

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.789 of 2014**

1. Rohit Kumar S/o Mahetaru Yadav Aged About 32 Years
2. Baldau S/o Mahetaru Yadav Aged About 29 Years
3. Smt Sandhya W/o Ganesh Yadav Aged About 30 Years
4. Tukeshwar S/o Ganesh Yadav Aged About 6 Years (minor)
represented Through Natural Mother Smt Sandhaya Yadav

All R/o Indira Colony Tah. & PS Baloda Bazar, Dist. Baloda
Bazar CG.

---- Petitioner**Versus**

1. Additional Tehsildar And Sub Divisional Officer (Irrigation)
(Baloda Jalashay Mukhya Nahar), Baloda Bazar, Dist. Baloda
Bazar CG
2. State Of Chhattisgarh Through The Collector Dist. Baloda Bazar
CG.

---- Respondent

For Petitioners

Shri Trideep Bhattacharya, Adv. on
behalf of Shri Prateek Sharma, Advocate

For Respondent/State

Shri Syed Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****19/01/2017**

1. Petitioners would assail the order passed by the trial Court dismissing their application for appointment of commission for local inspection under Order 26 Rule 9 of the Code of Civil Procedure, 1908 (*'the CPC'* in short).
2. The petitioners/plaintiffs have preferred a suit for declaration and permanent injunction to the effect that the respondents are not entitled to proceed against the plaintiffs by treating them as encroacher of Government land, as they are in possession of the suit land under a registered sale deed executed by one Bal Krishna Lal Agrawal.
3. On the other hand, the respondent/State has pleaded that the petitioners have encroached an area of about 250 sq.ft. belonging to the Irrigation Department, being part of the Canal. The petitioners have moved the subject application for appointment of commission for carrying out demarcation so that the fact of encroachment can be elucidated and the suit is properly adjudicated.
4. Learned counsel for the State would oppose the petition on the ground that the plaintiffs have to stand on their own legs and the jurisdiction of Court under Order 26 Rule 9 of the CPC cannot be invoked to collect evidence for a party.

5. Having heard learned counsel for the parties and on perusal of the record, it would appear that the only dispute between the parties is concerning encroachment made by the petitioners over 250 sq.ft. land being part of canal. If the subject area is demarcated through a Revenue Officer, it will only assist the Court in properly adjudicating the issues involved.
6. In view of the above, since further proceedings in the civil suit has been stayed by this Court for last more than two years, ends of justice would be served if the application for issuance of commission is allowed; Commissioner's report is obtained; and thereafter, the suit be decided at the earliest.
7. Accordingly, on petitioners depositing the commission fees of Rs.5,000/- (Rupees Five Thousand Only) within a period of 15 days from today, the trial Court shall appoint the concerned Revenue Inspector as the Commissioner to demarcate the area and submit his report about the alleged encroachment made by the petitioners.
8. The Revenue Inspector shall fix a date for spot inspection, on which date both the parties shall remain in attendance. Even if any of the parties failed to remain present, the Revenue Inspector shall not adjourn the spot inspection and submit his

report to the concerned Court within a period one month from the date of issuance of writ of commission by the trial Court.

9. Let the entire process of submission of Commissioner's report by the Revenue Inspector be completed within a period of three months from today and, thereafter, the trial Court shall decide the suit within next six months.
10. Accordingly, the writ petition is disposed of with the observations as stated *supra*.
11. There shall be no order as to cost (s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri