

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 20<sup>th</sup> OF JULY, 2024**

**MISC. PETITION No. 1886 of 2023**

***SHANTIBAI***

*Versus*

***JAMIL AHMED***

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**Appearance:**

*Shri Rajeev Bhatjiwale- Advocate for the petitioner.*

*Shri R.K. Shivas – Advocate for the respondent.*

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**ORDER**

1/ Petitioner has filed present present petition under Article 227 of Constitution of India being aggrieved by impugned order dated 27/02/2023 passed by Civil Judge, Junior Division, Ratlam in Civil Suit no. 198/2021, whereby respondent/plaintiff's application filed under Order 26 Rule 9 read with section 151 has been allowed.

2/ Learned counsel for the petitioner/defendant submitted that respondent/plaintiff has filed civil suit for declaration and permanent injunction against the petitioner. Earlier, the respondent's application had preferred an application under section 26 Rule 9 of CPC, which had been disposed of as withdrawn. Thereafter, respondent/

plaintiff preferred an application before SDO, Ratlam for inspection and demarcation. On 28/08/2021. Inspection and demarcation has been conducted and Panchanama has been prepared. Thereafter, respondent/plaintiff preferred an application under Order 26 Rule 9 of CPC, which was opposed by the petitioner, but vide order dated 27/02/2023, the application was allowed. Impugned order passed by the trial Court is against the law and facts. Respondent is trying to collect evidence by the Court for proving his case. Impugned order is not sustainable, hence deserves to be set aside.

3/ *Per-contra*, counsel for the respondent/plaintiff opposed the aforesaid prayer made by the petitioner by submitting that impugned order passed by the trial Court is just and proper and does not call for any interference.

4/ Heard learned counsel for both the parties and perused the entire record.

5/ Hon'ble apex Court in the case of **Haryana Waqf Board Vs. Shanti Sarup and Others reported in (2008) 8 SCC 671**, has held that the controversy between the parties regarding demarcation of the land because the parties had adjacent lands, therefore, second appeal should have not been dismissed summarily and Local Commissioner ought to have been appointed for demarcation of land. Similar view was adopted by the co-

ordinate Bench of this Court in the case of **Prembai W/o Omkarlal and Others Vs. Ghanshyam S/o Vallabhdas and Others reported in 2010(3) MPLJ345**

6/ Co-ordinate Bench of this Court in the case of **Bhawarlal Vs. Shyamlal and others ( M.P no. 5361/2022 decided on 14/03/2023)** has held that powers conferred under Order 26 Rule 9 of C.P.C can be exercised at any stage, but for a limited purpose.

7/ In light of the aforesaid judgments, this Court does not find any illegality or perversity in impugned order passed by the trial Court and sees no reason to interfere with impugned order as the Court below has applied correct principle of law in deciding the said application.

8/ Accordingly, this petition, being devoid of merit, is hereby **dismissed**.

CC as per rules.

(ANIL VERMA)  
JUDGE