

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (227) No.738 of 2018

1. Smt. Gladius Caroline Rao W/o Late V.B.Rao, Aged about-67 years, R/o Elin Prayer Hall, Indu Chowk, Jarhabhata Bilaspur, Tahsil & District-Bilaspur (CG)
2. Dinesh Pandey S/o G.C. Pandey, Aged about 42 years, R/o Kududand, Mata Chaura, Gali No.5, Bilaspur, Tahsil & District Bilaspur (CG)

--- Petitioners

Versus

1. Tomeshwar Sinha, W/o Shri Shivdayal Sinha, Aged about 44 years, R/o Sai Vihar, Yadunandan Nagar Bilaspur, Tahsil & District Bilaspur (CG)
2. State of Chhattisgarh, through Collector, Bilaspur (CG)

--- Respondents

For Petitioners: Mr.K.A.Ansari, Senior Advocate with Mrs.Meera Ansari, Advocate

For Respondent No.1: Mr.Malay Shrivastava, Advocate

For Respondent No.2: Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board01/07/2019

1. This writ petition is directed against the order dated 9.8.2018 passed by the Third Additional District Judge, Bilaspur in Civil Suit No.21-A/2017, whereby the Third Additional District Judge has granted the plaintiff's application under Order 26 Rule 9 of the CPC.
2. Mr.K.A.Ansari, learned Senior Counsel for the petitioners, would submit that the trial Court is absolutely unjustified in granting the application as the plaintiff is trying to collect the evidence by getting the commissioner appointed as it is for the petitioners to get the evidence adduced and to prove that he is owner of the land bearing

khasra No.362/13, area 0.029 hectare, as such, there is no dispute with regard to identity of the land and unnecessarily the trial Court has appointed local commissioner for inspection, which deserves to be set aside.

3. Mr.Malay Shrivastava, learned counsel for respondent No.1, would support the imputed order.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. A bare perusal of the plaint would show that the plaintiff has described the suit land as khasra No. 362/13, which is said to be interfered by the petitioners/defendants No.1 and 2. According to the petitioners/defendants No.1 and 2, respondent No.1/plaintiff is owner of khasra No.362/9 which he has purchased from Panchram on 7.7.1999.
6. The trial Court after considering the case of the parties reached to the prima-facie conclusion that there is dispute with regard to identity of the land in view of factual position obtained therein and permitted for appointment of commissioner.
7. The Supreme Court in the matter of **Shreepat v. Rajendra Prasad & others**¹ has held as under:-

“3. The principal contention raised by learned Counsel for the Appellant is that though there was a serious dispute with regard to identity of the land in dispute, whether the land in dispute formed part of Khasra No.257/3 or Khasra No.257/1, the Courts below did not get identity established and decreed the suit of the Respondent only on the basis of oral evidence which was not sufficient for the purpose of establishing the identity of the land in dispute at the spot.

1 JT 2000 (7) SC 379

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 passed by the courts below as affirmed by the High Court and remand the case to the trial Court to dispose of the suit afresh in the light of the observations made above and in accordance with law.”

8. In the instant case, since there is serious dispute between the parties with regard to identity/boundary of the suit land as the plaintiff is claiming title which is the part of suit land bearing khasra No.362/13, whereas according to defendants No.1 and 2, suit land is part of khasra No.362/9 owned by them. Therefore, the trial Court is absolutely justified in appointing the commissioner under Order 26 Rule 9 of the CPC. I do not find any illegality in the said order.
9. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed. However, the trial Court is directed to expedite the trial. A copy of this order be sent to the concerned trial Court by E-mail/fax. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-