

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.143 of 2020

1. Tarandeep Sahni D/o Harcharan Singh Sahni Aged About 35 Years
2. Harcharan Singh Sahni S/o Raghubir Singh Sahni Aged About 58 Years
(Both are r/o Gurunanak Nagar Raipur Tahsil And District Raipur Chhattisgarh Presently Residing At Apollo Petrol Pump, Infront Of Agriculture College, Chokra Nala, Labhandih, G. E. Road Raipur, Tahsil And District Raipur Chhattisgarh)

---- Petitioners

Versus

1. Rakesh Gupta S/o H. P. Gupta Aged About 36 Years R/o Sunita Finlease Limited, Infront Of Rajkumar College G E Road, District Raipur Chhattisgarh
2. Hariprasad Gupta S/o Late Ramchandra Gupta Aged About 65 Years R/o Sunita Finlease Limited, Infront Of Rajkumar College G. E. Road, District Raipur Chhattisgarh

---- Respondents

For Petitioners : Mr. Malay Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

07-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 20.12.2019 passed by the 14th Civil Judge, Class II, Raipur, C.G., in Civil Suit No.57A/2012, dismissing the application of the petitioner/defendant filed under Order 26 Rule 10(2) of C.P.C.
2. Learned counsel for the petitioner submits that the trial Court has passed erroneous order without appreciating the law in this respect. The provision under Order 26 Rule 10(2) of C.P.C. very clearly provides that any of the parties has a right to examine the Commissioner who has submitted report under Order 26 Rule 9 of C.P.C., therefore, the petitioners' right has been arbitrarily closed by the Court below and if

this order remains as it is, then it will have effect of *res-judicata* for the petitioners and they will be precluded from filing any repeat application at later stage. Therefore, it is prayed that appropriate order may be passed.

3. Considered on the submissions and also perused the documents present along with the petition on the application made by the respondent/plaintiff. A Commission was issued and accordingly a Commissioner report was submitted regarding demarcation of land. Petitioner/defendant intends to challenge the report for which he had prayed for examination of the Commissioner before the Court. At present the evidence of parties are yet to be recorded, therefore, there is a possibility that the respondent/plaintiff may call the commissioner to examine him at the evidence stage and at that time the petitioner shall have liberty to cross-examine him. However, in case, the respondent/plaintiffs do not call the commissioner in their evidence, the petitioner can be granted liberty to file application under order 26 Rule 10(2) of C.P.C. for summoning the commissioner for the purposes challenging the commissioner report. Hence, with this observation, this petition is disposed off and liberty is granted to the petitioner as aforesaid. The impugned order shall not come in the way of the petitioner in filing a repeat application under Order 26 Rule 10(2) of C.P.C. at a later stage of the trial.

4. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Monika