

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 24<sup>th</sup> OF APRIL, 2024**

**MISC. PETITION No. 1881 of 2024**

**BETWEEN:-**

1. DASHRATH PRASAD S/O LATE RAMA RATHORE, AGED ABOUT 85 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE SAMATPUR, TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
2. VAISHAKHU S/O LATE SEMLIYA RATHORE, AGED ABOUT 82 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
3. PURNIYA D/O LATE SEMLIYA RATHORE, AGED ABOUT 75 YEARS, OCCUPATION: HOUSEWIFE R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPPUR (MADHYA PRADESH)
4. FATELAL RATHORE S/O DUASIYA BAI, AGED ABOUT 60 YEARS, R/O VILLAG EBARBASPUR POLICE STATION AND TEHSIL ANUPPUR DISRICT ANUPPUR (MADHYA PRADESH)
5. BAGWANDAS RATHORE S/O DUASIYA BAI, AGED ABOUT 52 YEARS, R/O VILLAG EBARBASPUR POLICE STATION AND TEHSIL ANUPPUR DISRICT ANUPPUR (MADHYA PRADESH)
6. GULALIYA BAI RATHORE D/O DUASIYA BAI, AGED ABOUT 49 YEARS, OCCUPATION: HOUSE WIFE R/O WRD NO 1 SAMATPUR POLICE STATION TEHSIL ANUPPUR, DISTRICT ANUPPUR (MADHYA

**PRADESH)**

7. **JALEBIYA BAI D/O DUASIYA BAI, AGED ABOUT 47 YEARS, OCCUPATION: HOUSE WIFE R/O BARBASPUR POLICE STATION AND TEHSIL ANUPPUR, DISTRICT ANUPPUR (MADHYA PRADESH)**
8. **KAUSHILYA BAI D/O DUASIYA BAI, AGED ABOUT 44 YEARS, OCCUPATION: HOUSEWIFE R/O BHAGAT BANDH POLICE STATION AND TEHSIL ANUPPUR DISTRICT ANUPPUR (MADHYA PRADESH)**
9. **MUNNI BAI W/O LATE TEJBALI RATHORE, AGED ABOUT 62 YEARS, OCCUPATION: HOUSE WIFE R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**
10. **SUNIL S/O TEJBALI RATHORE, AGED ABOUT 36 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**
11. **ANIL S/O TEJBALI RATHORE, AGED ABOUT 33 YEARS, R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**
12. **DHARMENDRA S/O TEJBALI RATHORE, AGED ABOUT 48 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**
13. **MAYA D/O LATE TEJBALI RATHORE, AGED ABOUT 41 YEARS, OCCUPATION: HOUSE WIFE R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**
14. **INDRAWATI D/O LATE TEJBALI RATHORE, AGED ABOUT 38 YEARS, OCCUPATION: HOUSE WIFE R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)**

15. SOHAN LAL S/O LATE RAMSHARAN RATHORE, AGED ABOUT 63 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
16. SHYAMLAL S/O LATE RAMSHARAN RATHORE, AGED ABOUT 61 YEARS, R/O VILLAGE SAMATPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
17. ANIL KUMAR S/O LATE MOHAN LAL RATHORE, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE ANUPPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
18. SUNIL KUMAR S/O LATE MOHAN LAL RATHOR, AGED ABOUT 42 YEARS, R/O VILLAGE ANUPPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
19. RAVINDRA KUMAR S/O LATE MOHAN LAL RATHORE, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE ANUPPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
20. KRISHNA DEVI D/O LATE MOHAN LAL RATHORE, AGED ABOUT 53 YEARS, OCCUPATION: HOUSE WIFE R/O VILLAGE ANUPPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
21. DURGA DEVI D/O MOHAN LAL RATHORE, AGED ABOUT 50 YEARS, OCCUPATION: HOUSE WIFE R/O VILLAGE ANUPPUR TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
22. GEDANLAL S/O LATE CHARKU RATHORE, AGED ABOUT 60 YEARS, OCCUPATION: AGRICULTURIS VILLAGE SAMATPUR POLICE STATIN AND TEHSIL ANUPPUR DISTRICT ANUPPUR (MADHYA PRADESH)
23. BHAGWANDEEN S/O LATE CHRKU RATHORE, AGED ABOUT 57 YEARS, OCCUPATION: AGRICULTURIST VILLAGE

**SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)**

- 24. KEMLI D/O LAE CHARKU RATHORE,  
AGED ABOUT 66 YEARS, OCCUPATION:  
HOUSE WIFE VILLAGE SAMATPUR  
POLICE STATIN AND TEHSIL ANUPPUR  
DISTRICT ANUPPUR (MADHYA PRADESH)**
- 25. SUKWARIYA D/O LATE CHARKU  
RATHORE, AGED ABOUT 63 YEARS,  
VILLAGE SAMATPUR POLICE STATIN  
AND TEHSIL ANUPPUR DISTRICT  
ANUPPUR (MADHYA PRADESH)**
- 26. KEMLA S/O LATE CHHAKLU RATHORE,  
AGED ABOUT 52 YEARS, VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)**
- 27. SHYAMWATI W/O LATE KALLU  
RATHORE, AGED ABOUT 24 YEARS,  
OCCUPATION: HOUSE WIFE VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)**
- 28. MOHAN S/O LATE KALLU RATHORE,  
AGED ABOUT 24 YEARS, OCCUPATION:  
AGRICULTURIST VILLAGE SAMATPUR  
POLICE STATIN AND TEHSIL ANUPPUR  
DISTRICT ANUPPUR (MADHYA PRADESH)**
- 29. SHUBHAM S/O LATE KALLU RATHORE,  
AGED ABOUT 19 YEARS, OCCUPATION:  
AGRICULTURE VILLAGE SAMATPUR  
POLICE STATIN AND TEHSIL ANUPPUR  
DISTRICT ANUPPUR (MADHYA PRADESH)**
- 30. BIMLA D/O LATE KALLU RATHORE,  
AGED ABOUT 35 YEARS, VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)**
- 31. RANU S/O LATE KALLU RATHORE, AGED  
ABOUT 24 YEARS, OCCUPATION: HOUSE**

WIFE VILLAGE SAMATPUR POLICE  
STATIN AND TEHSIL ANUPPUR DISTRICT  
ANUPPUR (MADHYA PRADESH)

32. NEETU D/O LATE KALLU RATHORE,  
AGED ABOUT 24 YEARS, VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)
33. BABITA D/O LATE KALLU RATHORE,  
AGED ABOUT 22 YEARS, VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)
34. VIDYA BAI W/O LATE PREMALAL  
RATHORE VILLAGE SAMATPUR POLICE  
STATIN AND TEHSIL ANUPPUR DISTRICT  
ANUPPUR (MADHYA PRADESH)
35. SANJAY S/O LATE PREMALAL RATHORE,  
AGED ABOUT 26 YEARS, OCCUPATION:  
HOUSEWIFE VILLAGE SAMATPUR  
POLICE STATIN AND TEHSIL ANUPPUR  
DISTRICT ANUPPUR (MADHYA PRADESH)
36. DEEPAK S/O LATE PREMLAL, AGED  
ABOUT 22 YEARS, VILLAGE SAMATPUR  
POLICE STATIN AND TEHSIL ANUPPUR  
DISTRICT ANUPPUR (MADHYA PRADESH)
37. PARVATI D/O LATE PREMLAL RATHORE,  
AGED ABOUT 30 YEARS, VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)
38. MAMTA D/O LATE PREMLAL RATHORE,  
AGED ABOUT 28 YEARS, VILLAGE  
SAMATPUR POLICE STATIN AND TEHSIL  
ANUPPUR DISTRICT ANUPPUR (MADHYA  
PRADESH)

.....PETITIONERS

*(BY SHRI DINESH KUMAR UPADHYAY - ADVOCATE)*

**AND**

1. PREM KUMAR TRIATHI S/O LAKSHPATI PRASAD TRIPATHI, AGED ABOUT 73 YEARS, R/O VILLAGE SAMATPUR, TEHSIL AND DISTRICT ANUPPUR (MADHYA PRADESH)
2. SANAT KUMAR TRIPATHI S/O LAKSHPATI PRASAD TRIPATHI, AGED ABOUT 70 YEARS, VILLAGE SAMATPUR POLICE STATIN AND TEHSIL ANUPPUR DISTRICT ANUPPUR (MADHYA PRADESH)
3. MAHENDRA KUMAR TRIPATHI S/O LAKSHPATI PRASAD TRIPATHI, AGED ABOUT 68 YEARS, VILLAGE SAMATPUR POLICE STATIN AND TEHSIL ANUPPUR DISTRICT ANUPPUR (MADHYA PRADESH)
4. DHANNU RATHORE S/O LATE SEMLIYA RATHORE, AGED ABOUT 82 YEARS, VILLAGE SAMATPUR POLICE STATION AND TEHSIL ANUPPUR (MADHYA PRADESH)
5. STATE OF MADHYA PRADESH THROUGH COLLECTOR, ANUPPUR, DISTRICT ANUPPUR (MADHYA PRADESH)

.....RESPONDENTS

(NONE)

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*This petition coming on for admission this day, the court passed the following:*

**ORDER**

1. This petition under Article 227 of the Constitution of India has been filed seeking the following reliefs :-
  - (i) Issue a writ in nature of certiorari to set-aside the impugned order dated 19.1.2024 (Annexure-P/1) passed by Civil Judge Senior

Division, Anuppur, District Anuppur (MP) in  
RCSA No.43/2020, in the interest of justice.

(ii) Any other relief which this Hon'ble Court  
deem fit may also be granted.

2. By the impugned order the Trial Court has rejected the application filed by the petitioners for appointment of local Commissioner under Order 26 Rule 9 of CPC.
3. It is submitted by counsel for the petitioners that Trial Court has committed an error by rejecting the said application whereas the dispute could have been resolved by appointment of local Commissioner.
4. Heard learned counsel for the petitioners.
5. Petitioners had filed an application under Order 26 Rule 9 of CPC for the following reliefs :-
  - (अ) वाद पत्र के साथ संलग्न नजरी नक्शा के अन्तर्गत के भूखण्ड का खसरा नम्बर सर्वे बन्दाबस्त की खतौनी वर्ष 1958-59 की खतौनी के आलोक में क्या है।
  - (ब) उक्त नजरी नक्शा के अन्तर्गत के भूखण्ड रकवा/क्षेत्रफल क्या है और उसके अन्तर्गत किसका-किसका किस-किस प्रकार से आधिपत्य है।
6. From plain reading of the application filed under Order 26 Rule 9 of CPC it is clear that petitioners want to collect evidence by getting a local Commissioner appointed. Furthermore, relief clause A is completely vague and accordingly, Shri Dinesh Kumar Upadhayay was requested to clarify, then he too was unable to clarify the same.
7. Be that whatever it may be.
8. It is well established principle of law that Trial Court cannot delegate its power to local Commissioner to decide the dispute and the question of

possession is necessarily a question of fact which has to be adjudicated by the Trial Court on the evidence led by the parties.

9. Under these circumstances, this Court is of the considered opinion that by filing an application under Order 26 Rule 9 CPC, since the petitioners have tried to collect the evidence which is not permissible under the law, the Trial Court did not commit any jurisdictional error by rejecting the said application.
10. Accordingly, the petition fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

JP