

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.434 of 2020

1. Rajesh Kashyap S/o Late Shri Ramasre, Aged About 34 Years
2. Vinod Kashyap, S/o Late Shri Ramasre, Aged About 40 Years
(Both are r/o Behind Shyam Talkies, Bilaspur, Tahsil and District Bilaspur Chhattisgarh)

---- Petitioners

Versus

1. Hemant Chhabra S/o Melaram Chhabra, Aged About 52 Years R/o Behind Laxmi Sports Gondpara Bilaspur, Tahsil And District Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through Collector, Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioners	: Mr. Ratnesh Kumar Agrawal, Advocate.
For Respondent No.1	: Mr. Vijay Chabra and Mr. Shujauddin Rajas, Advocates.
For Respondent No.2	: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-10-2020

Heard.

1. This petition has been brought praying to exercise jurisdiction under Article 227 of constitution of India and quash the impugned order dated 14.09.2020 passed by the Court of First Civil Judge, Class-II, Bilaspur, District- Bilaspur, C.G., in Civil Suit No.46-A/2018, dismissing the application under Order 26 Rule 9 of C.P.C. filed by the petitioner/plaintiff.
2. Learned counsel for petitioners submits that the suit has been brought by the petitioners claiming title of land bearing Khasra No.326/2010 ad-measuring 0.182 hectare, situated in Village- Juna, Bilaspur, C.G. It has been pleaded that the respondent No.1 has encroached upon the 500

sq.ft. of the suit land. Respondent No.1 has denied the pleadings and claimed that his construction is standing on his own property bearing Khasra No.326/40 on which the petitioner has no title. It is further submitted that the plaintiff and the respondent No.1/defendant both have got the land demarcated and the reports that have been filed in the civil suit by both parties are contradictory to each other. It is, therefore, submitted that under the present circumstances, the dispute between the plaintiff and the defendant No.1 will never be resolved on the basis of the material that is present, hence, an application was filed under Order 26 Rule 9 of C.P.C. praying for appointment of commissioner to inspect and examine whether the disputed construction is standing on the property of the plaintiff or on the property of the respondent No.1. The learned trial Court has not exercised the jurisdiction vested with it and on the contrary has drawn a wrong conclusion that the petitioner has filed such application for the purposes of collection of evidence. The demarcation of the suit property through the commissioner appointed by the Court is very much essential in this case, as only that can resolve the dispute between the parties, therefore, it is prayed that the petition may be admitted/allowed and relief be granted to the petitioners.

3. Learned counsel for the respondent No.1 opposes the submissions made and made the statement to maintain the claim of respondent No.1 over the suit property. The dispute has been raised regarding the identity and location of suit property Khasra No.326/10. It is submitted by the learned counsel for the respondent No.1 that the original chunk of land has been sold to numerous persons and on totaling the land sold by the original owner to various persons, the remainder land would be only 640 sqft, therefore, the claim of the petitioner that the suit land is 0.45 acre is an impossible claim. The petitioner/plaintiff has filed demarcation report, therefore, he should rely on the same and cannot make a prayer for the repeated demarcation of the suit property, hence,

it is prayed that the petition is without any substance which may be dismissed.

4. Learned counsel for the petitioners submits that the dispute that has been raised by the respondent/defendant is yet to be established in the trial. The dispute present is very clear whether the construction of respondent No.1 which is claimed by the petitioner/plaintiff to be raised on his property is of true claim or not therefore, the local inspection through the Court is very necessary in this case.
5. Relying on the judgment of this Court in **Prem Kumar Sharma Vs. Deepak Singh & Ors.** in W.P.(227) No.471/2014 decided on 30.09.2016, in which the Co-ordinate Bench of this Court after relying on the various judgments of M.P. High Court and Supreme Court has held that there is a serious dispute between the parties with regard to boundary/area of the scheduled suit land would be with regard to identity of the land, therefore, the trial Court should have got the identity of the land established by appointing local Commissioner under Order 26 Rule 9 of C.P.C., rejection of such prayer has resulted into miscarriage of justice. It is further submitted that this is a similar case as **Prem Kumar Sharma Vs. Deepak Singh and Ors.** (Supra) and reliance has also been placed on the judgment of this Court in the case of **Dr. Anand Verma & Ors. Vs. Rajkumar Tiwari & Ors.** passed in W.P.(227) No.743 of 2019, decided on 16.12.2019.
6. Learned State counsel representing respondent No.2 makes formal objection.
7. Considered on the submissions made by the learned counsel for both the parties, it is clear from the submissions and also from the documents present, on which both the parties claim their support. The respondent No.1 has raised construction on the land, on which the petitioners and respondent No.1 have rival claims. The demarcation by

Revenue Officer that was taken up at the instance of both the parties separately and the reports submitted are not satisfactory to draw any conclusion as the reports are contradictory to each other.

8. The very words used in Order 26 Rule 9 of C.P.C. are these that “in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or ascertaining the market-value of any property, or the amount of any *mesne* profit or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court” and in case. The Court has power to direct appointment of Commissioner for local investigation. Any order on the application filed under Order 26 Rule 9 of C.P.C. cannot be cursorily passed. The Court is duty bound to look into the pleadings of the parties to consider on the dispute present and also consider on the evidence oral and documentary which is proposed from both the sides to make out reasonably whether the issuance of commission is necessary or not.
9. The learned Court below has made observation in the impugned order that affidavit statement of witnesses under Order 18 Rule 4 of C.P.C. has been filed and that the application for local inspection has been brought at a later stage. It has also been observed that both the parties have filed demarcation report given by Tahsildar, Bilaspur, separately but there is no observation whether the reports are sufficient to reach to any conclusion. Therefore, I am of this view that the learned trial Court has not taken pains to examine the case between the parties as required under the law and pass order which can be said to be passed in cursory manner. In my view, looking to the level of dispute that is present between the parties and so far the evidence that is proposed from both the sides does not appear to be sufficient to reach to any

conclusion regarding the dispute present, therefore, it was necessary in this case that a Commissioner should have been appointed for local inspection. The petition is disposed off at motion stage, the impugned order is quashed and both the parties are directed to give presence before the trial Court on **28th of October, 2020** and then the trial Court shall pass orders for appointment of Commissioner for local inspection as prayed for by the petitioner after concurring with both the parties.

10. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika