



2026:CGHC:9769



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1195 of 2024

1 - Bhagat Ram S/o Late Umend Singh Kanwar Aged About 57 Years R/o Railway Colony
Bangla No. B- 8, Tahsil And District- Bilaspur (C.G.) (Plaintiff) **... Petitioner(s)**
versus

1 - Harsh Singh S/o Vijay Singh Aged About 35 Years (Wrongly Mentioned In Ordersheet/
Oblong As Singh Sar) R/o Girls Higher Secondary School Gumber Petrol Pump Gali No. 4
Torwa Bilaspur Tahsil And District - Bilaspur (C.G.) (Defendant) **... Respondent(s)**

For Petitioner(s) : Mr. Ram Kumar Tiwari, Advocate
For Respondent(s) : Mr. Rohit Sharma, Advocate

Hon'ble Shri Justice Sachin Singh Rajput

Order on Board

24/02/2026

This writ petition under Article 227 of the Constitution of India is filed being aggrieved by the order dated 10.10.2024 passed by the learned 3rd Civil Judge Junior Division, Bilaspur, District Bilaspur, CG in Civil Suit (A) No. 217 of 2019. By the order impugned, the application of the petitioner under Order Rule 26 Rule 9 CPC was rejected.

2. Learned counsel for the petitioner submits that the subject property involved in the present writ petition is comprised in piece of Khasra No. 1282/25, area 2250 square feet P.H. No. 22/3, R.I.C. Bilaspur situated within the municipal limits of the Municipal Corporation, Bilaspur, in Ward No. 48/42, Shaheed Hemu Colony Nagar. The petitioner who is the plaintiff



in the civil suit has filed a suit for permanent injunction as well as mandatory injunction alleging that the respondent is in illegal encroachment of the subject property and is raising unauthorized construction thereon. A specific prayer has been made seeking restraint against the respondent from entering upon the subject property and from carrying out any construction over the same. During the pendency of the suit, the petitioner/plaintiff filed an application under Order 26 Rule 9 of the Code of Civil Procedure seeking appointment of a Commissioner for demarcation of the subject property. It has been specifically pleaded in the said application that the respondent has already encroached, or is in the process of encroaching upon the subject land and that in the absence of proper demarcation the reliefs claimed by the petitioner/plaintiff in the civil suit cannot be effectively adjudicated. The learned Trial Court, however, committed a manifest error in rejecting the said application by the impugned order. Learned counsel further submits that the present writ petition deserves to be allowed and the application filed under Order 26 Rule 9 CPC ought to be allowed by directing appointment of a Commissioner for demarcation of the subject property.

3. Learned counsel for the respondent opposes the submissions advanced on behalf of the petitioner and submits that along with the plaint, the petitioner had also filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The said application was rejected by the learned Civil Judge vide order dated 17.03.2021. Aggrieved by the said order, the petitioner preferred an appeal, which was also dismissed by the learned 4th Additional District Judge, Bilaspur (C.G.). Learned counsel submits that categorical findings have been recorded by both the learned Civil Judge as well as the learned Appellate Court while deciding the application under Order 39 Rules 1 and 2 CPC and the appeal arising therefrom. It has been held that the dispute relating to the subject



property pertains to one Jeetu Singh Thakur and that certain litigation's had already been initiated by the petitioner against the said Jeetu Singh Thakur before the Revenue Court. It is further submitted that the respondent is neither a necessary party nor a proper party to the dispute. The suit itself is not maintainable in the absence of impleadment of the proper and necessary party namely Jeetu Singh Thakur. Learned counsel further submits that the learned Civil Judge has considered all relevant aspects of the matter while rejecting the application and the impugned order does not suffer from any illegality or perversity warranting interference by this Court.

4. Heard learned counsel for the parties and perused the record.

5. From perusal of the documents appended with the writ petition, it is manifest that a suit for permanent injunction and for demolition of alleged illegal encroachment was filed by the petitioner in respect of the subject property in which the respondent herein was arrayed as a defendant. It further appears that an application filed by the petitioner/plaintiff under Order 39 Rules 1 and 2 CPC was dismissed by the learned Civil Judge against which the appeal preferred by the petitioner/plaintiff was also dismissed. Perusal of the order dated 10.08.2022 passed in the Miscellaneous Appeal would clearly indicate that in respect of certain property a revenue dispute was pending between the petitioner and one Jeetu Singh. The recital of the said order also reflects that there exists a dispute with regard to demarcation of the property. The learned Civil Judge observed that the petitioner/plaintiff was attempting to collect evidence through appointment of a Commissioner and that the burden was upon the plaintiff to prove his own case. It was further observed that no sufficient or cogent reasons were assigned by the petitioner/plaintiff seeking demarcation of the subject property.

6. From perusal of the written statement filed by the



respondent/defendant it would indicate that the four-corner boundaries shown by the petitioner in fact pertain to land belonging to Smt. Pushpa Singh bearing Khasra No. 1282/44 area 0.008 hectare. The allegations with regard to encroachment upon the subject property have been specifically denied. It has been stated that the said Pushpa Singh purchased the said property by a registered sale deed and had constructed a boundary wall thereon during the year 1996–97, and has been in possession of the same since 1996. From assessment of the documents available on record, it is manifest that the petitioner is claiming rights over the suit property and seeking injunction by making allegations against the respondent. However, from the orders passed by the learned Civil Judge as well as the learned Appellate Court while dismissing the application under Order 39 Rules 1 and 2 CPC, it appears that the real dispute pertains to some other person and not the respondent herein. Prima facie, it appears that the proper and necessary party has not been impleaded in the present writ petition. As submitted by learned counsel Mr. Sharma, the respondent has no right, title, or interest in the subject property and is a stranger to the dispute. Unless and until the proper parties are arrayed as defendants, no useful purpose would be served by allowing the application under Order 26 Rule 9 CPC. Therefore, this Court does not find any illegality, perversity, or jurisdictional error in passing the impugned order.

7. Accordingly, the writ petition fails and is hereby dismissed. However, liberty is reserved in favour of the petitioner to file a fresh application, if any cause of action survives or eventually arises.

Sd/-
(Sachin Singh Rajput)
JUDGE

Pawan