

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 770 of 2019

- Shashank Agrawal S/o Sudhir Kumar Agrawal Aged About 16 Years Minor, present age is about 20 years, Through Next Friend Father Sudhir Kumar Agrawal, R/o Pratap Chowk Saraswati Nagar Bilaspur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Pawan Kumar Agrawal S/o Shri Harchand Agrawal R/o Village Tenganmada, Tahsil Kota, District Bilaspur, Chhattisgarh
2. Nagar Panchayat Through Competent Officer Ratanpur, Village And Post Ratanpur, District Bilaspur, Chhattisgarh
3. State Of Chhattisgarh Through Collector Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Prasanjeet Dutta, Advocate.
For State/respondent	:	Mr. Sanjay Pathak, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16-10-2019

Heard.

1. This petition has been brought challenging the order dated 05.09.2019 passed by 5th Additional District Judge, Bilaspur in Civil Suit No.35A/2016 for dismissing the application under order 26 Rule 9 C.P.C. in which prayer for demarcation of the disputed property was made.
2. Learned counsel for the petitioner submitted that earlier the petitioner/plaintiff had brought the suit praying for relief for permanent injunction but in the later on development, the suit land was encroached upon by the respondent No.1 on 03.03.2016. Subsequent to which, petitioner/plaintiff had prayed for amendment to incorporate the relief of possession which has been allowed by the trial Court. Subsequently, the petitioner again filed application on 17.08.2017 praying for demarcation

of the land under the provisions of Order 26 Rule 9 C.P.C. It is further submitted that there is a clear dispute raised by the petitioner/plaintiff regarding the encroachment of suit land by the respondent No.1/defendant, therefore, the demarcation was necessary in this case for the purpose of correct decision of the case. Therefore, the order passed is arbitrary, relief may be granted in favour of the petitioner.

3. Learned counsel appearing on behalf of respondent No.3/State makes formal objection.
4. Considered on the submissions and also perused all the documents filed along with the petition, it is found that the trial Court has also framed one issue in this respect that, whether the respondent No.1 has illegally encroached upon the land of the plaintiff. Therefore, apart from the evidence which may be adduced orally or the documents that are present in this respect, it is found that the demarcation of the disputed land may be of help to the trial Court in deciding the case. On perusal of the impugned order, it is found that the trial Court has not mentioned any specific reasons for dismissal of the application, therefore, I feel inclined to allow this petition at motion stage without notice to the respondent No.1 & 2. The petition is disposed off and the order dated 05.09.2019 is hereby set aside and the trial Court is directed to reconsider on the application filed by the petitioner under Order 26 Rule 9 C.P.C. dated 17.08.2017 in the light of the observation made in this order.
5. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge