

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 736 of 2014**

Mukund Dammani, S/o. Mohan Lal Dammani, aged about 53 years, R/o. D-572, near Radha Swami Mandir, Samta Colony, Raipur District Raipur (C.G.)

----Petitioner/Plaintiff

Versus

1. Mamta Hinduja, W/o. Late Laxmandas Hinduja, aged about 50 years, R/o. House No. 57, 58, Geetanjali Nagar Society, Shankar Nagar, Raipur, District Raipur (C.G.)
2. Ashok Nainwani, son of late Raghmal Nainwani, aged about 58 years, R/o. near Mahima Hospital, Shanti Nagar, Raipur, District Raipur (C.G.)
3. Dilip Hinduja, son of Tikammal Hinduja, aged about 45 years, R/o. Siddhi Vinayak, Siremikword, Tikrapara, Raipur, District Raipur (C.G.)

----Respondents/Defendants

For Petitioner	: Mr. Goutam Khetrapal, Advocate.
For Respondents	: Mr. Ankur Agrawal, Advocate. .

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/11/2018

(1) By the impugned order dated 01.07.2014, plaintiff's application under Order 26 Rule 9 of the CPC has been rejected, against which instant writ petition has been filed questioning that order.

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

(3) The plaintiff, petitioner herein, filed an application under Order 26 Rule 9 of the CPC holding that he is the title holder of Khasra No. 222/2 and 222/4 whereas defendants claimed that plaintiff is making construction over the land bearing Khasra No. 166/27.

(4) In that view of the matter, the trial Court ought to have considered whether the appointment of local commissioner is necessary or not. The trial Court has simply held that plaintiff has to prove his own case without considering the necessity of appointing local commissioner as there is dispute of identity of the land between the parties. In view of above, the impugned order is set aside. Application under Order 26 Rule 9 CPC is restored to the file of trial Court for hearing afresh that application keeping in view the fact that there is dispute of identity of the land between the parties. The said application will be considered and decided by the trial Court expeditiously preferably within a period of one month from the date of receipt of certified copy of this order.

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

(6) Copy of order be sent to the trial Court through District Judge for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

