

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 860 of 2019

1. Smt. Madhumita, W/o Jitendra Kumar Rai, Aged About 27 Years, C/o Kamta Prasad, Navin Nagar, Charoda, Tahsil-Patan, District-Durg, Chhattisgarh.
2. Smt. Mamta Pathak, W/o Rakesh Pathak, Aged About 30 Years R/o Quarter No. 10/C, Railway Colony, Bhilai-3, Tahsil-Patan, District-Durg, Chhattisgarh.
3. Smt. Kiran Kumari, W/o Avinash Kumar Singh, Aged About 28 Years R/o Panchsheel Nagar, West Charoda, Tahsil-Patan, District-Durg, Chhattisgarh.
4. Smt. Pinki Kumari, W/o Vineet Kumar, Aged About 28 Years, R/o Quarter No. 43/A, Railway Colony, Bhilai-3, Tahsil-Patan, District-Durg, Chhattisgarh.

---- Petitioners

Versus

1. Smt. Vinaya Chaturvedi, W/o Shri Praveen Kumar Chaturvedi, Aged About 38 Years R/o Flat No. 003, Pramila Residency, 30-110, Defense Colony, Sainikpuri, Sikandarabad (Telangana) Through Power of Attorney Virendra Nath Dixit, S/o Late Shri I.P. Dixit, Aged About 70 Years, R/o House No.-66/ B, Street No. 12, Smriti Nagar, Bhilai, Tahsil and District-Durg, Chhattisgarh.(Plaintiff)
2. Munshir Khan @ Musib Khan, S/o Peer Khan, Aged About 40 Years, R/o Sindhiya Nagar, Titurdih Durg, Tahsil and District-Durg, Chhattisgarh.(Defendant No. 1)
3. Shri G.B. Laxman Rao, S/o Late Nagraj Rao, Aged About 35 Years, R/o Aditya Nagar, Durg Tahsil and District-Durg, Chhattisgarh. (Defendant No. 2).
4. Devendra Kumar Yadav, S/o Late Mannalal Yadav, Aged About 52 Years, R/o Polsai Para, Durg Tahsil And District-Durg, Chhattisgarh. (Defendant No. 3)
5. Ravindra Kumar Yadav, S/o Late Mannalal Yadav, Aged About 48 Years, R/o Polsai Para, Durg, Tahsil And District Durg Chhattisgarh. (Defendant No. 4)
6. State of Chhattisgarh, Through The Collector Durg, Collector Office, Durg, Tahsil and District-Durg, Chhattisgarh.(Defendant No. 9)

---- Respondents

For petitioners : Mr. Anand Shukla, Advocate.
For respondent No.6/State : Mr. Devendra Pratap Singh, Dy. Adv.
General.

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

20/11/2019

Heard.

1. The petitioners feeling aggrieved by the order dated 6.9.2019 passed by the learned 10th Additional District Judge, Durg, District-Durg (CG) by which application filed by the petitioners under Order 26 Rule 9 of CPC has been rejected, has preferred this writ petition.
2. It is submitted that respondent No.1/plaintiff, on the basis of one demarcation report dated 24.11.2012, has claimed reliefs of damages and permanent injunction in the plaint. The petitioners and others, who are defendants in this case, have disputed the said demarcation report in their written statement. Subsequent to this, the petitioners filed an application for spot inspection and demarcation of the suit property by appointment of Commissioner through Court. Looking to the dispute present, the trial Court should have allowed the application for spot inspection and demarcation. Therefore, the rejection of this application is arbitrary and unsustainable.
3. Learned State counsel appearing for respondent No.6 raises formal objection.
4. On perusal of the impugned order, it is found that the Court below has observed that in case the application under Order 26 Rule 9 is allowed, it would imply that the Court is believing that the earlier demarcation report filed is inadmissible in evidence and unbelievable. This kind of statement in this order is uncalled for because it would go to show prejudice on the part of the Court itself. Even on perusal of the copy of plaint and writ petition, it is very clear that the demarcation report on which the plaintiff is relying is clearly disputed by the defendants, therefore, the trial Court had the requirement to consider

on the application in this direction as to whether the demarcation report is necessary for proper adjudication of the dispute between the parties. Hence, I am of this opinion that the trial Court has not given any consideration on the application filed by the petitioners accordingly and rejected the same only for the reason that a demarcation report was already filed previously.

5. With the above observations, the petition stands disposed off at the motion stage itself. The impugned order is set aside and the trial Court is directed to reconsider on the application filed by the petitioners under Order 26 Rule 9 of CPC in the light of the observations made in this order.

Sd/-
(Rajendra Chandra Singh Samant)
Judge