

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 819 of 2019

- Yudhishtir Binkar S/o Late Bhagwantra, Aged About 54 Years, R/o Tarbarah, Ward No. 19, Sanjay Gandhi Nagar, Bilaspur, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Anil Aasna S/o Semsan Aasna, Aged About 40 Years, R/o Tarbahar, Near Primary School, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Aanand Aasna S/o Late Benjamin Dayal, Aged About 50 Years, R/o Bhartiya Nagar, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. S.K. Das S/o S. Das, Aged About 50 Years, R/o Railway Colony, RPF Barrack, Behind Budhwari Bazar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Indian Church of Council of Disciples of Christ Bilaspur through Executive Secretary Shri N.L. Soni, Advocate, R/o Near Indu Chowk Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Smt. Savitri W/o Late Santram Binkar, Aged About 58 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
6. Vinod Binkar S/o Late Santram Binkar, Aged About 42 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
7. Arvind Binkar S/o Late Santram Binkar, Aged About 40 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
8. Chetan Binkar S/o Late Santram Binkar, Aged About 42 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
9. Aalok Binkar S/o Late Santram Binkar, Aged About 40 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
10. Snehlata Binkar S/o Late Santram Binkar, Aged About 30 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
11. Mukesh Binkar S/o Late Santram Binkar, Aged About 40 Years, R/o Tarbahar, Ward No.19, Sanjay Gandhi Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
12. Smt. Janki Bai D/o Late Bhagwantram Binkar, Aged About 60 Years, W/o Parmeshwar Prasad, R/o Chandan Awas, Rajkishore Nagar Bilaspur, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
13. Smt. Neeta Mehar, Aged About 45 Years, R/o Vinobanagar Raigarh, Tahsil and District Raigarh, Chhattisgarh., District : Raigarh,

Chhattisgarh

---- Respondents

For Petitioner – Shri Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

18-01-2021

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 04-10-2019 passed by the Court of 8th Additional District Judge Bilaspur, Chhattisgarh in Civil Appeal No.120-A/2018 dismissing the application under Order 26 Rule 9 of the CPC.
2. It is submitted by learned counsel for the petitioner that the impugned order is erroneous and arbitrary. There is dispute regarding demarcation of the disputed property. The demarcation report that was submitted by the Commissioner before the trial Court was not complete even then the same has been relied upon for passing the judgment and decree. Hence, to challenge that demarcation report it is necessary for the petitioner to make such prayer for re-demarcation of the suit property. Learned Court below has not appreciated these facts and circumstances and passed the order of rejection, which is not sustainable. Therefore, it is prayed that this petition be allowed and relief be granted to the petitioner.
3. Considered on the submission. The petitioner has preferred appeal against the judgment and decree of the Court of IVth Civil Judge Class-I, Bilaspur dated 28-08-2018. The petitioner then has filed the application under Order 26 Rule 9 read with Section 151 of the CPC praying for re-demarcation of the disputed property, which has been rejected by the impugned order.
4. The appellate Court is guided by the procedure as provided under Order 41 of the CPC. Order 41 of the CPC nowhere permits scope for appointment of Commissioner for demarcation of the disputed property. All this exercise had to be done before the trial Court. The only scope is present in Order 41 Rule 27 of the CPC for presenting additional evidence, but that means that the evidence

should be oral or documentary which may be considered by the appellate Court. Apart from that, there is provision under Rule 23 Order 41 of the CPC that if the appellate Court considers that retrial is necessary in the case it may reverse the decree and direct the trial Court to proceed with the retrial.

5. The petitioner is at liberty to convince the appellate Court in appeal that Commissioner's report on which the trial Court has relied upon was not sufficient and there necessity for re-demarcation and if appellate Court is convinced, in that case the appellate Court has powers to pass orders in accordance with law. Hence, I am of this view that learned appellate Court has not committed any error in passing the order of rejection. The petitioner has opportunity to present his case and convince the appellate Court with respect to the necessity of re-demarcation at the stage of final hearing of the appeal. Hence, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge