

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 642 of 2016**

- Mahesh Kumar Verma S/o Late Shankar Prasad Verma, Aged About 85 Years R/o Village Bitkuli, Tahsil Bilha, District Bilaspur (Chhattisgarh), Presently R/o Juni Line, Bilaspur, Civil And Revenue District Bilaspur, (Chhattisgarh)

---- Petitioner**Versus**

1. Arun Kumar Verma S/o Late Shankar Prasad Verma, Aged About 72 Years R/o B- 24, Shailendra Nagar, Near Bagrecha Nursing Home, Raipur, District Raipur, (Chhattisgarh)
2. State Of Chhattisgarh, Through The Collector, District Raipur, (Chhattisgarh)
3. Tahsildar, Bilha, Tahsil Bilha, District Bilaspur, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Ravindra Agrawal, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****26/10/2016**

1. Petitioner's suit for declaration of title and permanent injunction has been dismissed by the trial Court against which first appeal is pending before the District Judge. In the said first appeal, the petitioner moved an application under Order 26 Rule 9 CPC for issuance of commission for local inspection to ascertain the nature of land as to whether the land is under the water/tank or it is barren land. The application was moved for the reason that the revenue entries do not carry an entry in the *wazib-ul-urz* that the land is under water and for this reason suit has been dismissed.

2. It is settled law that petition under Article 227 of the Constitution of India is not entertained unless the order is *ex facie* or palpably illegal and if the same is allowed to stand it would occasion failure of justice. Since the appeal is yet to be heard finally, this Court would not comment on the merits of the case. In the event, the appeal is decided against the petitioner, he would be at liberty to raise the issue of rejection of the application as a ground in second appeal, if the eventuality so arises.
3. Accordingly, the writ petition stands disposed of.

Sd/-

Judge
Prashant Kumar Mishra

Ashu