CGHC010310162026 2026:CGHC:43542

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1018 of 2026

1 - Manish Agrawal S/o Premprakash Agrawal Aged About 49 Years R/o Flat No. 407, Mahavir Apartments-2, 7 Bulgalows, Bon Bon Lane, Andheri West Post Office Azad Nagar, District Mumbai Maharashtra (Age And Address Wrongly Mention In The Cause Title Of Impugned Order)

... Petitioner(s)

versus

1 - Omprakash Sahu S/o Mohan Sahu Aged About 54 Years R/o House No. 236, Ward No. 14, Anjora, Thanaud, District Rajnandgaon Chhattisgarh

2 - Prahlad Kumar Sahu S/o Mohan Sahu Aged About 47 Years R/o House No. 236, Ward No. 14, Anjora, Thanaud, District Rajnandgaon Chhattisgarh

... Respondent(s)

For Petitioner(s)	:	Mr. Prasoon Agrawal,Advocate
For Respondent(s)	:	Mr. Nimesh Kumar Jha, Advocate

(Hon’ble Shri Justice Ravindra Kumar Agrawal)

Order on Board

07/10/2026

Present is a writ petition filed by the petitioner under Article 227 of the Constitution of India seeking the following reliefs:

> *10.1. That this Hon'ble Court may kindly be pleased to quash and set aside the order dated 25.06.2026 passed by 06.01.2026 passed by the District Judge, Rajnandgaon (CG) in Civil suit No. 2A/2026 and allow the application filed by the petitioners under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, 1908.*
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> *10.2 That this Hon'ble Court may kindly be pleased to grant any other relief, which it deems fit and proper.*

2. Learned counsel appearing for the petitioner submits that the petitioner is the plaintiff before the learned Trial Court and has instituted a suit for specific performance of contract against the defendants, who are the respondents herein, with respect to an agreement dated 22.11.2024. It is submitted that by the aforesaid agreement, the defendants had agreed to sell the land situated at Village Devada, Tahsil and District Rajnandgaon, bearing Khasra Nos. 330/3 and 330/4, admeasuring 0.90 acres out of the total area of 1.12 acres.

3. He submits that under the terms of the said agreement, it was the obligation of the defendants to get the land demarcated and its boundaries fixed, whereafter they were required to execute the sale deed within six months from the date of execution of the agreement. It is further submitted that the entire sale consideration of Rs.11,00,000/- had been paid as advance. It is contended that, after execution of the

agreement, the defendants excavated soil from the suit land and sold the same, thereby earning an amount of approximately Rs.10,00,000/-, causing loss to the plaintiff. Upon coming to know of such activity on the part of the defendants, the plaintiff filed an application under Order XXVI Rule 9 of the Code of Civil Procedure before the learned Trial Court seeking appointment of a Commissioner for inspection of the suit land and for submission of a report regarding the alleged excavation of soil therefrom.

4. The said application was rejected by the learned Trial Court vide impugned order dated 26.05.2026, principally on the ground that the application under Order XXVI Rule 9 CPC could not be permitted for the purpose of collecting or creating evidence and that it was for the plaintiff to establish his case by leading appropriate evidence. He submits that the factum of excavation of soil from the suit land and the sale thereof by the defendants constitute disputed questions of fact, which can appropriately be adjudicated upon after the parties have led their evidence. He further submits that no prejudice would be caused to either party if a Commissioner is appointed, as the petitioner merely seeks to ascertain whether excavation of soil has taken place from the suit land. It is, therefore, submitted that the impugned order may be set aside and the learned Trial Court may be directed to appoint a Commissioner and obtain a report with regard to the alleged excavation of soil from the suit land.

5. On the other hand, learned counsel appearing for the respondents opposes the submissions advanced on behalf of the

petitioner. He submits that the respondents, who are the defendants before the learned trial court have categorically denied execution of any agreement in favour of the plaintiff. It is submitted that the alleged agreement dated 22.11.2024 was never executed by the respondents and is a forged and fabricated document on the basis of which the plaintiff has instituted the suit for specific performance of contract.

6. He further submits that since the respondents have not executed any agreement for sale of the suit land, they are at liberty to use their land in accordance with their whims. It is also submitted that the respondents have specifically denied the allegation of excavation of soil from the suit land. Therefore, the Commissioner's report cannot be sought merely for the purpose of creating or collecting evidence in favour of the plaintiff. It is for the plaintiff to establish his case by leading appropriate oral as well as documentary evidence. He submits that the learned trial court has duly considered the entire matter and has rightly rejected the application, which does not suffer from any perversity or illegality warranting interference in exercise of writ jurisdiction. The writ petition, therefore, deserves to be dismissed.

7. I have heard learned counsel for the parties and perused the material available on record.

8. From the pleadings of the parties, it is apparent that the plaintiff is claiming enforcement of the agreement dated 22.11.2024 on the basis of which he has instituted the suit for specific performance of contract. The said agreement has been specifically denied by the defendants in

their written statement. The defendants have categorically pleaded that they never executed any agreement in favour of the plaintiff. They have also denied the allegation that they excavated soil from the suit land. There is no dispute with regard to the identity of the suit land. It is the plaintiff who has alleged that soil was excavated from the suit land by the defendants and that the same was sold, thereby causing loss to him. The question as to whether the soil was in fact excavated from the suit land is essentially a disputed question of fact.

9. The present suit is for specific performance of contract. The identity of the suit land is not in dispute. The grievance of the plaintiff is that certain prejudice has been caused to him on account of the alleged excavation and sale of soil from the suit land by the defendants, who are stated to be its owners, resulting in an alleged loss of Rs.10,00,000/-. Having regard to the nature of the suit and the allegations made by the plaintiff, this Court is of the considered opinion that appointment of a Commissioner for the purpose sought by the plaintiff is not necessary. The plaintiff can establish the allegations regarding excavation of soil and the consequential loss, if any, by leading appropriate oral as well as documentary evidence before the learned Trial Court. The appointment of a Commissioner cannot be permitted merely to enable a party to collect evidence in support of a disputed factual assertion.

10. Upon perusal of the entire material available on record, this Court does not find any perversity, illegality or jurisdictional error in the order passed by the learned Trial Court rejecting the application filed by the

petitioner. Accordingly, the writ petition fails and is hereby dismissed.

Sd/-
(Ravindra Kumar Agrawal)
Judge

SUGUNA DUBEY
Digitally signed by SUGUNA DUBEY
Date: 2026.10.09 11:02:44 +0530