

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 330 of 2019**

Smt. Meera Pandey, aged about 40 years W/o Shri Krishna Pratap Pandey R/o Imlipara, Old bus stand, Bilaspur, Tahsil and District Bilaspur (C.G.).

---- **Petitioner**

Versus

1. Anil Mundra & sons, through Anil Mundra S/o vishnu Gopal Ji Mundra R/o Maheshwari Col benifcation and Infrastructure Pvt. Ltd, Village – Parsada, Sirgitti Industrial area, Post Tifra, bilaspur, Tahsil and District Bilaspur (C.G.).

2. State of chhattisgarh through Collector, Bilaspur, Tahsil and District Bilaspur (C.G.).

--**Respondents**

For Petitioner	:	Mr. Neeraj Choubey, Advocate
For Respondent No. 1	:	Mr. Anand Shukla, Advocate
For Respondent No.2	:	Ms. Smita Jha, PL

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

16/12/2021

- The instant writ petition under article 227 of the Constitution of India has been preferred against the order dated 14/02/2019 passed in Civil Suit No. 90A/16 by the 6th Additional District Judge, Bilaspur whereby the application filed by the petitioner under Order 26 Rule 9 read with 151 of the CPC has been rejected.
- Brief facts of the case are that the petitioner/plaintiff is title holder of agricultural land bearing Khasara No. 77/3 and 77/4, admeasuring 0.65 acres situated at village Dadha Bodri which was purchased through registered sale-deed dated 28/01/2010 from Prahalad S/o Sakhkhu who

was owner and in possession of the said land. The respondent No.1/defendant No.1 is owner of the land bearing Khasara No. 118/1. Respondent No.1 encroached some portion of the land of the petitioner, when the State authority were going to construct road over the land of the petitioner therefore, she filed a civil suit for declaration, permanent injunction and for recovery of possession. In the said suit, defendant No.1/respondent No.1 denied the assertion of the plaintiff and created dispute about the identity of boundary of the suit land. After completing the pleadings of the parties, the trial Court framed the issues for adjudication and also drew the attention of the parties in the various provisions of the CPC including the provision of Order 26 of the CPC. Looking to the nature of dispute, the petitioner/plaintiff filed an application under Order 26 Rule 9 read with Section 151 of the CPC on 28/04/2018 for issuing commission by appointing a suitable revenue officer as a commissioner for taking the measurement around the land of the plaintiff and defendant. As per the revenue record, the Khasra Map issued by the revenue authority, the proposed road is going from the middle of the land of the plaintiff, thus, proposed road has divided the land of the petitioner in two parts. Respondent No.1 opposed the prayer for issuing the Commission. After hearing the parties, the application of the petitioner has been rejected by the impugned order.

3. Counsel for the petitioner submits that the trial Court has failed to appreciate the facts and circumstances of the case in its correct prospective while passing the impugned order. The trial Court has grossly

erred in rejecting the application filed by the plaintiff under Order 26 Rule 9 read with Section 151 of the CPC. Counsel for the petitioner argues that if there is dispute of identity of boundary of the property in question then the duty of the Court is to issue commission by appointing an employee of revenue department to get the measurement and identify the boundary of the suit land. Even no application from any party is required for that purpose. Reliance has been placed in the matter of ***Shreepat v. Rajendra Prasad, reported in JT 2000 (7) SC 389, Haryana Waft board v. Shanti Sarup & others, 2008 SCW 6500, Jaswant S/o Kashi Ram Yadav v. Deen Dayal, (2011) 2 MPLJ 576.***

4. Counsel for respondent No.1 submits that the petitioner/plaintiff has invoked the provisions of the CPC for collection of evidence, so, he supports the impugned order and relied on the matter of ***Smt. Teena Pandey & Anr. v. Dr. Kirnesh Pandey (MP No. 2406/2019), MP High Court, Indore Bench decided on 08/07/2019.***
5. I have heard counsel for the parties and perused the documents annexed with the petition minutely.
6. The plaintiff has filed the suit for declaration of title of agricultural land bearing Khasara No. 77/3 and 77/4 admeasuring area 0.65 acres and also filed map along with plaint. As per annexure-A, the plaintiff has also asserted in therein that defendant No.1 disputed about the area marked as द ई फ pertaining to plaintiff's Khasara No. 77/3 and 77/4. In the impugned order, the trial Court has observed that the plaintiff had filed demarcation report about the suit land and annexed Ex.P-4 to Ex.P-9 and

also recorded the statement of Alok Kumar Patwari (PW3) in support of the said demarcation report, so in such circumstances there is no need for re-demarcation, hence, the trial Court rejected the application.

7. It is well established that appointment of commissioner under Order 26 Rule 9 of the CPC is discretionary power vested to the Court and if any issue requires clarification and elucidation, the Court may *suo moto* appoint commissioner for which no application is required. Normally with the controversy of demarcation of land between the parties, the Court should direct the investigation by appointing a commissioner. In this case, as the plaintiff himself has filed a demarcation report and on such basis the trial Court did not find any reason at that stage to appoint commissioner and obtained a fresh report. The trial Court under Order 26 Rule 9 of the CPC has power to appoint commissioner at any stage of suit for ascertaining and showing light on the main dispute as well as fact leading to dispute and for determining the identity of land, so, if the trial Court finds that first demarcation report, filed before it, is sufficient for adjudication of the case, then this Court does not find any valid reason to interfere with the said order. The said order was passed under the discretion of the court for which reasons had assigned.
8. Consequently, this Court does not find any substance in this petition. The same is dismissed.

Sd/-

(Deepak Kumar Tiwari)
Judge