CGHC010073012026 2026:CGHC:45393

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 252 of 2026

1 - Suryakant Shukla S/o Late Kashi Prasad Shukla Aged About 69 Years Resident Of H.No. 128, Hanuman Nagar, Kalibadi Chowk, Raipur, Tehsil And District Raipur (C.G.)

... Petitioner(s)

versus

1 - Ku. Tanya Bajpayee Daughter Of Ashish Bajpayee,Resident Of 120, Sundar Nagar, Raipur, Tehsil And District Raipur (C.G.)

2 - Jaya Bajpayee W/o Ashish Bajpayee, Resident Of 120, Sundar Nagar, Raipur, Tehsil And District Raipur (C.G.)

3 - State Of Chhattisgarh Through Collector, Raipur, Tehsil And District Raipur (C.G.)

... Respondent(s)

For Petitioner(s)	:	Mr. Ankur Agrawal, Advocate
For Respondent No.1	:	Mr. Manoj Paranjape, Sr. Advocate assisted by Ms. Shivangi Agrawal, Advocate
For Respondent No.2	:	Mr. Abhyuday Singh, Advocate
For Respondent No.3/State	:	Mr. Manish Kashyap, PL

(Hon'ble Shri Justice Ravindra Kumar Agrawal)

Order on Board

27/10/2026

The present writ petition has been preferred under Article 227 of the Constitution of India, calling in question the legality and propriety of the order dated 02.02.2026 passed by the learned 6th District Judge, Raipur, in Civil Suit No. 17-A/2020, whereby the application preferred by the petitioner under Order 26 Rule 1 of the Code of Civil Procedure, 1908 (for short, "the CPC"), has been rejected.

SUGUNA DUBEY
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2. Learned counsel for the petitioner submits that the petitioner is defendant No. 1 in the suit filed by respondent No. 1 before the learned trial Court. The suit has been filed seeking, inter alia, a declaration that the sale deed dated 01.06.2016 is null and void and not binding upon respondent No. 1; a declaration that the agreement dated 01.06.2016 is not binding upon her; a declaration that the undated exchange deed is also not binding upon her; and a declaration concerning the possession of the suit property in relation to the sale deed executed by defendant No. 2 in favour of defendant No. 1, along with a decree of permanent injunction.

3. It is submitted that, after the plaintiff's evidence had been recorded, the petitioner moved an application under Order 26 Rule 1 of the CPC, seeking appointment of a Commissioner for recording his evidence at his residence. In support of the application, the petitioner averred that he has been suffering from paralysis since 2017 and, owing to his physical infirmity, is unable to move about without

assistance. It was further stated that, even with assistance, he is unable to remain seated for more than five to ten minutes, thereby rendering his physical appearance before the Court extremely difficult. He submits that the petitioner is 69 years of age and is also suffering from cardiac ailment, for which he has undergone heart surgery and has a stent implanted in his coronary arteries. Having regard to his advanced age and medical condition, the petitioner claims that he is physically incapable of appearing before the trial Court for the purpose of recording his evidence and he sought permission for his evidence to be recorded at his residence through a Commissioner appointed by the Court.

4. It is further submitted that the application was supported by an affidavit and medical documents, annexed as Annexure P/6, while photographs depicting the petitioner's physical condition were also placed on record as Annexure P/7. He further submits that the learned trial Court rejected the application primarily on the ground that the petitioner had not produced documents relating to his treatment and that the suit had been pending since 2020. On that basis, the trial Court inferred that the application had been filed with the intention of delaying the proceedings.

5. On the other hand, learned counsel appearing for respondent No. 1 opposes the submissions advanced on behalf of the petitioner and submits that the plea of physical incapacity raised by defendant No. 1 is doubtful, particularly in view of the fact that he has been regularly appearing in person before the revenue authorities in the pending

revenue proceedings and is, therefore, apparently capable of moving about. It is contended that the application has been filed merely with a view to delaying the proceedings. Learned counsel further submits that, had the petitioner genuinely been suffering from paralysis, he would have produced the relevant medical records substantiating his ailment, however, the requisite supporting documents have not been furnished.

6. It is further submitted that the learned trial Court has rightly taken note of the fact that the suit has been pending since 2020 and that permitting the petitioner's evidence to be recorded through a Commissioner would result in further delay in the disposal of the proceedings. He submits that, having regard to the facts and circumstances of the case, the learned trial Court was justified in rejecting the application and directing defendant No. 1 to appear before the Court for recording his evidence. The impugned order suffers from no perversity or illegality warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. On these grounds, dismissal of the writ petition is sought.

7. Learned counsel appearing for the respondent No.2 supported the impugned order by which the application filed by the petitioner is rejected.

8. I have heard learned counsel for the parties and perused the documents annexed with the petition.

9. The controversy revolve around in the present petition is the physical condition of the petitioner and the rejection of his application seeking appointment of a Commissioner for recording his evidence at his residence. The application was preferred under Order 26 Rule 1 of the CPC, which provides for the examination of a witness by commission in circumstances contemplated therein.

> **CPC Order 26, Rule 1: Cases in which Court may issue commission to examine witness**
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> 1. Cases in which Court may issue commission to examine witness.—Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it: [Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.
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> Explanation.—The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.]

10. A perusal of the application filed under Order 26 Rule 1 of the CPC before the learned trial Court indicates that the petitioner has averred that he is aged about 69 years, had been suffering from paralysis since 2017, and was also afflicted with cardiac ailments, necessitating heart surgery and the implantation of a stent. He further asserted that, owing to his physical condition, he was unable to stand or

sit for more than five to ten minutes and was, therefore, incapable of appearing physically before the Court for the purpose of recording his evidence. The petitioner claims to have supported his application by an affidavit and medical documents vide Annexure-P/6, in addition to photographs depicting his physical condition Annexure-P/7. These circumstances were required to be considered by the learned trial Court while determining whether the petitioner's evidence could appropriately be recorded through a Commissioner at his residence, in accordance with the applicable provisions of the CPC.

11. Be that as it may, without entering into the controversy surrounding the petitioner's medical condition, this Court is of the considered opinion that, having regard to the provisions of Order 26 Rule 1 of the Code of Civil Procedure, 1908 (for short, “the CPC”), the petitioner's age and the medical condition pleaded by him, his application seeking permission to have his evidence recorded through a Commissioner deserves to be allowed. Such a course would adequately safeguard the petitioner's opportunity to lead evidence, while ensuring that no prejudice is caused to the opposite parties, who would retain the right to cross-examine him in accordance with law.

12. Accordingly, the impugned order dated 02.02.2026 is hereby set aside. The application preferred by the petitioner under Order 26 Rule 1 of the CPC stands allowed.

13. The learned trial Court is directed to facilitate the recording of the evidence of defendant No. 1 through a Commissioner, in accordance

with law, and to ensure that the proceedings thereafter are conducted expeditiously. The parties shall cooperate with the learned trial Court and shall not seek unnecessary adjournments, so as to avoid any further delay in the disposal of the civil suit, which has been pending since 2020.

14. The learned trial Court is further directed to appoint the Commissioner within a period of three weeks from the next date fixed before it. The interim order, if any, stands vacated.

15. With the aforesaid observations and directions, the writ petition stands allowed.

Sd/-
(Ravindra Kumar Agrawal)
Judge