

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 243 of 2020

- Gopal Ji Mandir Trust Through Mahant Ram Gopal Das, Guru Bramhlin Baldev Das, Aged About 64 Years, Occupation Sarwarakar, Gopal Ji Mandir Trust, R/o Gopal Ji Mandir, Beladula, Raigarh, Tahsil And District Raigarh Chhattisgarh.....Plaintiff.

---- Petitioner

Versus

1. Govind Ram Basantani, S/o. Shri Nihalchand Basantani, Aged About 64 Years Occupation Business, R/o Beladula, Sindhi Colony, Raigarh, Tahsil and District Raigarh Chhattisgarh.....Defendant.
2. Ashok Basantani, S/o Shri Govindram Basantani, Aged About 59 Years Occupation Business, R/o Beladula, Sindhi Colony, Raigarh, Tahsil and District Raigarh Chhattisgarh.....Defendant.
3. Nagar Palik Nigam, Raigarh Chhattisgarh. Through Commissioner, Nagar Palik Nigam, Raigarh District Raigarh Chhattisgarh.....Defendant.

---- Respondents

For Petitioner	: Mr. Vipin Punjabi, Advocate.
For respondents No.1 & 2	: Mr. Roop R. Naik, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

27/9/2021

1. As this Court vide order dated 13.4.2020 passed in Review Petition No.55/2021 has reviewed and recalled the order dated 10.2.2021 passed in this case, therefore, this petition is again taken up for consideration.
2. Brief facts of case are this that the petitioner has filed a civil suit against private respondents pleading that respondents No.1 & 2 have encroached upon suit property belonging to petitioners. Relief of declaration, possession and permanent injunction has been prayed in

civil suit. Respondents No.1 & 2, who are contesting defendants in civil suit, have filed their written statement claiming their title over the suit property.

3. It is submitted by learned counsel for petitioner that as per pleadings of the parties, there is clear dispute present which can be resolved only by way of demarcation of suit property. The learned trial Court committed error in holding that petitioner/ plaintiff is making an attempt to create evidence in his favour. It is clearly pleaded in plaint that respondent No.1 is having title and possession over land bearing Khasra No.79/3 measuring 5488 sq. ft., whereas respondent No.3 has granted permission to respondent No.1 to raise construction on 5777 sq. ft. of land, which is illegal and objectionable. It is subsequent to that respondents No.1 & 2 encroached upon the suit property. It is also submitted that respondent No.1 has admitted in written statement that he is owner of land bearing khasra No.79/3 measuring 5488 sq. ft. and it has been denied that sanction for construction was obtained over 5777 sq.ft. of land. This is false written statement and Annexure P/5 is the sanction for construction in which it is clearly mentioned that sanction/permission is for raising construction over 5777 sq. ft.. In such a situation, dispute between the parties can only be resolved by way of proper demarcation. On this basis, it is prayed that the impugned order be set aside and relief, as claimed in writ petition, be granted to the petitioner.
4. Learned counsel for respondents No.1 & 2 raises an objection with regard to maintainability of present petition on the ground that all concerned have not been made party to petition. Private respondents have filed counter claim seeking for declaration against the petitioner.

Application filed under Order 39 Rule 1 & 2 CPC has been rejected by the trial Court, which supports case of the respondents. Enquiry report dated 9.10.2010, on which respondents No.1 & 2 are placing reliance, has not been challenged by the petitioner, therefore, that report has attained finality. Hence, prayer for fresh demarcation of suit property is certainly an attempt on the part of petitioner to collect evidence in support of his case.

Reliance has been placed on the judgment of M.P. High Court dated 8.7.2019 in M.P. No.2406/2019, parties being case of Smt. Teena Pandey and another vs Dr. Kirnesh Pandey; and judgment of High Court of Odhisa in case of Regional Cooperative Marketing and another vs Amarnath Saraph, reported in 2019 SCC Online Orissa 172. It is prayed that the petition be dismissed.

5. In reply, it is submitted that enquiry report relied upon by private respondents is not a demarcation report. No proper demarcation of suit property has yet taken place, therefore, order for demarcation of suit property is necessary.
6. I have heard both the parties and perused the documents on record.
7. Considered on the submissions. The pleading that respondent No.1 is owner of plot having area of 5488 sq. ft. is not disputed by the petitioner. There is further pleading in the plaint that sanction for construction over land measuring 5777 sq. ft. has been obtained by respondent No.1 and construction thereon has been already raised. Unless and until a proper demarcation is made, the dispute regarding encroachment upon suit land of the petitioner will not be resolved. The co-ordinate Bench of this Court has held in Second Appeal No.57 of

2003, parties being Nand Lal Mourya and Ors. vs. Vinod Kumar Yadav and another, that in case where dispute is with respect to boundaries of land, demarcation is the only method by which such dispute can be resolved. I am also of the same view. Findings recorded in the judgments on which reliance has been placed by respondents are findings on the basis of facts present in those respective cases. Facts of present case are different. Therefore, I am of this view that present petition deserves to be allowed.

8. Accordingly, writ petition is allowed. Impugned order of the learned trial Court is set aside and application of the petitioner filed under Order 26 Rule 9 of CPC is allowed. The trial Court is directed to make arrangement for making appointment of Commissioner for demarcation of suit property and other necessary orders may also be passed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge