

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE ANIL VERMA  
ON THE 26<sup>th</sup> OF JULY, 2024**

**MISC. PETITION No. 1424 of 2024**

*(ROOP KUNWAR W/O LATE RAJENDRA SINGH PARMAR AND ANOTHER  
Vs  
SMT. JASODABAI W/O NANDLAL PANWAR AND OTHERS)*

**Appearance:**

*(SHRI SATYAM PANDEY – ADVOCATE FOR THE PETITIONERS)  
(SHRI NAMIT GOSWAMI – ADVOCATE FOR RESPONDENTS NO.1 & 2)  
(SHRI AMIT RAVAL – GA FOR RESPONDENT NO.3/STATE)*

**ORDER**

1. Heard on IA No.4765/2024, which is an application for taking additional documents on record.
2. Documents may be relevant for proper adjudication of this petition, therefore, IA No.4765/2024 is allowed and the documents are taken on record.
3. Also heard on IA No.2252/2024, which is an application for ignoring the defects. Documents are quite legible, therefore, IA is allowed and the defects pointed out by the Registry is hereby ignored.
4. Both the parties heard.
5. Petitioners have preferred this petition under Article 227 of the Constitution of India against the impugned order dated 12.2.2024

passed by the Civil Judge, Junior Division, Narsingharh, District Rajgarh, whereby an application under Order 26 Rule 9 read with Section 151 of CPC filed by the petitioner for appointment of the commissioner has been dismissed.

6. Brief facts of the case are that the respondents/plaintiffs have preferred a civil suit before the trial Court for declaration of title and permanent injunction. During the pendency of the civil suit petitioners/defendants have preferred an application under Order 26 Rule 9 r/w S.151 CPC before the trial Court to appoint the commissioner for local inspection of the suit land. After hearing both the parties, trial court has dismissed the application by the impugned order dated 12.2.2024. Therefore, the petitioners have preferred this miscellaneous petition against the impugned order.

7. Learned counsel for the petitioners contended that the impugned order passed by the trial Court is against the law and facts. Acquisition of land due to widening of NH-12 is not disputed question of fact, but the remaining area after acquisition and the identity of the remaining land according to the different sale deeds, is now disputed. Matter cannot be decided without appointing the Commissioner because both the parties are claiming the remaining land after acquisition. Therefore, it is necessary to appoint the commissioner. The trial court has failed to appreciate the need of appointment of the commissioner to decide the real controversy of the suit. Hence, he prays that the impugned order be set aside and the application filed by the petitioners be allowed and

commissioner be appointed for local inspection. He has also placed reliance upon the orders passed by the coordinate bench of this Court in the case of *Gourishankar Vs. Shravan Singh and another vide order dated 12.10.2022 in WP No.11878/2017*, in the case of *Rajaram Mali and Another Vs. Smt. Ganga Bai (dead) and others vide order dated 2.11.2023 passed in MA No.1285/2005* and in the case of *Manish Singh Vs. Ajay Kumar Soni and others vide order dated 9.8.2023 passed in MP No.4408/2023*.

8. Per contra, learned counsel for respondents No.1 and 2 opposes the prayer and prays for its rejection by supporting the impugned order passed by the trial Court.

9. Respondent No.3/State is the formal party.

10. Counsel for the parties heard at length and perused the documents filed by them.

11. After considering all the facts and circumstances of the case, it appears that prior to filing this application revenue authorities have already conducted demarcation and demarcation report has been filed in the year 2017. Therefore, no need to appoint any commissioner for the aforesaid demarcation. Petitioners/defendants did not file any counter claim before the trial Court. Acquisition of the land by the Land Acquisition Officer is a separate issue, which is beyond the jurisdiction of the civil court.

12. Matter can be decided on the basis of the demarcation report and on the basis of oral evidence adduced by both the parties. Although during the pendency of the civil suit court has already having jurisdiction to appoint any revenue officer to conduct the demarcation, but no party can be permitted to use process of the court as an agency to collect the evidence.

13. In view of the aforesaid, this Court is of the considered opinion that the order passed by the trial Court is in accordance with law and no illegality or perversity has been found in the impugned order. Therefore, no need to appoint any commissioner for the local spot inspection. Accordingly this petition is dismissed by affirming the order dated 12.2.2024 passed by the trial Court.

C.C. as per rules.

**(ANIL VERMA)**  
**JUDGE**

Trilok/-