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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 895 of 2026

1 - Bhagwan Singh Thakur S/o Late Pyare Singh Thakur Aged About 68 Years R/o Brihaspati Bazar Ke Samne, Tilak Nagar Tehsil And District Bilaspur C.G.

... Petitioner(s)

Versus

1 - Usha Agrawal W/o Hanuman Prasad Agrawal Aged About 73 Years R/o Durga Mandir Ke Pass, Sarkanda, Tehsil and District Bilaspur C.G.

2 - State of Chhattisgarh Through Collector Bilaspur C.G.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Ankur Diwan, Advocate.
For Respondent No.1	:	Shri Praveen Kumar Tulsyan, Advocate.
For State	:	Shri Rajkumar Sahu, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

06.10.2026

1. The present writ petition under Article 227 of the Constitution of India has been filed by the petitioner against the impugned order dated 02.05.2026 passed by the Ist Additional Judge to the Court of Ist Civil Judge, Senior Division, Bilaspur in Civil Suit No.A/52/2021 whereby the application filed by the defendant No.1 under Order 26 Rule 9 CPC has been rejected.

2. Learned counsel for the petitioner would submit that the petitioner is defendant before the trial court where the respondent No.1/plaintiff is prosecuting a suit for declaration of title and permanent injunction over the suit land bearing Khasra No.709, 710/1 and 710/2 Area 0.065 Hect., 0324 Hect. and 0.194 Hect. respectively, situated at village Gatori, Tehsil and District Bilaspur. The plaintiff claimed in the suit that she has purchased the suit land bearing Khasra Nos. 709 and 710/2 through registered sale deed dated 14.09.1999 from Urmila Bai and the land of Khasra No.710/1 was purchased through registered sale deed dated 07.02.1983 from Durga Prasad and came into possession of the same. Thereafter, she constructed a boundary wall over there. In the year 2017 for widening of Bilaspur-Ratanpur main road, some part of land of the plaintiff, which was in the eastern side, was acquired by the State Government and she was paid compensation for the same.

3. In the month of December, 2020 when the defendant No.1 moved an application for demarcation of his land khasra No.710/3, she made an objection to appear in the demarcation proceeding and she claimed that since the land Khasra No.710/3 was not divided in the revenue map, the land of defendant No.1 is not exist there. He would further submit that defendant No.1 have denied the claim of plaintiff with the pleading that the land of Khasra No.709 was sold by his brother Rai Singh to Urmila Devi and the land of Khasra No.710/2 was sold by him to Urmila Devi whereas the land of Khasra No.710/1 was sold to the plaintiff by Durga Prasad. The land of Khasra No.710/1 and 710/2 are the part of original Khasra No.710 which was total area 1.61 Acre. The plaintiff had purchased Khasra No.710/1 area 0.80 Acre and Khasra

No.710/2 Area 0.48 Acre, and the remaining land i.e. 0.33 Acre is owned by the defendant No.1 which he inherited after death of his father. Since major part of the land of the plaintiff has been acquired by the State Govt., he encroached the land of defendant No.1 i.e. Khasra No.710/3 and when the defendant No.1 made an application for its demarcation, the plaintiff raised objection that his land is not in existence. Though the defendant No.1 got his land demarcated by the revenue authorities, but in every time different demarcation report was given by the revenue authorities and therefore indulgence of the court is required to get a proper demarcation report from a team of revenue authorities by appointing a Commissioner to elucidate the actual position of the land and entitlement of the parties over their respective part of the land.

4. He would refer to demarcation report Annexure-P/9 dated 07.02.2021 in which a note has been put by the Revenue Inspector who conducted demarcation that red ink portion of the map is the land of Khasra No.710/3 area 0.33 Acre. When the plaintiff again tried to demarcate his land in the year 2023, a report was given to the revenue authorities Annexure P/10 in which they have stated that plaintiff is in possession of excess land of 0.33 Acre which was part of the land Khasra No.710, however, there is no division of the land in the revenue map, and therefore its boundary could not be determined. Since there is a conflicting demarcation report submitted by the authorities, the trial court may be directed to appoint a Commissioner and to obtain demarcation report from the competent revenue authorities to effectively adjudicate the dispute between the parties. He would also

submit that the since plaintiff's evidence have not been started yet, no prejudice is being caused to any of the parties. Therefore, the petition may be allowed and a Commissioner may be appointed for demarcation report.

5. On the other hand, learned counsel for the respondent No.1 opposes the submissions made by the counsel for the petitioner and have submitted that the plaintiff had earlier approached before the revenue authorities for demarcation of the land and his land has been demarcated thrice, yet he is not satisfied with the demarcation report and filed an application before the trial court for again demarcation of his land. In the demarcation report dated 11.08.2023, Annexure P/10, it has been mentioned by the revenue authorities that land of Khasra No.710/3 has not been divided in the revenue map, therefore, its boundary cannot be fixed. It was the demarcation application filed by the plaintiff himself and firstly he has to get the land divided in the revenue map on the basis of sale deeds and then only he may get his land demarcated. Even otherwise, it is for the defendant No.1 who led oral as well as documentary evidence in support of his counter claim to prove that plaintiff is in encroachment of his land and he is entitled for 0.33 Acre of the land of Khasra No.710/3. Since earlier demarcation report has already been filed by the defendant No.1 in the case, there is no need to again demarcate the land. The provisions of Order 26 Rule 9 CPC is not meant for creation of document in favour of parties and defendant No.1 tried to create a document in his favour. He would further submit that defendant No.1 has also filed a counter claim against the plaintiff for declaration of title, mandatory injunction and for

vacant possession of the suit land Khasra No.710/3 area 0.33 Acre after demolishing the boundary wall raised by the plaintiff over the same. He also submits that though the trial court is empowered to appoint a Commissioner to determine the issue of encroachment, if any, at an appropriate stage, however, in the present case the plaintiff's evidence has not been started yet, therefore, the rejection of the application filed by the defendant No.1 does not suffer from any illegality or perversity, and prayed for dismissal of the writ petition.

6. I have heard the counsel for the parties and perused the material annexed with the writ petition.

7. The issue involved in the present writ petition is demarcation of the land of the petitioner bearing Khasra No.710/3 Area 0.33 Acre. From the pleading of plaint filed by the plaintiff, it reveals that plaintiff had purchased the land of Khasra No.709 Area 0.16 Acre and Khasra No. 710/2 area 0.48 Acre through registered sale deed dated 14.09.1999 and Khasra No.710/1 area 0.80 Acre through registered sale deed dated 07.02.1983. It is the claim of the defendant No.1 that the land of Khasra No.710/1 and 710/2 were the part of original Khasa No.710 which was having total area 1.61 Acre, out of which, 1.28 Acre was purchased by the plaintiff and the remaining land i.e. 0.33 Acre remains with defendant No.1 which is identified as Khasra No.710/3. The plaintiff got her land diverted in the year, 2000 and started her business there. When the defendant No.1 tried to get his land demarcated, he moved an application in the year 2021 for demarcation and his land was demarcated on 07.02.2021. As per the report given by the Revenue Inspector, a note was appended in the said sketch map

prepared at the time of demarcation and shown red ink part belongs to Khasra No. 710/3 Area 0.33 Acre which was shown in the northern side of the land of the plaintiff. The said demarcation report was objected by the plaintiff before the revenue authority and thereafter the petitioner again approached before the revenue authorities in the year 2023 for division of his land and for spot inspection report. The revenue authorities have made a Panchnama on 11.08.2023 in which it has been mentioned that the land of Khasra No.710/3 has not been divided in the revenue map, however, the location of the land of the petitioner i.e. Khasra No. 710/3 have not been shown and it has been reported that since the defendant No.1 has not filed any document with respect to its four-corners, the determination of its boundary could not be possible. When the defendant No.1 again approached before the revenue authorities for demarcation of his land Khasra No.710/3 area 0.33 acre, his application has been rejected vide order dated 23.04.2024 holding that the defendant No.1 is not in possession of any document to prove the four-corners of his land and therefore determination of boundary of his land Khasra No.710/3 could not be possible.

8. The specific case of the defendant No.1 is that after sale of 1.28 Acres of land in favour of plaintiff, the remaining 0.33 acres of land of original Khasra No.710 remains with him which is identified as Khasra No.710/3 and he is title holder of the said land but plaintiff had encroached his land and he tried to identify the land and to get back possession of the said land from her. From documents Annexure P/8,9 and 10 it transpires that he approached the revenue authorities for

demarcation of his land, however, despite report dated 07.02.2021, in which the identification of the land of Khasra No.710/3 area 0.33 Acre has been described in the sketch map, the revenue map was not corrected and in the subsequent demarcation report it has been mentioned that since there is no division in the revenue map, the land of defendant No.1 cannot be located or identified and demarcation could not be possible. For that very reason, his application was again rejected on 23.07.2024.

9. Rule 9 of Order 26 of CPC provides commission to make local investigation which reads as under-

> ***"9. Commissions to make local investigations.***- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:
>
> Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."

10. Order 26 Rule 9 CPC provides for appointment of Commissioner for local inspection with respect to any dispute regarding boundary of the subject property and to elucidate any matter in dispute. When there is a dispute regarding identification of the land or encroachment of the land, the trial court is competent enough to call the demarcation report by appointing a local Commissioner invoking its power under Order 26 Rule 9 CPC. ***In Durga Prasad Vs. Parveen Foujdar And Ors., 1975 SCC Online MP 14,*** the Madhya Pradesh High Court has held that the dispute of encroachment can only be decided after proper demarcation by the revenue authorities. It has been held in the said judgment that :

> “Point No.2: In cases where there is a disputed as to encroachment, the fact whether there is such an encroachment or not cannot be determined in the absence of an agreed map, except by the appointment of a Commissioner under Order 26 Rule 9 of the Code of Civil Procedure…….”

11. Dispute with respect to encroachment and demarcation of the property can be decided only after obtaining the demarcation report from the competent revenue authority. In the present case, the petitioner/defendant No.1 is raising a dispute about encroachment over his land by the plaintiff and it is the case of the plaintiff also that the defendant No.1 interfering in possession of her land by claiming that it is the land belongs to Khasra No.710/3 Area 0.33 Acre and the said land is not divided in the revenue map.

12. Considering the grievance raised by the defendant No.1; the nature of dispute between the parties; the earlier demarcation proceeding on the instance of defendant No.1, the reports submitted by the revenue authorities and the order dated 23.04.2024 (Annexure P/8,9 and 10 respectively), this court is of the considered opinion that their exist dispute with respect to demarcation of the suit property and to identify the encroachment over the land of defendant by the plaintiff, it requires a report from the competent revenue authority after having demarcation in presence of the parties. Though the plaintiff’s evidence have not been started yet in the case, but the nature of dispute cannot be decided without there being any proper demarcation report.

13. Therefore, this court is of the considered opinion that the trial court shall obtain a Commissioner report with respect to demarcation of the land of the parties and to adjudicate the dispute between the parties accordingly. Therefore, the impugned order dated 02.05.2026 is set

aside. The application filed by the defendant No.1 under Order 26 Rule 9 CPC is allowed and the trial court is directed to appoint a Commissioner and call a demarcation report from the competent revenue authority and thereafter to proceed in the suit in accordance with law.

14. With the aforesaid observations, the present writ petition is allowed.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder