

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 958 of 2019

Bharatlal Chandrakar, S/o. Gopalram, Aged About 44 Years, R/o. Village Pitiyajhar, Thana -Mahasamund, Tahsil and District Mahasamund Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Collector, District -Mahasamund Chhattisgarh.
2. Divisional Engineer, Chhattisgarh State, Power Distribution Co. Ltd. Chhattisgarh.

-----Respondents

For Petitioner : Mr. Arvind Shrivastava, Advocate

For Respondent No.1/State : Mr. Adil Minhaj, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/12/2019

1. This petition has been brought being aggrieved by the order dated 27.09.2019, passed by the learned Second Civil Judge Class-II, Mahasamund in Civil Suit No.5A/2018, dismissing the application filed by the petitioner under Order 26 Rule 9 of C.P.C.
2. It is submitted by the learned counsel for the petitioner that the suit property has been encroached upon by the respondents. Earlier an application was filed under Order 39 Rule 7 of C.P.C., which was rejected. The rejection order was challenged before this Court in W.P. (227) of 421 of 2018, which was decided on 09.05.2018 and the petitioner was granted opportunity to move suitable application for the purpose of demarcation of the suit property. Subsequent to that

application under Order 26 Rule 9 of C.P.C. was filed, which has been rejected by the impugned order without taking notice of the order of this Court.

3. On perusal of the impugned order it is clear that the learned trial Court has not taken notice of the order of this Court dated 09.05.2018 in which it is observed that demarcation of the suit property appears to be requirement for adjudication of the dispute between the parties and liberty was granted to the petitioner for filing appropriate application. Therefore, I am of this view that the impugned order has not correctly passed. Hence, the petition is disposed off at motion stage. The impugned order dated 27.09.2019, passed by the learned Second Civil Judge Class-II, Mahasamund in Civil Suit No.5A/2018 is set-aside and the learned trial Court is directed to reconsider on the application under Order 26 Rule 9 of C.P.C. in light of the order passed by this Court in W.P. (227) 421 of 2018 dated 09.05.2018.
4. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge