

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 743 of 2019

1. Dr. Anand Verma, S/o late M.C. Verma, aged about 55 years, R/o Juni Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.
2. Dr. Anil Verma, S/o late M.C. Verma, aged about 53 years, R/o Juni Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

Throguh his power of attorney holder-Dr. Anand Verma, S/o late M.C. Verma, aged about 55 years, R/o Juni Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

3. Smt. Meena Khare, D/o. Late M.C. Verma, aged about 57 years, R/o Juni Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

Throguh her power of attorney holder-Dr. Anand Verma, S/o late M.C. Verma, aged about 55 years, R/o Juni Line, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Rajkumar Tiwari, S/o Nandkumar Tiwari, aged about 45 years, R/o. Ashtbhuji Bhawan, Rajendra Nagar, Bilaspur, Tahsil & District, Bilaspur, Chhattisgarh.
2. State of Chhattisgarh through: Collector, Bilaspur, District, Bilaspur, Chhattisgarh.

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For petitioners	:	Mr. Manoj Paranjpe & Ms. Vaishali Mahilong, Advocates.
For respondent No.1	:	Mr. Manish Nigam, Advocate.
For respondent No.2	:	Mr. Roshan Dubey, Panel Lawyer.

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

16/12/2019

1. The petition has been brought being aggrieved by the order dated 24.7.2019 passed by the 3rd Civil Judge Class-II, Bilaspur, in Civil Suit No.70A/2017 dismissing the application filed by the petitioner for demarcation of the suit property.

2. It is submitted that the petitioners/plaintiffs have filed a civil suit seeking for relief of declaration and permanent injunction in respect of the suit property. The suit property has been demarcated at the instance of both the sides but the main issue is with regard to existence of 20 ft. wide road between the property of petitioners and defendant No.1, which is claimed by respondent No.1 as *Nistari land*, and therefore, it is claimed that there exists a government land in between the property of the petitioner and defendant No.1, hence, the demarcation and spot inspection of the suit property by Commissioner is very essential and necessary for the complete adjudication of the dispute between the parties.

Reliance has been placed on the judgment of M.P. High Court in Mahendra Kumar v. Gram Panchayat Barella, reported in 1982 M.P. Weekly Note 47. It is submitted that if there is no agreement on the map filed along with the suit, the boundaries can be ascertained by appointing a Commissioner. Reliance has been placed on the judgment of this Court in the matter of Santoshi Jangade v. Abhishek Singh & another, reported in 2018(2) Cg LJ 269. It is further submitted that looking to the facts and circumstances of this case the demarcation of the suit property by a Commissioner is very much essential, hence, petition be admitted and relief, as prayed for, be granted.

3. Learned counsel for respondent objects the maintainability of the petition on this ground that the suit has been filed on the basis of Power of Attorney given by the plaintiffs No.2 & 3 and since the power of attorney has expired, the petitioner No.1 cannot prosecute the case. It is further submitted that the learned Court below has not committed any error in passing the impugned order for the reason that there is no issue of any property of the petitioner encroached upon by the respondent side. The relief claimed is only of declaration of title and injunction. It is stressed that there is existence of a *Nistari land* between the property of the petitioner and the respondent which is very much clear from the documents and other report already present in the record of civil suit, therefore, there is no necessity of any demarcation of the suit property. Hence, it is submitted that the petition is without any substance, which may be dismissed.

4. I have heard counsel for both the parties and perused the documents on record.
5. It has been demonstrated by the petitioners that they are the owners of land bearing khasra Nos.189/7, 231/3 & 197/5, total area 10,788 sq.ft. and when they were raising a boundary wall over that property, the respondents have objected and intervened in the construction of boundary wall. A demarcation was done on the application of the petitioners on 17.12.2005 which clearly shows that there is no existence of any road between the land of petitioners and respondent No.1.
6. Respondent No.1 has not denied the pleadings in statement regarding ownership of the petitioners, however, it is claimed that there is a *Nistari Rasta* in between the property of petitioner and respondent No.1.
7. The petitioner has further demonstrated on the basis of the documents filed that the mention of a road in between the property of petitioner and respondent No.1 is a subsequent development which was not present from the very beginning. As the petitioners have a claim that there is no government land or *Nistari Rasta* in between their property and the property of respondent No.1 and on the opposite, it is the claim of respondent No.1 that such road is existing, hence, this claim disputed by of the parties cannot be decided only on the basis of the statements given by them and to find out that there exists some government land in between the properties of both the parties, the demarcation and spot inspection appears to be essential. Even though, the demarcation report has been filed from both the sides, but those reports have not been agreed upon by the either side. Hence, a demarcation at the behest of the Court would be a proper course in the direction of proper adjudication of the case. Thus, this Court is of the opinion that the impugned order suffers from infirmity which is liable to be set aside.
8. Consequently, the petition is allowed at the motion stage itself and the impugned order is set aside. The application filed by the petitioners under Order 26 Rule 9 CPC is allowed and the learned trial Court is

directed to pass an order appointing a Revenue Officer as 'Commissioner' for the purpose of demarcation of the suit property in accordance with the provisions of law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha