



2026:CGHC:13573

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 932 of 2025**

1 - Shiekh Nasruddin S/o Late Shri Shiekh Badruddin Aged About 58 Years
R/o Q. No. 14-A, Street No. 21, Sector 02, Bhilai Nagar, Tahsil Distt. Durg,
Chhattisgarh.

... Petitioner(s)**Versus**

1 - Sarveshwar Dayal Mishra S/o Late Shri B.B. Mishra Aged About 62 Years
R/o M.I.G. 01/841, Hudco, Bhilai Nagar, Tahsil Distt. Durg, Chhattisgarh.
2 - Smt. Ratna Devi Mishra W/o Sarveshwar Dayal Mishra R/o M.I.G. 01/841,
Hudco, Bhilai Nagar, Tahsil And Distt. Durg, Chhattisgarh.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Jitendra Pali, Advocate.
For Respondents	:	Shri Akash Kundu, Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J**Order on Board****20.03.2026**

- The present writ petition under Article 227 of the Constitution of India has been filed by the petitioner against the impugned order dated 26.06.2025 passed by IInd Civil Judge (Senior Division) Durg in Civil Suit No.A/8/2019 whereby the application filed by the petitioner under Order 26 Rule 9 CPC has been rejected.
- Brief facts of the case are that, the petitioner is the plaintiff before the trial court and prosecuting a Civil Suit for declaration of title,

possession and permanent injunction with respect to suit land Khasra No.76/44 area 0.03 Hect. (3120 sq.ft.) situated at village Kohka, Purani Basti, Ward No.7, PH No.14/19, Tehsil and District Durg. In the said civil suit the fourcorners of the suit land was claimed as, 25 ft. road in northern side, plot No.34 in southern side, 25 ft. road in eastern side and 20 ft. road in western side. The plaintiff had purchased the suit land from its owner Milap Verma on 01.10.2009 through registered sale deed and the land is recorded in his name by Khasra No.76/44. In the month of June, 2018 when he visited his land, he found the defendants started construction over his land. After approaching the authorities when no action was taken to stop construction, he filed WPC No.3072 of 2018 before this court seeking a direction to the authorities for demarcation of his land Khasra No.76/44. Vide order dated 21.10.2018 the Coordinate Bench of this court in the said writ petition directed the petitioner/plaintiff to move an application before the concerned Tehsildar for demarcation of the land. In compliance thereof, the petitioner/plaintiff submitted his application on 10.11.2018 and then after its demarcation the Revenue Inspector submitted a demarcation report dated 16.01.2019 in which construction by defendant over the land of petitioner/plaintiff was found.

The defendant raised objection with respect to change of its Khasra Number and then the Revenue Inspector sought a direction from the Tehsildar with respect to old and new Khasra Number. In the meantime, the plaintiff filed the civil suit. In the civil suit the plaintiff/petitioner filed his application under Order 26 Rule 9 CPC and prayed for appointment of a Commissioner to conduct a local

investigation and to carry out proper demarcation of the suit land. The application filed by the petitioner/plaintiff was rejected by the trial court on 24.01.2023 on the ground that application for demarcation cannot be allowed for collection of evidence. Against the rejection of application of the petitioner dated 24.01.2023, the petitioner preferred WP227 No.686 of 2023 before this court. The Coordinate Bench of this court vide its order dated 28.08.2023 in WP227 No.686 of 2023 granted liberty to the petitioner to file his application at the subsequent event, if so advised.

3. In compliance of the order dated 21.10.2018 passed by coordinate Bench of this court in WPC No.3072 of 2018, the Additional Tehsildar along with Assistant Superintendent Land Records demarcated the land on 04.06.2019 and the Superintendent Land Record Durg submitted the demarcation report dated 22.08.2019 before the Additional Tehsildar and after rejecting the objection raised by the Objector/respondent No.1-Sarveshwar Dayal Mishra, issued the copy of demarcation report dated 22.08.2019. The petitioner challenged the said demarcation report dated 22.08.2019 by filing his Revision No.20014/42/2018-19 before the Collector, Durg, which was allowed on 23.02.2021 on the ground that the respondent No.1 in his another cases disclosed the location of his land Khasra No.4726, Plot No.27&28 in the southern side of Bhelva Talab and the SDO has shown the location of his land in the eastern side of Bhelva Talab whereas the land of the respondent No.1 is actually situated at western side of Bhelva Talab. The order dated 23.02.2021 was challenged by the respondent No.1 before the Commissioner Durg by filing his

revision which was partly allowed on 23.02.2023 and ordered that there was a mistake committed during Bandobast and only after correction of revenue records demarcation should be carried out by the authorities and liberty was reserved in favour of the parties to get their land again demarcated after correction of the revenue records. The said order dated 23.02.2023 passed by by the Commissioner Durg was challenged by the petitioner before the Chhattisgarh Board of Revenue Circuit Court at Raipur. The Board of Revenue, by its detailed order dated 14.03.2024 quashed the order dated 23.02.2023 passed the Commissioner, Durg, order dated 26.08.2019 passed by Additional Tehsildar, Durg and the demarcation report dated 22.08.2019 and has affirmed by the order dated 23.02.2021 passed by the Additional Collector, Durg and further directed to demarcate the land of the petitioner in accordance with law as per the direction issued by the High Court vide its order dated 31.10.2018 in WPC No. 3072 of 2018.

4. Pursuant to the said direction of Board of Revenue dated 14.03.2024 the land was demarcated in presence of parties by a team of Revenue Inspectors and Halka Patwari and submitted a report on 30.05.2024 and amended report dated 11.07.2024 before the Additional Tehsildar, Bhilai. The said report dated 30.05.2024 and amended report dated 11.07.2024 has not been challenged by any of the parties.
5. In the civil suit which was filed by the petitioner, he moved an application under Order 26 Rule 9 CPC for demarcation of his land in compliance of the order dated 28.08.2023 passed by the Coordinate Bench of this court in WP227 No.686 of 2023 which was dismissed by the trial court vide its order dated 26.06.2025 holding that the land of

the petitioner has repeatedly been demarcated by the revenue authorities and to collect evidence the order for demarcation cannot be passed which is under challenge in the present writ petition.

6. Learned counsel for the petitioner would submit that the issue involved in the present case is the identity of land of the petitioner as well as defendant which can only be decided after a proper demarcation report conducted by the revenue authorities in accordance with law. There are variance in the report of the revenue authorities every time and in every demarcation report. The parties have raised objection with respect to conducting proper demarcation by the authorities, but their objection were not properly dealt with. He would further submit that repeatedly the demarcation or the order of demarcation was quashed by the superior revenue authority, yet no proper demarcation was conducted with respect to the petitioners land. Therefore, indulgence of civil court is required to monitor the proper demarcation report for which he made application before the trial court. It is not collecting or creating the evidence, but it is calling of report to clarify the true and correct fact of the spot so that the dispute between the parties can be finally adjudicated. It is only the revenue authorities who are competent to demarcate the land and dispute of encroachment or identity of land is to be decided on the basis of demarcation report. He would further submit that even after constitution of a team for demarcation of the land of the petitioner, the first report dated 30.05.2024 was found to be vague which was subsequently amended on 11.07.2024 which again remain inconclusive. With the liberty granted by the coordinate Bench of this court in WP227 No.686 of 2023 vide order dated 28.08.2023,

the petitioner moved his application for demarcation of his land which has not been considered properly and has been dismissed on mechanical ground. The proper demarcation in accordance with law is required to be conducted in the case to find out the exact location and boundary of Khasra No.76/44 which can only be done after a proper and conclusive demarcation report. No prejudice would be caused to any of the parties if proper demarcation is to be conducted to finally adjudicate the dispute between the parties. Therefore, the petition may be allowed and the impugned order may be set aside and the application for demarcation of the suit land from the competent revenue authorities may be allowed.

7. 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 time and again the land of the petitioner was demarcated, however, in every time the report came against him and he re-agitated the issue by filing various proceedings either in writ petition or in appeal/revision before the revenue authorities and challenged the demarcation report. It is the plaintiff's burden to prove the fourcorners of the suit land. Under the direction of the Board of Revenue, the land of the petitioner was again demarcated and report was submitted on 30.05.2024 and amended report was submitted on 11.07.2024 by the committee constituted for demarcation of the suit land. The said order for conducting fresh demarcation was passed on petitioner's application for demarcation. The said demarcation report dated 30.05.2024 and amended report dated 11.07.2024 has not been challenged by the petitioner and it attains its finality. In paragraph 6 of

amended demarcation report dated 11.07.2024, the location of the land of the petitioner and its fourcorners have been disclosed and in paragraph 7 and 11 of the said report the location of the land of respondent No.1 has been mentioned. The said demarcation report remain un-challenged and therefore there is no need to again demarcate the land of the petitioner under the supervision of the civil court. Had the petitioner been disagreed with the demarcation report, he ought to have challenged it, but he didn't do so. Therefore, the trial court has rightly rejected the application of the petitioner which needs no interference.

8. I have heard the counsel for the parties and perused the material annexed with the writ petition.
9. 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.....”

10. In *Haryana Waqf Board Vs. Shanti Swarup and Others*, **2008(8)SCC 671**, the Supreme Court has held in paragraph 3 to 7 as under:

“3.The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant-Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land.

4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 of the CPC.

5. The appellate court found that the trial court did not take into consideration the pleadings of the parties when there was no specific denial on the part of the respondents regarding the allegations of unauthorized possession in respect of the suit land by them as per paragraph 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial court was wrongly rejected.

6. It is also not in dispute that even before the appellate court, the appellant-Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. The High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case, whether the Local Commissioner should be appointed for the purpose of demarcation in respect of the suit land.

7. For the reasons aforesaid, we are of the view that the High Court ought to have considered this aspect of the matter and then to decide the second appeal on merits. Accordingly, we set aside the judgment and decree passed in the second appeal and the second appeal is restored to its original file.”

11. From perusal of record it transpires that on the application made by the petitioner, the land of the petitioner was demarcated and report was submitted on 16.01.2019 before the Tehsildar and then the Tehsildar closed the proceeding on 26.08.2019. The petitioner had challenged the said demarcation report in revision filed before the Additional Collector, Durg which was allowed on 23.02.2021 and the Additional Collector, Durg, has observed in its order dated 23.02.2021 as under:

“(i) प्रकरण के लंबित अवस्था में तीन सीमांकन प्रतिवेदन कमशः दिनांक 26.08.2019, 30.09.2019 व 11.05.2020 हुए हैं जिसके अनुसार प्रकरण में अनावेदक की भूमि नये एवं पुराने नक्शे में अलग-अलग स्थान पर दर्शित होने के कारण बंदोबस्त के दौरान त्रुटि बताया गया है। बंदोबस्त के दौरान अभिलेखों में त्रुटि होने के कारण वर्तमान में विवाद की स्थिति निर्मित हुई है।

(ii) संहिता की धारा 129 (सीमांकन), संहिता की धारा 89 (बंदोबस्त त्रुटि सुधार तथा धारा 250 (कब्जा दिलाने) के अंतर्गत इस न्यायालय का क्षेत्राधिकार नहीं है। किन्तु आवेदक के आवेदन पत्र के आधार पर वाद भूमि का अधीक्षक भू-अभिलेख जिला कार्यालय दुर्ग से सीमांकन भी करवाया गया है, जिसमें भी बंदोबस्त के दौरान अभिलेखों में त्रुटि बताया गया है।

उपरोक्त विवेचना के अनुसार प्रकरण में संलग्न दस्तावेजों के आधार पर मैं यह पाता हूँ कि पूर्व में इस न्यायालय में उत्तरवादी श्री सर्वेश्वर दयाल मिश्रा द्वारा अतिरिक्त तहसीलदार भिलाई नगर के राजस्व प्रकरण कमांक 973-74 वर्ष 2017-18 में पारित आदेश दिनांक 18.06.2018 से क्षुब्ध होकर पुनरीक्षण प्रस्तुत किया गया था जिसमें दिनांक 25.11.2018 को कलेक्टर दुर्ग द्वारा आदेश पारित किया गया जिसके अनुसार उत्तरवादी द्वारा आवेदन वापस चाहा गया जिसके फलस्वरूप चूंकि आवेदक अपने आवेदन पत्रों में आने कार्यवाही नहीं चाहता है। अतः आवेदक द्वारा प्रस्तुत दोनों पुनरीक्षण आवेदनों को निरस्त किया जाता है। प्रकरण नस्तीबद्ध कर दाखिल दफ्तर हो, का आदेश पारित किया गया है।

माननीय उच्च न्यायालय बिलासपुर रिट पिटीशन कमांक 3072/2018 के आदेश दिनांक के अनुसार तहसीलदार को सीमांकन हेतु निर्देशित किया गया। दिनांक 26.06.2019 को तहसीलदार के द्वारा सीमांकन कर जिसमें एस.एल.आर. के द्वारा दिया गया प्रतिवेदन को सीमांकन का अंग मानते हुए आदेश पारित किया गया है। दिनांक 26.08.2019, 30.09.19 एवं 11.05.2019 के सीमांकन प्रतिवेदन में बंदोबस्त त्रुटि बताया गया है।

उत्तरवादी क्रमांक 2 द्वारा राजस्व प्रकरण कमांक (1) 7/3(5)/2011-12 (2) 186/3(12)/2010-11 (3) 21/अ (70)/2012-13 उक्त सभी प्रकरणों में अपनी भूमि खसरा 4726 प्लॉट नं 27 व 28 की स्थिति भेलवा तालाब के दक्षिण में कच्चा ले आउट के अनुसार बताया गया है। अनावेदक के भूमि के दस्तावेजों में अनुविभागीय अधिकारी (रा.) के द्वारा इनकी भूमि को भेलवा तालाब के पूर्व दिशा में लाल स्याही से अंकित दर्शाया गया है, जबकि पुनरीक्षणकर्ता की जमीन पश्चिम दिशा में है।

न्यायालय अतिरिक्त तहसीलदार भिलाई नगर में उत्तरवादी कमांक 2 श्री सर्वेश्वर दयाल मिश्रा द्वारा त्रुटि सुधार बाबत आवेदन पत्र प्रस्तुत किया गया है। आवेदन का अवलोकन करने पर यह पाया गया है कि प्रकरण कमांक 07/अ(5)/2011-12 में त्रुटि सुधार की आवश्यकता नहीं है। आवेदक अपने भूमि पर कब्जा चाहता है। अतः कब्जा के लिए प्राप्त कर सकता है। अतः प्रस्तुत आवेदन पोषणीय नहीं होने से इसी स्तर पर खारिज किया जाता है। अतः 07/अ (5) / वर्ष 2011-12 में नस्तीबद्ध कर दाखिल दफ्तर हो, का आदेश न्यायालय अतिरिक्त तहसीलदार भिलाई नगर के द्वार दिनांक 04.05.13 को पारित किया गया है, उक्त आदेश की उत्तरवादी कमांक 2 द्वारा कभी भी अपील या चुनौती नहीं दी गई है और नहीं यह आदेश निरस्त हुआ है जिसके कारण उक्त पारित आदेश आज दिनांक प्रभावशील है।”

- 12.** The said order dated 23.02.201 was challenged by the respondent No.1 before the Commissioner, Durg, which was allowed vide order dated 23.02.2023 and the order passed by the Additional Collector Durg was set aside, however, the order passed by the Commissioner Durg dated 23.02.2023 was again challenged by the petitioner before the Board of Revenue which was again allowed vide its order dated 14.03.2024 and the order passed by the Commissioner Durg dated 23.02.2023 and order dated 26.08.2019 passed by Additional Tehsildar Durg and demarcation report dated 22.08.2019 was quashed and the order passed by the Additional Collector, Durg dated 23.02.2021 was affirmed and again directed the revenue authorities to demarcate the land of the petitioner in compliance of the order dated 31.10.2018 passed by coordinate Bench of this court in WPC No.3072 of 2018. Thereafter, the subject land was again demarcated and report was submitted on 30.05.2024 and amended report was submitted on 11.07.2024. On instruction, learned counsel for the petitioner submits that the demarcation report dated 30.05.2024 and amended report dated 11.07.2024 has not been challenged by the petitioner. Since the demarcation of the land of the petitioner was carried out and report was submitted which has not been challenged by the petitioner, the said report was submitted on the application made by the petitioner before the Additional Tehsildar which traveled up to coordinate Bench of this court in WPC No.3072 of 2018 decided on 21.10.2018 and subsequently WP227 No.686 of 2023 which was decided on 28.08.2023 and then the demarcation of the land of the petitioner was

conducted. Since the petitioner was already having demarcation report which has not been challenged till date, the land of the petitioner cannot be again put under the subject of demarcation.

- 13.** Therefore, I do not find any perversity or illegality in the order dated 26.06.2025 passed by the trial court rejecting the application of the petitioner under Order 26 Rule 9 CPC. However, the petitioner is at liberty revive his prayer for demarcation of his land in the event if the said demarcation report is challenged or he would be able to show any discrepancy in its genuineness or any procedural lapses to conduct the demarcation which makes it incorrect demarcation report by leading their evidence and in such eventuality the trial court shall decide the application of the petitioner in view of the evidence produced by him and in accordance with law.
- 14.** With the aforesaid observations, the writ petition stands disposed of.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder