

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 608 of 2016**

- Ram Kumar Karsh S/o Shri Dashram, Aged About 60 Years Caste Dhobi, R/o Village Nawagarh, Police Station & Tahsil Nawagarh, Civil & Revenue District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

1. Lomesh Kumar Shriwas S/o Shri Narottam Shriwas, Aged About 45 Years Caste Nai, R/o Village Nawagarh, Police Station & Tahsil Nawagarh, Civil & Revenue District Janjgir Champa Chhattisgarh
2. State Of Chhattisgarh Through The Collector Janjgir, Civil & Revenue District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner
For Respondent /State

Shri Paras Mani Shriwas, Advocate
Shri Neeraj Jain, Government Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****18.10.2016**

1. The present Petition has been preferred invoking Article 227 of the Constitution of India assailing the order dated 27.08.2016 passed by the Civil Judge, Class II, Nawagarh in Civil Suit No. 12A/2013 whereby an application under Order 26 Rule 9 of CPC filed by the Petitioner has been rejected.
2. A brief fact relevant for consideration of this case is that the Petitioner-plaintiff filed Civil Suit No. 12A/2013 before the Civil Judge, Class II, Nawagarh seeking declaration of title and also for declaring the registered sale deed dated 25.05.2008 to be null and void. Pending the suit the Petitioner-plaintiff filed an application under Order 26 Rule 9

seeking for appointment of Commissioner for demarcation of the property so as to demarcate a road existing in the said property. The said application has been rejected by the Court below leading to the filing of the present Petition.

3. Learned Counsel for the Petitioner submits that initially he made effort under the Right to Information Act from the Government offices to obtain information in respect of existence of road in the suit property and when he failed in getting the same he has now moved an application for appointment of the Commissioner.
4. According to the Petitioner no prejudice would be caused in case the application would have been allowed rather it would have facilitated the Court below in reaching to a just decision in better way.
5. However, a perusal of the record shows that the suit property in fact is a property which was jointly owned by the plaintiff and his brother and was sold on 28.05.2008 to the purchaser and in the sale deed existence of road is not mentioned neither is it reflected in the map attached with the sale deed. If there would have been a road it would have been reflected in the document in the revenue records or other records. Further existence of a public road is a matter of fact which the plaintiff cannot be permitted to be established by appointment of a Commissioner. The Court below has rightly rejected the same as it was indisputably the plaintiff's property which he had sold in the year 2008. When he has sold the property without reflecting the road in the said sale deed at that time, now he cannot be permitted to turn around seeking for existence of road on the said property and now seek for appointment of the Commissioner to ascertain whether there was any road in the suit property or not.
6. Thus, this Court does not find strong case made out for invoking

extraordinary supervisory jurisdiction conferred upon this Court under the provisions of Article 227 of Constitution of India. This Court does not find any blatant error on facts or in law nor any perversity in the order of the Court below calling for interference with the impugned order.

7. Accordingly, the present Writ Petition being devoid of merits, stands dismissed.

Sd/-

**(P. Sam Koshy)
JUDGE**