

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 573 of 2021

Shivpal Singh Kashyap, S/o. Shivbalak Singh Kashyap, aged about 60 years, R/o. Near Shiv Mandir, Nariyal Kothi Dayalband Bilaspur, Police Station City Kotwali, Tahsil and District Bilaspur (Chhattisgarh).

---- Petitioner

Versus

1. Chhedilal Kashyap, S/o. Nankau Kashyap, aged about 72 years, R/o. Madhuban Road Dayalband Bilaspur, Police Station City Kotwali, Tahsil and District Bilaspur Chhattisgarh.
2. State of Chhattisgarh, Through : Collector Bilaspur Tahsil And District Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioners	: Mr. Ratnesh Agrawal, Advocate
For State-respondent	: Ms. Shreya Mishra, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/10/2021

1. This petition has been brought being aggrieved by the order dated 17.08.2021, passed by the learned Court of 7th Civil Judge Class-II, Bilaspur, in Civil Suit No.143-A/2021 by rejecting the application filed by the petitioner under Order 39 Rule 7 of C.P.C.
2. It is submitted by the learned counsel for the petitioner that respondent No.1 has filed a civil suit for reliefs of declaration of title and permanent injunction. A separate application under Order 39 Rule 1 and 2 of C.P.C. has also been filed by the respondent/plaintiff. The petitioner/defendant filed his reply and also filed an application under Order 39 Rule 7 of C.P.C. praying that pleading in the plaint and the application regarding existence of path on the suit property is beyond the reality, therefore, an inspection of the spot is necessary, for which the orders were prayed

for.

3. Learned trial Court without considering on this application and without making application of mind, has dismissed this application and subsequent to that application under Order 39 Rule 1 and 2 of C.P.C. has been decided in which relief has been granted to the respondent No.1.
4. It is also submitted that the petitioner has preferred a miscellaneous appeal against the order passed by the learned trial Court on the application filed under Order 39 Rule 1 and 2 of C.P.C., which is pending. Hence, this petition.
5. Learned State counsel appearing for the respondent No.2 makes formal objection.
6. After considering on the submissions, this petition is disposed off at motion stage. The petitioner has liberty to raise this ground in the miscellaneous appeal filed by him challenging the order passed by the learned trial Court on the application under Order 39 Rule 1 and 2 of C.P.C. and the petitioner may convince the appellate Court about the necessity of the inspection before decision of the application under Order 39 Rule 1 and 2 by the trial Court.
7. With this observation, this petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge