

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 578 of 2019

1. Omprakash Kashyap, S/o Late Sant Prasad Kashyap Aged About 54 Years Occupation - Agriculturist, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District Bilaspur Chhattisgarh.
2. Sushil Kashyap, S/o Late Sant Prasad Kashyap Aged About 48 Years Occupation - Business, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District Bilaspur Chhattisgarh.
3. Sunil Kashyap, S/o Late Sant Prasad Kashyap Aged About 44 Years Occupation - Business, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District Bilaspur Chhattisgarh.
4. Pervej Kashyap, S/o Late Sant Prasad Kashyap Aged About 40 Years Occupation - Business, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District-Bilaspur Chhattisgarh.
5. Rajesh Kashyap, S/o Late Kamta Prasad Kashyap Aged About 36 Years Occupation - Business, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District Bilaspur, Chhattisgarh.
6. Rakesh Kashyap, S/o Late Kamta Prasad Kashyap Aged About 32 Years Occupation - Business, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District Bilaspur Chhattisgarh.
7. Smt. Kamla Bai Kashyap, Wd/o Late Kamta Prasad Kashyap Aged About 62 Years Occupation - House Wife, R/o Infront Of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil and Revenue District-Bilaspur, Chhattisgarh.
8. Horilal Kashyap, S/o Late Shiv Dayal Kashyap, Aged About 68 Years R/o Infront of Manohar Talkies, Juna Bilaspur, Police Station - City Kotwali, Tahsil, Civil And Revenue District-Bilaspur, Chhattisgarh. (Plaintiffs).

---- Petitioners

Versus

1. Shyam Kumar Khatri, S/o Harishchandra Khatri, Aged About 50 Years, R/o Near Radha Krishna Temple, Torwa Bilaspur, Police-Station - Torwa, Tahsil Civil and Revenue District-Bilaspur, Chhattisgarh.
2. State of Chhattisgarh Through Collector-Bilaspur, District-Bilaspur

Chhattisgarh., District : Bilaspur, Chhattisgarh

3. Mathura Prasad Pandey S/o Bihari Lal Pandey Aged About 75 Years
R/o Infront Of Chhattisgarh Gramin Bank, Torwa Bilaspur, Police
Station Torwa, Tahsil Civil & Revenue District-Bilaspur, Chhattisgarh.
(Defendants).

---- Respondents

For Petitioners : Mr. Ratnesh Kumar Agrawal, Advocate.

For Respondents : Mr. Anuragdayal Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

05/11/2019

1. This petition has been brought challenging the order dated 28.5.2019 passed by the learned trial Court in Civil Suit No.504A/2014 rejecting the application filed under Order 26 Rule 9 of the Civil Procedure Code, 1908.
2. It is submitted that the petitioners have filed a civil suit praying for decree of declaration of title and possession with respect to the suit land on the ground that the suit land has been encroached upon by respondent No.1, who has contested the suit and denied the plaint averments by filing his written statement. Thus, there is a clear dispute regarding identification of property encroached. Petitioners/plaintiffs have filed one demarcation report in support of their claim, whereas the respondent No.1 has filed separate demarcation report in his defence, which are contradictory. Further, the respondent No.1 has also claimed that he has not encroached upon the disputed land, therefore, there was requirement for specific demarcation of the original area of khasra No.133/2 to find out as to who is in possession of that land. The trial Court without giving proper consideration has rejected the application in an arbitrary manner which is liable to be set aside and the application for spot inspection of disputed property deserves to be allowed.

3. Learned counsel for respondents submits that the respondent No.1 is in possession of land bearing khasra No.133/2 whereas the dispute raised in the plaint filed by the petitioners is with respect to the land bearing khasra No.133/34. Thus, there is no dispute with regard to the land bearing khasra No.133/2. It is also submitted that in the application filed by petitioners under Order 26 Rule 9 CPC itself it has been mentioned that 4.94 acre land was purchased, which is part of khasra No.133/2 total area 6.84 acres. It is also not disputed by the petitioners themselves in the application that they have not received possession of the entire land purchased by them. Further, the spot inspection report obtained by the petitioner is only for the purpose of collecting and creating the evidence in their favor which cannot be permitted. Hence, this petition be dismissed.
4. In reply, it is submitted by learned counsel for petitioner that respondent No.1 has got demarcated the whole land of khasra No.133/2 regarding which report the petitioners have objectors . As there is boundary dispute between the parties, therefore, spot inspection is essential in this case.
5. I have heard both the parties and perused the documents on record.
6. Petitioners have pleaded in their plaint that they are owners of land bearing Khasra No.133/34, ad-measuring 4.94 acre and out of which, respondent No.1 has encroached upon 1.25 acres of land. Respondent No.1/defendant has contested this pleading on two grounds, firstly, that he has not encroached upon the disputed land and secondly, even if it is found that he is in possession of disputed land, then he has acquired title on the basis of adverse possession. The demarcation report filed by both the sides are not matching and appear to be contradictory. However, the dispute exists as it is the claim of the petitioners/plaintiffs that they are not in possession of the entire land which they had purchased.
7. It is not denied that the land bearing khasra No.133/34 is the part of original khasra No.133/2 having total area of 6.84 acres, out of which the plaintiffs had purchased 4.94 acre. The demarcation reports filed do not draw clear picture as to how the shortage of land of the petitioners has occurred and who is the actual person responsible for the shortage, therefore, in this case the finding of the trial Court that

the dispute can be resolved on the basis of the demarcation reports filed does not appear to be a proper conclusion for the reason that the demarcation reports themselves are creating dispute. Hence, for the purpose of proper adjudication of this case it would have been proper for the trial Court to order local inspection as provided under Order 26 Rule 9 of CPC to demarcate the total of area 133/34, which has been carved out of khasra No.133/2, to find out the actual fact situation on the spot. Hence, for these reasons, I am of this opinion that the order passed by the trial Court is erroneous and without proper application of mind and therefore, the same is liable to be set aside.

8. Accordingly, the writ petition is allowed and the impugned order rejecting the application filed under Order 26 Rule 9 CPC is hereby set aside and the trial Court is directed to pass orders for appointment of Commissioner for local inspection of the disputed property, for the purposes of finding out total area of disputed property and the encroachments, if any, upon it.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

