

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.168 of 2019

- Smt. Neetu Tiwari W/o Chandrika Prasad Tiwari Aged About 45 Years
R/o Village Lakhurri, Post Lakhali, Tahsil Champa, District- Janjgir-
Champa, Chhattisgarh, Through The Power Of Attorney Holder
Tikeshwar Prasad Tiwari, Aged About 46 Years, R/o Village Lakhurri,
Post Lakhari Tahsil Champa, District- Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. Durga Dewangan S/o Late Gendram Dewangan, Aged About 45 Years
2. Resham Lal Dewangan S/o Badlu Dewangan Aged About 50 Years
(Both are r/o Ashok Vihar, Opp. Science College, Dabri Para, Bilaspur,
District- Bilaspur, Chhattisgarh)
3. State Of Chhattisgarh Through The Collector, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	– Mr. Ravindra Agrawal, Advocate.
For Respondent No.01	– Ms. Neelam Khan, Advocate.
For State/respondent No.03	– Mr. Sameer Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-08-2021

Heard.

1. This petition has been brought under Article 227 Constitution of India
being aggrieved by the order dated 24.04.2018 passed in Civil Suit
No.628A/2016 by which the application of the petitioners filed under
Order 26 Rule 9 of C.P.C. was dismissed.

2. It is submitted by the learned counsel for the petitioner that petitioner has filed a Civil Suit against respondents praying for reliefs of declaration, possession and permanent injunction. It is pleaded that the private respondents have encroached upon the suit land and they are raising construction on the same. The plaint is contested by the private respondents. Additional documents have been filed, in which the copy of demarcation report is filed on which respondent is placing reliance, which clearly shows that the suit land belonging to the petitioner is missing in the demarcation map, whereas the existence of the suit land is shown in the other map on which the petitioners has placed reliance.
3. It is also submitted that the learned trial Court has granted the relief of temporary injunction in favour of the petitioner restraining the respondents from raising construction over the suit land, which has been confirmed by the appellate order. Therefore, the demarcation of the suit land is essential for the determination of the suit.
4. Reliance has been placed on the judgment of Supreme Court in the case of Shreepat Vs. Rajendra Prasad & Ors. reported in (2000) 7 JT 379, in which it was held that in case of dispute regarding the identity of the suit property, there is requirement for issuing a Survey Commission to locate the plot in dispute.
5. Reliance has also been placed on the order of this Court in W.P.(227) No.907 of 2019 between Mangat Rai Agrawal Vs. State of Chhattisgarh and Ors. decided on 29.11.2019. Hence, it is prayed that the impugned order is not sustainable, which may be set aside and relief may be granted to the petitioner.
6. Learned counsel appearing for the private respondent No.1 opposes the submissions and submits that the learned trial Court has not committed

any error in passing the impugned order. Therefore, this petition may be dismissed.

7. Heard learned counsel for the parties and perused the documents present on record.
8. Considered on the submissions. On perusal of the pleadings in the copy of plaint and written statement which are filed along with the petition, it is found that there is clearly a dispute present regarding the identity of the suit land in question. As the petitioner and the private respondents have rival claims over the same suit property, the respondents are relying on the demarcation report, which has not been conducted through the Court. Therefore, for the purpose of giving the opportunity to the petitioner for establishing the case, she must be granted an opportunity for the demarcation of the suit property. The provisions under Order 26 Rule 9 C.P.C. provides for issuance of Commission for local investigation in a pending suit. Therefore, it cannot be said that the issuance of Commission is only for the purpose of collection of evidence. The dispute that is present between the parties cannot be resolved without an appropriate demarcation of the suit property. Therefore, with these observations, this petition is allowed and the impugned order passed by the trial Court is hereby set aside. The application of the petitioner under Order 26 Rule 9 C.P.C. is allowed and the learned trial Court is directed to do the needful for issuance of Commission for local investigation and demarcation of the suit property.
9. Accordingly, this petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge