

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 907 of 2019

- Mangat Rai Agrawal S/o Shri Nanda Kishore Agrawal Aged About 68 Years Resident Of Lajpat Rai Nagar Khaparaganj Bilaspur, Tehsil And District Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Collector Bilaspur, District Bilaspur Chhattisgarh
2. Tahsildar Bilaspur District Bilaspur Chhattisgarh
3. Rajsva Nirikshak Bilaspur, District Bilaspur Chhattisgarh
4. Nanda Kishor Budhiya S/o Late Shri Antulal Budhiya Aged About 80 Years Resident Of Opposite Company Garden Tilak Nagar, Bilaspur, Tehsil And District Bilaspur Chhattisgarh

---- Respondents

For Petitioners : Mr. M.D. Sharma, Advocate.

For Respondent No.1 to 3/State : Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

29-11-2019

Heard.

1. This petition has been brought being aggrieved by the order dated 24.10.2019 passed in Civil Appeal No.A-120/2017 pending before the Court of District Judge, Bilaspur, C.G.
2. Learned counsel for the petitioner submits that the petitioner had filed a Civil Suit for declaration and permanent injunction claiming his title on the land bearing Khasra No.986/1 area measuring 0.58 acres. During the pendency of the suit the petitioner filed an application for demarcation and local investigation of the disputed land, which was

rejected. Thereafter, the suit was dismissed and decree was passed. The petitioner then filed appeal and again he filed application under Order 26 Rule 9 of C.P.C. praying for local investigation of the suit land, which has been again rejected by the impugned order. It is submitted that the pleading of the petitioner was denied by the private respondent/defendant that land of such description is not existing. Therefore, there is an issue of identity of suit land because of which the prayer of local investigation was very much relevant, which has not been considered.

3. According to the submissions made by the learned counsel for the petitioners, there is an issue of identity of the suit property, therefore, this prayer that was made for local investigation, would have been helpful in adjudicating the case and dispute between the parties. It appears that Appellate Court has hastily decided this application, whereas this application should have been decided at the stage of final hearing in the appeal.
4. After hearing submissions, I am of this view that there exists dispute regarding the identity of the suit property and on the basis of which the Appellate Court should have given consideration. Therefore, for these reasons, I feel inclined to dispose off this petition at motion stage. The impugned order is set aside and the Appellate Court is directed to decide the application filed by the petitioner under Order 26 Rule 9 of C.P.C. at the stage of final hearing in the appeal.
5. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge