

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 360 of 2016**

1. Pramod Golcha S/o Jineshwar Das Golcha, Aged About 63 Years

2. Smt Sushma Golcha, W/o Pramod Golcha, Aged About 57 Years

Both R/o Behind Pujari School, Rajatalab, Tahsil and District Raipur.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Collector, Raipur Distt. Raipur

2. Chief Secretary, Public Works Department State Of Chhattisgarh
Mantralaya, Raipur Chhattisgarh.

3. Principal, Industrial Training Institute, Saddu, Tahsil And Distt. Raipur

---- **Respondent**

For Petitioners : Shri Parag Kotecha, Advocate.

For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/06/2016

1. In February, 2009, the petitioners/plaintiffs have preferred a suit for declaration and permanent injunction against the respondent/State seeking declaration that they have prescribed their right of way from the Government land, therefore, the State be restrained from interfering with the petitioners' right of way.

2. In the said suit, the plaintiffs moved an application in the year 2009

itself seeking issuance of commission for local investigation under Order 26 Rule 9 CPC. The said application was rejected on 20.11.2009 against which the plaintiffs did not prefer any petition under Article 227 of the Constitution of India.

3. Admittedly, both the parties have already led their evidence and the suit is fixed for final arguments. At this stage, the plaintiffs moved another application under Order 26 Rule 9 CPC on 15.1.2016 claiming same relief of issuance of commission. The trial Court has rejected the application by observing that there is no dispute between the parties about identity or boundary of the land, therefore, powers under Order 26 Rule 9 CPC cannot be invoked.
4. Having heard learned counsel for the petitioners at length, it appears to this Court that there is no dispute that the respondents/defendants had erected a boundary wall and put a gate on the land in question, which, according to the plaintiffs, they were using as right of way to gain access to their agricultural field. Thus, the trial Court is absolutely correct in observing that there is no dispute about identity/location or boundary of the land in question. Jurisdiction under Order 26 Rule 9 CPC is ordinarily exercised when there is dispute about location of the land.
5. In a case where the plaintiff is claiming prescription of easementary right of way on the defendants' land, it is for him to succeed on his own

strength by adducing evidence concerning existence of such easementary right. Erection of boundary wall or a gate on the defendants own land not being in dispute, it is for the plaintiffs to convince the trial Court about prescription of easementary right.

6. The trial Court has not committed any such illegality or irregularity which warrants exercise of jurisdiction under Article 227 of the Constitution of India in view of the law laid down by the Supreme Court in the matter of **Surya Dev Rai Vs. Ram Chander Rai**¹ and **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**².
7. For the foregoing, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329