

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 235 of 2018

Rajesh Battra, Aged 43 years, S/o Late Nand Lal Battra, R/o Behind Of Yellow Building, Kumhar Para Road, Fafadeh Raipur, Tahsil And District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Swaran Pal Singh Chawla, S/o Mangat Singh Chawla , R/o Sai Apartment, Near Old Bus Gurudwara Ravi Nagar Pndri, Raipur Tahsil And District Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through Collector , Raipur Tahsil And District Raipur Chhattisgarh.

---- Respondents

For petitioner - Shri Neeraj Choubey, Advocate.
For Respondent/State –Shri S.R.J. Jaiswal, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

28/03/2018

Heard.

1. Instant petition is against the order dated 2/01/2018 passed in Civil Suit No.163-A/15 by the 7th Civil Judge Class-2, Raipur whereby an application preferred under Order 26 Rule 9 read with section 151 of CPC was dismissed.
2. Learned counsel for the petitioner would submit that the petitioner is the plaintiff in a suit filed for possession and permanent injunction with the averment that the defendant has encroached upon his land bearing Khasra Nos.243/4 & 249/7 admeasuring 0.101 hectare. It is stated that defendant has purchased land bearing khasra Nos.243/2 & 249/5 admeasuring 0.171 hectare, however the defendant forcefully has taken over possession of the part of the land which belong to the petitioner/plaintiff. Therefore, unless and until local Commissioner Revenue Officer is appointed to demarcate the land, the factum of

encroachment cannot be ascertained. It is further submitted that even oral evidence and other evidence of the third party would be helpful in this case, therefore trial court failed to understand the same and has passed order of dismissal of application under Order 26 Rule 9 read with section 151 of CPC.

3. Perused the order. Learned court below by its order dated 2/01/2018 has dismissed the application for issuance of commission of the spot on the ground that it is the burden of the plaintiff to prove his case and how much encroachment has been made by the defendant. Application under Order 26 Rule 9 read with section 151 of CPC. would show that the plaintiff alleged that he is the owner of the land at village Aamasivni, RI Circle, Raipur in respect of Khasra Nos.243/4 and 249/7 admeasuring 0.101 hectare. It is stated that the defendant who is alleged to have encroached is the owner of land bearing khasra Nos.243/2 and 249/5 admeasuring 0.171 hectare. Defendant however have encroached part of the land belonging to the plaintiff which has been shown in the map demarcated in red and forcefully has encroached upon the land and constructed the road, therefore in order to ascertain the factum of encroachment, Revenue Inspector may be appointed as Commissioner in this case. In reply to such application for appointment of commission it was stated that the plaintiff has purchased land on 22/09/2012 whereas defendant is in possession of the land since 29/04/2005 and the land which is alleged to have been encroached belongs to the defendant.

4. Perusal of the document filed alongwith the petition would show that serious dispute exist in respect of the part of the encroachment of the land as both the parties are claiming land belong to them. Different land which has been stated to have been encroached bears khasra numbers. Therefore, when serious dispute is existing in respect of the possession

over certain land in question, following the law laid down in case of **Haryana Waqf Board Vs. Shanti Sarup** reported in **2008 AIR(SCW) 6500** in the opinion of this court in respect of the encroachment whether have been made or not can only be ascertained if Revenue Inspector is appointed as Commissioner so that identity of the land can be settled. Further the Supreme Court in case of **Shreepat Vs. Rajendra Prasad & Ors.** reported in **JT 2000(7) SC 379** has held in paragraph 4 as under:

“4. In our opinion, this contention is correct. Since there was a serious dispute with regard to the area and boundaries of the land in question, especially with regard to its identity, the courts below, before decreeing the suit should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of Khasra No.257/3 or Khasra No.257/1. This having not been done has resulted in serious miscarriage of justice. We consequently allow the appeal, set aside the order order passed by the courts below.....”

5. Considering the facts involved in this case, the order of the learned court below is set aside. The application filed by the plaintiff under Order 26 Rule 9 read with section 151 of CPC is allowed. It is directed that the trial court shall appoint one Revenue Inspector to demarcate the respective plot. Plaintiff and defendant shall also remain present during such demarcation proceeding. If need be police help may also be extended while carrying out such demarcation.
6. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE