

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 481 of 2015

1. Smt. Geeta Modi Aged About 63 years W/o Late Vishamber Pd. Modi
2. Raj Kumar Modi Aged About 42 Years S/o Late Vishamber Pd. Modi
3. Rakesh Kumar Modi Aged About 37 Years S/o Late Vishamber Pd. Modi
4. Vinay Kumar Modi Aged About 31 Years S/o Late Vishamber Pd. Modi

All R/o Saptdev Mandir Main Road, Korba

5. Smt. Vidhya Agrawal Aged About 44 Years W/o Ashok Kumar Agrawal R/o Arogha Marg Korba Chhattisgarh
6. Smt. Sweta Agrawal Aged About 29 Years W/o Madhukant Agrawal R/o Rishi Colony Dayalband Bilaspur Chhattisgarh

---- Petitioners

Versus

1. Vijeet S/o Late N.V. Vijayan
2. Vijesh S/o Late N.V. Vijayan
3. Vijayraj S/o Late N.V. Vijayan
4. Sushri Vijayshree D/o Late V.N. Vijayan

All R/o Infront Of Usha Complex (Infront Of Purana Pawan Talkies) Main Road, Korba Chhattisgarh

5. Bhagwan Das Modi S/o Dwarika Das Modi R/o Main Road Korba Chhattisgarh

---- Respondents

For Petitioners	:	Shri Parag Kotecha, Advocate
For Respondent No.3	:	Shri Rajesh Singh, Advocate

Order On Board

10/08/2015

The matter is heard finally with the consent of learned counsel for the parties.

1. The petitioners have filed this petition aggrieved by order 10.3.2015 passed by 2nd Civil Judge Class-I Korba, by which the petitioners' application to recall one of the witnesses for the purpose of proving documents already on record, has been rejected.

2. Learned counsel for the petitioners submits that in order to establish its case, the documents which are already on record are required to be proved, which can be done only by getting those documents exhibited by the evidence of plaintiff's witness Rajkumar Modi. He submits that earlier when Raj Kumar Modi was examined, though some of the documents were exhibited, but due to inadvertent mistake, some of the documents on which plaintiffs rely upon and were already filed, could not be exhibited. This mistake was soon realized and therefore, application has been made. The plaintiffs are prepared to produce the witnesses at the earliest and examine him soon. Till date, the defence witnesses have not opened and, therefore, at this stage, no prejudice would be caused to other party. On the other hand, if an opportunity is not afforded to the petitioners, the petitioners would be deprived of leading an important piece of documentary evidence to establish their case.
3. On the other hand, learned counsel for the respondent submits that the provision contained in Order XVIII Rule 17 CPC cannot be taken recourse to to rectify the mistake committed at the time of examination of a witness . He submits that plaintiff was granted ample opportunity, but the opportunity having not been availed, at a later stage, the petitioners' application cannot be allowed on mere asking.
4. The document and impugned order shows that plaintiffs' evidence has been concluded only on 5.2.2015 and it is not a case where after a long time and after recording defendant witnesses, plaintiffs' sought to re-examine a witness to prove the document. The documents is already on record. It is stated to be rent note. Looking to the nature of controversy, the document appears to be relevant. The evidence of defendant's witness has not begun. Therefore in these circumstances, depriving the petitioners an opportunity to prove document by recalling witness may result in miscarriage of justice. For that reason alone, I am inclined to interfere with the impugned order.
5. Accordingly, impugned order dated 10.3.2015 is set aside and petitioners' application under Order XVIII Rule 17 read with Section 151 CPC is allowed. It is, however, directed that the petitioners/plaintiff shall be granted one opportunity only to recall and re-examine witness –Rajkumar Modi. It will be for the plaintiffs to keep their witness present on the date fixed for examination and the Court will not be required to issue summons. Further, upon such re-examination of the witness, the defendants shall be entitled to further cross-examine the said witness.
6. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
JUDGE