

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 575 of 2016**

Ramvishal Jangre, S/o Bisoha Prasad, aged about 50 years, Caste Satnami Village Dodekala, Thana, Vidhansabha, Raipur Tahsil Raipur, District Raipur (C.G.)

---- Petitioner**Versus**

1. Bisoha Ram Sahu, S/o Guhan Sahu, Aged about 65 years,
2. Sharda Sahu, S/o Bisoha Sahu, Aged about 35 years,
3. Punitram, S/o Bisoha Sahu, aged about 34 years,
4. Annu, S/o Bisoha, aged about 28 years,
5. Smt. Ratna, W/o Sharda Sahu, aged about 28 years,
6. Smt. Rambha, W/o Punit, aged about 30 years

All resident of Village Dodekala, Thana-Vidhansabha, Raipur, Tahsil: Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri N.K. Malviya, Advocate.
For Respondents	:	Shri Rajesh Kumar Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****09/05/2017**

(1) By the impugned order, petitioner/plaintiff's application under Order 26 Rule 9 read with Section 151 Cr.P.C. has been rejected, against which instant writ petition has been filed questioning the same.

(2) Learned counsel for the petitioner would submit that the appointment of commissioner is absolutely necessary to the facts & circumstances of the case and the trial Court is absolutely unjustified in rejecting the application.

(3) Per contra, Mr. Tiwari, learned counsel for the respondents would

submit that the suit is pending since 19.11.2003 and the appellate Court has remanded the matter to consider question of issue of valuation and court fee and also on the question of identity of the land and possession, as such, the trial Court is absolutely justified in rejecting the application filed by the plaintiff.

(4) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(5) The plaintiff has filed a suit for recovery of possession. The trial Court decreed the suit of the plaintiff but the first appellate Court has remanded the matter to the trial Court to decide the plaintiff's suit afresh after framing appropriate issues, against the order of remand; the petitioner/plaintiff preferred Misc Appeal No. 78/2009 before this Court.

(6) On remand, this Court in Miscellaneous Appeal No. 78 /2009 has held as under:-

“10. Indisputably, there is a dispute regarding identity of the suit property inasmuch as the plaintiff is owner of the land bearing Khasra No.210/38 whereas the defendants are the owners of land bearing Khasra No.210/26 i.e. part of same Khasra Number. It is settled law, the dispute as to the identity of the suit property cannot be resolved without getting it demarcated by appointing the revenue authority as commissioner, which has not been done in the instant case. Further, apparently, the suit has not been valued by the plaintiff the purpose of relief of possession claimed by him.

11. Considering the overall facts and circumstances of the case, the issue, which is essential for the purpose of decision of the case is “whether respondents have encroached upon land bearing Kh. No. 210/38 area 0.053 hectares by constructing three room house over it ?

12. To decide the above issue, it was necessary to get the suit land demarcated by appointing revenue authority as Commissioner. For this, no evidence is available on the record. The First Appellate Court, having found retrial necessary, has remanded the matter to the trial Court for the decision afresh.”

(7) In view of above finding of this Court that appointment of commissioner is absolutely necessary, the impugned order dated 16.06.2016 is set aside and the trial Court is directed to appoint revenue officer to be commissioner to demarcate the land and get a report within one month from the date of issuance of commission and the trial Court thereafter to conclude the hearing of the suit expeditiously preferably within a period of three months from the date of receipt of report of the commissioner.

(8) The writ petition is allowed the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-