

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 790 of 2014**

Smt. Seema Pathak, aged about 43 years, wife of Akhilesh Pathak, resident of near Gandhi Chowk, Juna Bilaspur, Police Station- City Kotwali, Tahsil and District – Bilaspur (C.G.)

----Petitioner/Plaintiff

Versus

1. Smt. Aasha Tiwari, Sarpanch, Village-Khaira, aged about 50 years, wife of Ambika Prasad Tiwari,

2. Ambika Tiwari, aged about 57 years, son of late Janak Tiwari,

Both are resident of Village-Khaira (Lagra), Tahsil and District – Bilaspur (C.G.) at present near Muktidham, Khairabada, Sarkanda, Tahsil and District Bilaspur

3. Narendra Pathak, aged about 65 years, son of Kashi Prasad Pathak, resident of village -Khaira (Lagra), Tahsil and District – Bilaspur (C.G.)

4. Prameel Pathak, aged about 42 years, son of late Ganesh Pathak, resident of Village- Khaira (Lagra), Tahsil and District – Bilaspur (C.G.)

5. Santosh Pathak, aged about 65 years, son of late Devi Prasad Pathak, resident of Village- Khaira (Lagra), Tahsil and District – Bilaspur (C.G.)

6. Madan Pandey, aged about 50 years, son of Annapurnanad Pathak, resident of Village – Khaira (Lagra), Tahsil and District Bilaspur (C.G.)

7. Shivdayal Sahu, aged about 68 years, son of late Kanhaiya Sahu, resident of Village-Khaira (Lagra), Tahsil and District – Bilaspur (C.G.)

8. State of Chhattisgarh, through the Collector, District – Bilaspur (C.G.)

---- Respondents/Defendants

For Petitioner	: Shri Ravindra Sharma, Advocate.
For Respondent No. 8	: Shri Arun Sao, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

02/11/2018

(1) By the impugned order dated 30.07.2014, second application for appointment of

commissioner under Order 26 Rule 9 of the CPC read with Section 151 of the Code of Civil Procedure (henceforth “CPC”) filed by the petitioner has been rejected by the trial Court.

(2) Learned counsel appearing for the petitioner submits that impugned order is bad and unsustainable in law, which is liable to be set aside.

(3) Per contra, learned counsel for the respondent No. 8/State would submit that in view of the decision rendered by this Court in the matter of **Smt. Poonam Shukla & others Vs. Khemchand Jain**¹, the application under Order 26 Rule 9 read with Section 151 of the CPC filed by the petitioner has rightly been rejected by the trial Court, which does not call for any interference in the instant petition.

(4) I have heard learned counsel appearing for the parties.

(5) This Court in the matter of **Smt. Poonam Shukla & others** (supra) has held as under:

“10. After hearing learned counsel for the parties and in view of the fact that the petitioners/plaintiffs application has already been rejected on merits and on the principle of res-judicata enumerated in *Satyadhyan Ghoshal and others Vs. Smt. Deorajin Debi and another*² that it applies also between two stages in the same litigation and reiterated in *Ajun Singh Vs. Mohindra Kumar & others*³, the petitioners cannot be permitted to maintain the application under Order 26 Rule 9 of the CPC which has earlier been rejected by the trial Court and which has become final. Consequently, I do not find any illegality in the impugned order. Accordingly, the writ petition is liable to be and is hereby dismissed. However, considering the fact that suit was filed on 26.8.1993, the trial Court is directed to expedite the trial and conclude the same within a period of four months from the date of production of certified copy of this order.”

(6) In view of the afore-cited decision rendered by this Court, I am of the view that the trial Court is absolutely justified in rejecting the application under Order 26 Rule 9 of the

1 2017 (2) C.G.L.J. 530

2 AIR 1960 SC 941

3 AIR 1964 SC 993

CPC for appointment of commissioner, in which I do not find any illegality warranting interference under Article 227 of the Constitution of India.

(7) Accordingly, the writ petition fails and is hereby dismissed. However, the petitioner is at liberty to challenge the order rejecting his application for appointment of revenue commissioner in accordance with law.

(8) Copy of this order be sent to the trial Court through concerned District Judge.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

