

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (227) No. 585 of 2009

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PETITIONER
Defendant No. 1

: Prince Kumar S/o Shri Ramnivas Gupta, aged about 26 years, occupation agriculture, resident of Sitapur, P.S. and Tehsil Sitapur, District Surguja (CG).

VERSUS

RESPONDENTS

- : 1. Shrinivas S/o Dwarika Prasad Gupta, aged about 45 years, occupation Agriculture.
2. Gopal Prasad Gupta S/o Dwarika Prasad Gupta, aged about 40 years, occupation agriculture.
3. Madan Prasad S/o Dwarika Prasad Gupta, aged about 30 years, occupation agriculture.
4. Purshottam S/o Dwarika Prasad Gupta, aged about 28 years, occupation agriculture.

(Plaintiffs)

All resident of village Suarpara, P.S. Batauli, Tehsil Sitapur, District Sitapur (CG).

5. Smt. Shobha Deve W/o Late Ramnivas Gupta, aged about 48 years, r/o Sitapur, P.S. and Tehsil Sitapur, District Surguja (CG).
6. Satyanarayan S/o Sukhdev, aged about 36 years, occupation agriculture, R/o Narbadapur, P.S. Kamleshwarpur, Tehsil Sitapur, District Surguja (CG).
7. State of Chhattisgarh, through Collector, Surguja Ambikapur (CG).

(Defendants No. 2 to 4.)

(WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA)

(SB: Hon'ble Mr. Satish K. Agnihotri, J.)

Present : Shri Shakti Raj Sinha, Advocate for the petitioner.
Shri Bhaskar Pyasi, Panel Lawyer for the respondent No.7/State.

ORAL ORDER

(Passed on 31st day of January, 2009)

With the consent of learned counsel appearing for the parties, the matter is taken up for hearing finally.

1. The petitioner/defendant No. 1, by this petition, challenges the legality and validity of the order dated 15.12.2008 (Annexure P/1); passed by the Civil Judge Class II, Sitapur, in Civil Suit No. 64A/07 (Shrinivas and Others Vs. Prince Kumar and Others) whereby, the objection filed by the petitioner/defendant No. 1 under Order 16 Rule 1(3) read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') has been rejected.



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- Learned counsel for the petitioner/defendant No. 1 submits that the plaintiffs/respondents No. 1 to 4 have filed a civil suit before the court below for declaration and permanent injunction in relation to the suit land described in schedule A of the plaint, bearing part of Khasra No. 1173 and 1152 total area 2.44 hectare, situated at Village Suarpara, Tahsil Sitapur, Distt. Surguja (CG).
3. Mr. Sinha further submits that in the said suit, the plaintiff produced a list of witnesses and thereafter their statements were recorded which is evident from Annexure P/5. Thereafter, on 22.10.2008 the plaintiffs filed second list of witnesses. The petitioner/defendant No 1 filed objection under Order 16 Rule 1 (3) read with section 151 of CPC that the affidavit of witness Mahesh Gupta produced on 16.9.2008 in the form of evidence was on a non-judicial stamp paper, his name was not mentioned in the earlier list of witnesses, therefore the affidavit filed by him may be rejected. It was also submitted by the defendant No.1 that there is delay in submission of the affidavit as well as the list of witnesses. The same has been filed with mala fide intention.
4. It was next contended that the court below without appreciating the facts and circumstances of the case, dismissed the application/objection filed by the petitioner/defendant No.1. The court below has not considered the fact that the ~~plaintiffs~~ are trying to delay the trial of the suit. The plaintiffs produced the second list of witnesses including the name of one Gopal Prasad Gupta (P.W. 1) after one and half year of submission of first list.
5. I have heard learned counsel for the petitioner, perused the pleadings and documents appended thereto.



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6. While considering the objections raised by the petitioner/defendant No.1, learned Court below has considered that the plaintiffs' evidence is not over and the trial was at the stage of evidence of plaintiff, therefore it is justifiable to allow sufficient opportunity to the plaintiff to produce his evidence.
7. Order 16 Rule 1(3) of the Code of Civil Procedure, 1908 clearly provides that the Court may for reasons to be recorded, permit a party to call any witness other than those whose names appeared in the list referred to in sub-rule (1) and as such, for proper adjudication, there is no bar to entertain a second list. The objection of learned counsel is that in the second list, there is a name of one Gopal Prasad Gupta also, who was in the first list and he has been examined. Thus, he cannot be summoned for re-examination without any rhyme or reason.
8. So far as legal position is concerned, contention of learned counsel deserves acceptance. The learned Judge has not indicated as to why a person who has already been examined be permitted to be included in the second list for the purpose of re-examination. It is, therefore, clarified that the witness shown in the second list may be entertained for the purpose of examination if it is found that they are necessary for the purpose of adjudication of the suit. Other persons, who had already been examined cannot be re-examined for asking by the plaintiff.
9. In view of the foregoing, nothing survives in this petition for adjudication. Thus, this petition stands disposed of, summarily.
10. Consequently, I.A. No. 1, also stands dismissed.

Sahu

Sd/-
Satish K. Agnihotri
Judge