

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 97 of 2020

- Devi Singh S/o Bhagwan Singh Sahu, Aged About 59 Years, Resident of Teacher's Colony, Kota, Raipur, Tehsil and District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. Municipal Corporation Raipur, Through Commissioner Municipal Corporation Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Chhattisgarh State Electricity Board, Raipur, Through President Dhanganiya, Raipur, Tehsil and District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

--- Respondents

For Petitioner – Mr. Ankur Agrawal, Advocate.

For Respondent No.1 – Mr. H.B. Agrawal, Senior Advocate with Ms. Richa Dwivedi, Advocate.

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

30-01-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 26-11-2019 passed by the learned trial Court.
2. It is submitted that the petitioner has filed a civil suit praying for relief of possession, permanent injunction and also compensation. It was pleaded that respondent No.1 has encroached upon the land of the petitioner/plaintiff and constructed road on 210 square feet. This pleading was supported with earlier demarcation report. It is further submitted that during pendency of the civil suit, respondent No.1 has further encroached upon the land of the petitioner/plaintiff and extended construction of road on additional 360 square feet of the petitioner's land. Therefore, an application was filed praying for demarcation of the same before the Court below which has been arbitrarily rejected. Hence, this petition.
3. Learned senior counsel for the respondent No.1 opposes the submission and submits that the prayer made in the application filed under

Order 26 Rule 9 of the CPC it has been misconceived as there is no such pleadings in the plaint filed by the petitioner. Therefore, the petition is devoid of merit.

4. Heard learned counsel for the parties and perused the documents.

5. After considering on the submissions made by learned counsel from both the sides and on perusal of the copy of the plaint filed along with the petition, it is found that the petitioner has not so far made any additional pleading by amendment to show that the disputed property has been further encroached upon by respondent No.1 for the purpose of construction of road. During argument learned counsel for the petitioner has sought to file application for amendment in the pleadings before the Court below. Hence, the petition is disposed off at the motion stage and the liberty is granted to the petitioner to file application for amendment of the plaint with regard to the so called additional encroachment upon his property by respondent No.1 and in case the application is allowed by the learned trial Court, the petitioner shall have further liberty to file repeat application under Order 26 Rule 9 of the CPC praying for inspection and demarcation of the disputed property. Learned Court below is directed to consider the applications made by the petitioner in accordance with law.

6. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge