

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 5633 of 2007**

Surajbali, aged about 63 years, S/o Raghunath Kachwaha, Resident of Village Mangla, Tahsil and District Bilaspur (CG).

---- Petitioner

Versus

1. Narayan Prasad Patel, aged about 65 years, Son of Ramji Patel, resident of Village, Mangla, Tehsil and District Bilaspur (CG).
2. Santosh Verma Ex-Patwari, P.H.N. 21, Village Mangla Bilaspur, Resident Of Jarhabhata Bilaspur Tahsil And District Bilaspur (CG).
3. State Of Chhattisgarh Through : Collector, Bilaspur (CG).

---- Respondents

For Petitioner	Shri Ajay Shrivastava, Advocate.
For Respondent No.1.	Shri Ravindra Agrawal, Advocate.
For Respondent No.2.	Shri CJK Rao, Advocate.
For Respondent/State	Shri B.Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21/08/2015**

1. By way of this petition, the Petitioner seeks to challenge the order dated 30.08.2007 passed by the Civil Judge Class-II in Civil Suit No.138-A/2006 whereby and whereunder the court below has rejected the application filed by the Petitioner under Order 26 Rule 9 of CPC for appointment of Commissioner.
2. Learned counsel appearing for the Petitioner submits that no prejudice whatsoever would have been caused to the Respondents if the

application filed by the Petitioner would have been allowed. On the contrary without Commissioner being appointed the suit property could not have been properly demarcated/inspected. He would further submit that even otherwise it is settled law that in order to establish the identity, ownership and possession of the suit property, proper recourse adopted by the court is to get the suit property demarcated and inspected by appointing the Commissioner. In support of his contention, he relied upon the decision of this court in case of W.P(227) No.259 of 2014 (Smt. Chhaya Kantkar & Ors. Vs. Smt. Mumtaz Fatima, decided on 12th January, 2015), wherein under some of the similar set of facts it was held that the nature of dispute raised in the present case would necessitate a finding as to whether the land available on the spot over which the dispute belongs to one of the party and one of the party to the dispute is in possession of the suit property and for all these, assistance of the revenue officers by submission of a report would be most appropriate.

3. Learned counsel for the Respondent No.1 opposing the prayer submits that demarcation report has already been submitted by the Respondent before the trial court and the trial court having found the said demarcation report sufficient for adjudication of the suit has rightly rejected the application of Petitioner filed under Order 26 Rule 9 of CPC.
4. In the present case, interim order was passed by this court on 02.04.2008 whereby it was directed that proceedings may go on but final judgment shall not be delivered till the next date of hearing, but it

has been informed by both the parties that proceedings thereafter has completely been stayed and the suit was not proceeded any further even though the interim order granted on 02.04.2008 was not continued on subsequent date of hearing. It is also informed that next date of hearing before the court below is 25.08.2015.

5. The object of local inspection is not so much to collect evidence which can be taken in court but to obtain evidence, which due to its peculiar nature, can only be had at the spot.
6. Where the result of the case was very much dependent on the identification of the suit land, it would be necessary to depute a commissioner by the court for survey of the property and give a report pertaining to the identity of the suit land, the boundaries of the disputed property and in whose possession the property today is.
7. It is trite law, the dispute with regard to identity of land can only be decided by getting demarcation report by appointing local Commissioner in this regard.
8. The High Court of Madhya Pradesh in case of Durga Prasad Vs. Parveen Foujdar (1975 MPLJ 801) dealing with the similar provisions of law has held that in cases where there is a dispute as to encroachment, the fact whether there is such an encroachment or not cannot be determined in the absence of an agreed map, except by the appointment of a Commissioner. It was further held that no finding on an alleged encroachment can be reached only on the oral evidence adduced by the plaintiff.

9. The Supreme Court also in a judgment passed in Shreepat Vs. Rajendra Prasad & Others (reported in JT 2000 (7) SC 379) has held in paragraph 4 as under:

“4. In our opinion, this contention is correct. Since there was a serious dispute with regard to the area and boundaries of the land in question, especially with regard to its identity, the courts below, before decreeing the suit should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of Khasra No.257/3 or Khasra No.257/1. This having not been done has resulted in serious miscarriage of justice. We consequently allow the appeal, set aside the order passed by the courts below.....”

10. Indisputably, where dispute regarding identity of land exists, the controversy between the parties can be resolved by appointing Commissioner in this regard as held by the Supreme Court in case of Haryana Waqf Board v. Shanti Sarup, reported in 2008(8) SCC 671. It was further held in the later part of said judgment that the High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case, whether the local Commissioner should be appointed for the purpose of demarcation in respect of the suit land.
11. Considering the fact that the proceedings itself was stayed for all these eight years, interest of justice would be served if this petition at this juncture is allowed with a direction that the order dated 30.08.2007 is set aside and the application of Petitioner filed under Order 26 Rule 9 of CPC is allowed and the court below should proceed further by appointing a Commissioner to obtain report at the earliest and

thereafter to decide the suit in accordance with law on its own merit.

12. As a consequence, the writ petition is allowed in terms of the direction given above. The impugned order dated 30.08.2007 passed in Civil Suit No.138-A/2006 is set aside. No order asto costs.

Sd/-

(P.Sam Koshy)
JUDGE

inder