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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 260 of 2019

1. Amitap Shrivastava S/o Deceased V.P. Shrivastava Aged About 41 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. Subhash Kumar Shrivastava S/o Deceased V.P. Shrivastava Aged About 39 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
3. Rajiv Kumar Shrivastava S/o Deceased V.P. Shrivastava Aged About 37 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
4. Sanjeev Kumar Shrivastava S/o Deceased V.P. Shrivastava, R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh. (Plaintiffs)

---- Petitioners

Versus

1. Ramashankar @ Rajjan Gupta S/o Deceased Pancham Lal Gupta Aged About 58 Years R/o Basantpur Ward No. 38, Rajnandgaon, Tehsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. Dhanraj @ Dhanna S/o Deceased Pancham Lal Gupta Aged About 55 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
3. Basant Lal Gupta S/o Deceased Pancham Lal Gupta Aged About 45 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
4. Bhikam Prasad Gupta S/o Deceased Pancham Lal Gupta Aged About 38 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
5. Sadhna Devi Deceased Pancham Lal Gupta Aged About 42 Years R/o Basantpur, Ward No. 38, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
6. Prabodh Kumar Gupta S/o Deceased Rammu Lal Gupta Aged About 35 Years R/o In Front Of Gauri Hotel, Basantpur, Rajnandgaon, Tehsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
7. Prashant Kumar Gupta S/o Deceased Rammu Lal Gupta Aged About 25 Years R/o In Front Of Gauri Hotel, Basantpur, Rajnandgaon, Tehsil And District Rajnandgaon Chhattisgarh. (Defendants), District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioners	: Shri Priyank Rathi, Advocate.
For Respondent No.7	: Shri Shashi Bhusan Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

03-03-2020

1. Heard.
2. This petition has been brought being aggrieved by the order dated 5.3.2019, by which the objection raised by the petitioners on the report of the Commissioner has been dismissed by the trial Court.
3. It is submitted that the petitioners are in possession of 1020 sq. ft. of land which is a part of Khasra No. 12/1 under the ownership of respondents No.1 to 5. The possession of the petitioners was in capacity of tenant, however, later on, an agreement has been executed for the sale of the same property. Respondents No. 1 to 5 have executed one sale deed in favour of respondents No.6 and 7 on 5.12.2008 which shows some portion of the property in possession of the petitioners included in the property sold to respondents No.6 and 7, therefore, the dispute arose. Hence, the petitioners filed an application under Order XXVI Rule 9 of the CPC for demarcation of the suit property, which was allowed and the Collector was appointed as the Commissioner. It is further submitted that the Collector has delegated the assignment to a Revenue Inspector, who has demarcated and submitted a report which shows that the petitioners are in possession of lesser area of the suit property than they are making the claim, therefore, an objection was raised before the trial Court. The objection raised was not at all appreciated and only mentioning the reason that it does not appear to be bonafide, the same has been rejected. Hence, interference is sought for by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.
4. Respondents No.1 to 6 are not represented.

5. Learned counsel for respondent No.7 opposes the submissions made by counsel for the petitioners and submits that the Revenue Inspector has demarcated the spot and has given the report of actual possession of the petitioners and that being the actual situation present on the spot, there is no ground to raise any objection for the same. Hence, the petition be dismissed.
6. Heard counsel for both the parties and perused the documents present on record.
7. Considered the submissions. It appears that there is no specific dispute between the petitioners and respondents No.1 to 5, however, the sale deed that has been executed in favour of respondents No.6 and 7 has created the situation because of which, the doubt has been raised as to that what is the area of land in which the petitioners are in actual possession. The actual claim of the petitioners is still that they are in possession of 1020 sq. ft. of land and that some of the area in their possession has been included in the sale deed dated 5.12.2008.
8. On perusal of the demarcation report, I am of the view that this situation is not clarified and the petitioners pleaded that whether the property in their possession was included in the property mentioned in the sale deed dated 5.12.2008, therefore, the commission issued by the trial Court has not been executed in a proper manner looking to the dispute between the parties. Hence, the objection raised by the petitioners' side before the trial Court appears to be proper, which needs to be considered. Hence, the petition is allowed at motion stage and the impugned order dismissing the objection raised by the petitioners is set aside. Learned trial Court is directed to reconsider on appointment of Commissioner for re-demarcation of the disputed property, if any application is so filed. If any such appointment of Commissioner is

made for re-demarcation then the learned trial Court is also directed to expedite the demarcation proceeding for submission of report preferably within a period of three months before deciding the civil suit pending between the parties.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi