Based on the pleadings of the parties from the plaint of the plaintiff and written statement of the defendant No. 1 and 2, the learned trial Court has framed the following issues on 03.08.2023 which is also necessary to be notice here which reads as under :-

1. क्या वादिनी वादग्रस्त भूमि ग्राम बोईरदादर विनोबा नगर स्थित भूमि ख.न. 291/2/क–2 एवं 291/2/ख–2 रकबा 0.036 हे0 भूमि पर कब्जे की अधिकारिणी है?

2. क्या पंजीकृत विकय पत्र दिनांक 28.03.2011 वादिनी के पक्ष में निस्प्रभावी होकर शून्य है?

3. क्या वादिनी द्वारा वाद समयावधि के भीतर प्रस्तुत किया गया है?

4. सहायता एवं व्यय ?

11. From perusal of the issues framed by the learned trial Court, it transpires that the issue with respect to the claim of possession by the plaintiff and with respect to declaration of sale-deed dated 28.03.2011 as null and void have been framed. It is the objection by the defendant No. 1 and 2 that the plaintiff has not claimed possession over the suit property and in absence of any claim of possession her suit is not maintainable and with respect to the claim of title over the suit property based on her possession, no issues have been framed by the learned trial Court. It also transpires that with respect to maintainability of the suit for want of relief of possession has also not been framed by the learned trial Court. In the application filed by the defendant No. 1, she proposed 23 issues to be framed, however, all the issues are appears to be her defence and not the issue involved in the suit, except the proposed issue No. 7 which is with respect to maintainability of the suit. It also transpires that with respect to declaration of title of the suit property in favour of the plaintiff, no issue has been framed. Order XIV Rule 5 of CPC, though, provided the power to amend and strike out issues, however, the issues are required to be framed based on the pleadings of the parties on which they are required to produce their evidences to prove their case. The issues are required to be framed with regard to the pleadings which are asserted by one party and denied by the other . Order XIV Rule 5 of CPC reads as under:-

> **"5. Power to amend and strike out issues-**
>
> 1. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.
>
> 2. The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

12. From perusal of the material annexed with the petition, this Court is of the opinion that apart from the issues framed by the learned trial Court on

03.08.2023, certain other issues involved in the case shall also be framed by the learned trial Court. Accordingly, this Court has directed the learned trial Court to frame the issue with respect to the proposed issue No. 7 as has been proposed by the defendant No. 1 in her application dated 06.12.2023 i.e. "क्या वादिनी द्वारा कब्जे की याचना नहीं किए जाने से वादिनी का प्रस्तुत वाद धारा 34 विनिर्दिष्ट अनुतोष अधिनियम के तहत प्रचलनशील नहीं है?" and also with respect to the relief clause No. 1 of the plaint i.e. " क्या वादिनी ग्राम– बोइरदादर, विनोबानगर स्थित भूमि नम्बर 291/2/क–2 एवं 291/2/ख–2 रकबा 0.036 हेक्टेयर वादग्रस्त भूमि व उस पर बने मकान जिस पर आवेदिका का 30–35 वर्षो से हक कब्जा व अधिकार है उसे वादिनी का घोषित किये जाने की अधिकाररिणी है?"

13. The learned trial Court is further directed to frame these two additional issues along with the other issues which has already been framed and to proceed with trial in accordance with law.

14. With the aforesaid observation, the present writ petition is **Partly Allowed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

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