

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 622 of 2015

1. Riyazuddin S/o Nizamuddin, aged about 38 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
2. Sirazuddin, S/o Nizamuddin, aged about 36 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
3. Moh. Farid, S/o Nizamuddin, aged about 34 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
4. Moh. Wahid S/o Nizamuddin, aged about 28 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)

---- Petitioners

Versus

1. Umesh Singh S/o Heera Singh Thakur, aged about 30 years, R/o Village Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
2. State of Chhattisgarh through the Collector, Bilaspur, District Bilaspur (Chhattisgarh)
3. Moh. Wasim S/o Nizamuddin, aged about 22 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
4. Saibun W/o Nizamuddin, aged about 58 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
5. Kamrun Nisha D/o Nizamuddin, aged about 43 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
6. Nazbun Nisha D/o Nizamuddin, aged about 41 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
7. Nazma Begam D/o Nizamuddin, aged about 35 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
8. Salma Begam D/o Nizamuddin, aged about 30 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)
9. Zakira Begam D/o Nizamuddin, aged about 29 years, R/o Musalman Para Takhatpur, Police Station Takhatpur, Civil and Revenue District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioners – Shri C.P.Laharey, Advocate.
For Respondent No.1 – Shri Ravindra Sharma, Advocate.
For Respondent No.2 – Shri Lav Sharma, Panel Lawyer.
For Respondents 3 to 9 – None, though represented.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

14/12/2015

1. Heard on admission.
2. The facts, in brief, of the instant WP(227) are that the petitioners /plaintiffs had filed an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (in brevity 'the Code') for issuance of commission to make local inspection. The Court below after hearing arguments dismissed the application on 16-09-2014 and held that as the plaint has been filed by the plaintiffs, the burden to prove the pleadings of the plaint is with the plaintiffs and also the plaintiffs made a prayer to the revenue authorities regarding the demarcation of the suit land and filed the demarcation report on 10-07-2012, hence, the Court held that it would not be appropriate to re-demarcate the suit land and accordingly dismissed the prayer.
3. Against the impugned order the petitioners have filed the instant WP(227) and prayed that the order passed by the Court below is illegal, against the law, and as per settled law, if there is some dispute regarding the areas of land or its identity then it shall be duty of the Court to issue commission by appointing the commissioner to resolve the real controversy between the parties, but the trial Court failed to do and committed error by not issuing the commission especially in the light of the pleadings made by the parties before the Court below. Hence, it is submitted that the order of the Court below be set aside and the Court below may be directed to issue a commission to make local inspection.
4. No any reply has been filed on behalf of the respondents.
5. Learned counsel for the petitioners supported the grounds taken and prayed that the petitioners have made out a case prima facie in their favour,

hence, the petition is liable to be admitted and after admitting the petition, the Court may allow the same and grant relief as prayed after hearing.

Learned counsel for the petitioners placed reliance in the matter of **Kamal Singh and another Vs. Roop Singh (since dead) through L.Rs. and another**¹, wherein the learned puisne Judge of M.P. High Court, Gwalior Bench held that in absence of proper pleadings and specific map of the disputed property, Courts below were not justified in decreeing the suit, controversy should have been resolved by issuing commission. Hence, the judgment and decree passed by the Courts below were quashed, the case remanded back to the trial Court with the direction that a Commissioner preferably a Revenue Officer be appointed for surveying the suit land.

Further reliance on behalf of the petitioners is placed in the matter of **Haryana Waqf Board Vs. Shanti Sarup and others**², wherein the Apex Court held that the only controversy between the parties was regarding demarcation of the suit land and held that it was appropriate for the Court to direct investigation by appointing a Local Commissioner under Order XXVI Rule 9 of the CPC. Therefore, the High Court was directed to consider the application, which had been earlier rejected by it, before proceeding to decide the Second Appeal on merits.

6. For the appreciation regarding the admission to the present matter, the grounds urged in the petition, order of the Court below and other annexed material are perused.

7. Before admission of the instant petition, this Court has to see whether the petitioners have made out some prima facie case for the admission of this petition.

8. The facts regarding issuance of commission, as in the impugned order dated 16-09-2014, goes to show that it is plaintiffs' suit, the plaintiffs already

¹ 2011 (3) M.P.H.T. 528

² 2008 (4) M.P.H.T. 306 (SC)

recorded the statement of three witnesses to support their case. The burden of proving lies with the plaintiffs to prove their case and the plaintiffs itself, after demarcation, filed report of the suit land on 10-07-2012. The Court below further held that with this, again demarcation of the suit land is not proper.

9. After considering the entire facts, it goes to show that both the case laws cited above are of no help because in both the matters there was no any demarcation report of the suit land, but in the present case, the plaintiffs had already filed the demarcation report and the same is a subject matter for appreciation on its merit. Hence, the Court below held that with this no any re-demarcation is required, therefore, the Court below refused to issue a commission to make local inspection.

10. After due consideration, in the considered view of this Court, there is no illegality or impropriety on the basis of the record in non-issuance of commission. The plaintiffs already examined their three witnesses, already filed the demarcation report and thereby there is no any need for re-demarcation for the suit land by the Court below.

11. To conclude, I do not see any prima facie matter for admission of the instant WP(227) for issuance of any writ of mandamus after hearing. Consequently, as the petition is not liable to be admitted for hearing, the instant WP(227) is hereby dismissed at the motion stage itself.

12. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE