

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.133 of 2017

1. Ramkumar Agrawal, S/o Laljimal Agrawal, aged about 66 years.
2. Pawan Agrawal, S/o Ramkumar Agrawal, aged about 46 years.

Both occupation agriculturist and businessman, R/o Nagar Sitapur, Ambikapur, Rajmarg, Police Station and Tahsil Sitapur, District Surguja (C.G.)

(Plaintiffs)
---- Petitioners

Versus

1. Mahendra Agrawal, S/o Jagannath Agrawal, aged about 50 years.
2. Bhim Agrawal, S/o Jagannath Agrawal, aged about 42 years.
3. Jai Bhagwan Agrawal, S/o Jagannath Agrawal, aged about 47 years.
4. Jagannath Agrawal, S/o Madu Ram Agrawal, aged about 73 years.

All R/o Village Pratapgarh, Post Pratapgarh, Tahsil Batouli, District Surguja (C.G.)

5. State of Chhattisgarh, through Collector, Surguja (C.G.)
(Defendants)
---- Respondents

For Petitioners:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Meera Jaiswal, Advocate.
For Respondents No.2 to 4: -	Mr. Anurag Singh, Advocate.
For Respondent No.5 / State: -	Mr. S.M. Ali, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/04/2017

1. By the impugned order, the plaintiffs' application under Order 26

Rule 9 of the CPC has been rejected finding that identity of land is before the Court, against which this writ petition under Article 227 of the Constitution of India has been filed.

2. Learned counsel for the petitioners/plaintiffs submits that the trial Court is absolutely unjustified in rejecting the application under Order 26 Rule 9 of the CPC as not maintainable. The application cannot be held to be non-maintainable by the trial Court.
3. Learned counsel for respondents No.2 to 4/defendants would support the impugned order.
4. I have heard learned counsel for the parties and perused the impugned order as also the other documents attached with the writ petition with utmost circumspection.
5. A careful perusal of the plaint would show that the plaintiffs have clearly stated that Khasra No.1340/3 area 0.163 hectare is on the northern side to the extent of 56 x 16 sq.mtr. and have claimed that encroachment and possession from the defendants. Thus, the identity of land is absolutely clear before the Court and in the relief clause, apart from that relief, the petitioners/plaintiffs have also sought relief that the plaintiffs be declared owners of Khasra No.1340/3, area 0.163 hectares and Khasra No.1341/3, area 0.88 hectares, as such, there is no dispute of identity of land. Identity is clear and has been placed before the Court. Therefore, the trial Court is absolutely justified in rejecting the application under Order 26 Rule 9 of the CPC.
6. Consequently, the writ petition is liable to be dismissed and is accordingly, dismissed in limine. However, the trial Court is

directed to conclude the trial as directed by this Court earlier. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma