

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 763 of 2019

- Smt. H. Laxmi D/o Shri Shanker Aged About 46 Years W/o Hanumant Rai Appa, R/o House No. 234, Street No. 6-B, Smriti Nagar Junwani, Durg, Tahsil And District Durg Chhattisgarh

---- Petitioner

Versus

1. Kanti Lal R. Desai S/o Late Ranchhor Aged About 67 Years
2. Jitesh Kumar Patel S/o Shri Kanti Lal R. Desai Aged About 44 Years
3. Smt. Manisha Patel W/o Shri Jitesh Kumar Patel Aged About 39 Years
(All are r/o Plot No. 55/14, Babadipsingh Nagar, Supela, Bhilai, Tahsil And District Durg Chhattisgarh)

---- Respondents

For Petitioner : Mr. Jitendra Gupta, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-10-2019

Heard.

1. This petition has been brought challenging the order dated 03.09.2019 passed by Third Additional District Judge, Durg, District- Durg in Civil Suit No.81-A/2015 pending before that Court.
2. Learned counsel for the petitioner submitted that the petitioner had filed an application under Order 26 Rule 9 of C.P.C. for demarcation of the disputed property and also she had filed an application under Order 1 Rule 10(2) of C.P.C. for impleadment of necessary party which has been dismissed arbitrarily by the Court below. It is also submitted that the pleading in the plaint itself shows that the property that has been sold by this petitioner has been disputed by one Sukhdeo Singh Siddhu and one Kishan Kumar claiming that they are the owners of the land on the basis of some sale deed but the property under their ownership belongs to different Khasra Nos. Therefore, there was requirement for identification

of the disputed property. Hence, the demarcation was necessary. Further, it is submitted that dispute has been raised by the persons concerned who are claiming ownership over the disputed property. Therefore, those persons are also necessary party. Hence, rejection of applications of the petitioners were without any basis.

3. Considered on the submissions made and perused the documents filed along with the petition, the petitioner has no authority to make a claim that the property which is part of the suit property, which has been disputed by one Sukhdeo Singh Siddhu and Kishan Kumar is a different property. A proper statement in this respect can be made only by the said Sukhdeo Singh Siddhu and Kishan Kumar. The pleading regarding the dispute in the plaint itself very clearly shows that the dispute has been raised by the persons above mentioned. Therefore, their impleadment as party in the suit appears to be necessary and subsequent to their impleadment on the basis of the pleadings made by them, if it is required for that case, the petitioner shall be at liberty to file a repeat application for demarcation of the disputed property. Hence, this petition is disposed off at the motion stage. The order impugned so far as it relates to the order on application under Order 1 Rule 10(2) of C.P.C. filed by the petitioner/defendants is hereby set aside and the trial Court is directed to consider on the impleadment on the necessary parties and proceed in accordance with law. The option is available to the petitioner to file a repeat application under Order 26 Rule 9 C.P.C., if it is necessary under circumstances that may appear after the pleading made by the necessary parties.
4. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge