

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 490 of 2019

1. Jagdish Prasad Agrawal S/o Late Shri Prabhulal Agrawal, Aged About 67 Years, R/o House No. 250, Beside Mittal Bhawan, Samta Colony, Tahsil and District - Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. Inderman S/o Jagtaram, aged about 47 Years, R/o Village - Amleshwar (wrongly mentioned as Amlewar), P.H. No.5, Tahsil - Patan, District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Indal Son of Jagtaram, Aged about 45 Years (now dead)
 - (i) Smt. Kumari Bai widow of late Indal, aged about 48 years,
 - (ii) Ravi Kumar S/o Late Shri Indal,
 - (iii) Dinesh S/o Late Indal,No.(i) to (iii) are resident of Village – Amleshwar, P.H.No.5, Tahsil-Patan, District-Durg (C.G.)
 - (iv) Seema Yadav D/o Late Indal, R/o Gadadih, Tahsil-Patan, District-Durg (C.G.)
3. State of Chhattisgarh, Through the Collector, District - Durg Chhattisgarh., District : Durg, Chhattisgarh

----Respondents

For Petitioner – Shri Goutam Khetrapal, Advocate.

For Respondents 1, 2(i) to 2(iv) – Shri Arvind Dubey, Advocate.

For State/respondent No.3 – Shri Shrikant Kaushik, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05-12-2019

Heard.

1. This petition is brought being aggrieved by the order dated 08-03-2019 passed by the Fourth Additional District Judge, Durg in Civil Suit No.8A/2016 dismissing the application filed by the petitioner/plaintiff for appointment of Commissioner for demarcation of the disputed property.
2. It is submitted that the petitioner has pleaded in his plaint that he is owner of the disputed land which has been encroached upon by the respondents/defendants side and construction has been raised upon it, whereas, the respondents 1 and 2 /defendants are disputing the pleadings, by denying the title of the plaintiff on the basis of long possession on the disputed

property and also that the respondents 1 and 2 are in possession of the property of the petitioner. Therefore, there is clear dispute regarding the identity plus area of the property between the parties. Therefore, the impugned order is erroneous and against the principles of law and the provisions of the Code of Civil Procedure. Hence, the petition be allowed.

3. Learned counsel for the respondent 1 and 2 opposes the petition and submits that it is burden of the petitioner to prove his case and one demarcation report has already been filed by the petitioner which is present in the record of the case, therefore, there is no requirement for any further demarcation of the property in dispute, hence, the petition be dismissed.

4. Learned counsel appearing for the State/respondent No.3 makes formal objection.

5. Heard learned counsel for the parties and perused the documents.

6. On perusal of the copy of the plaint and the WS there is dispute between the parties regarding the land which is claimed by the petitioner to be encroached upon by the respondents 1 and 2 and it is denied by the respondents side, therefore, for proper and complete adjudication of the case demarcation of the suit property by appointment of Commissioner through the Court appears to be necessary in this case. Therefore, I am of this opinion that the impugned order has not been correctly passed. Hence, the petition is allowed and the application for appointment of Commissioner filed by the petitioner is allowed. Learned trial Court is directed to proceed with the appointment of Commissioner which shall be revenue officer for demarcation of the property in accordance with law.

7. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge