

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 82 of 2016

1. Smt. Rajani Katela W/o Shri Basant Latela, aged about 68 years, R/o Civil Lines, Raipur, Pin 492001, Police Station Civil Lines, Revenue Tahsil and District Raipur, (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Kamladevi Jain W/o Late Shri Parasmal Jain, aged about 63 years, R/o Shankar Nagar, Near Water Tank Raipur, Pin 492001, Police Station Civil Lines, Revenue Tahsil & Distt. Raipur, (Chhattisgarh)
2. Shri Subhash Jain, S/o Late Shri Parasmal Jain, aged about 43 years, R/o Shankar Nagar, Near Water Tank Raipur, Pin 492001, Police Station Civil Lines, Revenue Tahsil & Distt. Raipur, (Chhattisgarh)

---- Respondents

For Petitioner – Shri V.G.Tamaskar, Advocate.

For Respondents – Shri B.P.Sharma and Shri Vivek Chopda, Advocates appearing on instruction of the respondents.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

11/02/2016

1. As per direction of this Court dated 4th February, 2016, affidavit of the concerned counsel Shri A.K.Nande is filed.
2. Perused the said affidavit.
3. At the outset, learned counsel for the petitioner submits that the defendants' witnesses Subhashish Jain, Sitaram Prajapati and Mahesh Kumar Bataviya are not cross-examined on behalf of the petitioner. It is further submitted that as per order dated 25-08-2015 in WP227 No.703 of 2013 of this Court, this Court directed to dispose of the matter as expeditiously as possible preferably within one year from the next date of hearing. They are ready to co-operate for early disposal of the case. Without commenting anything on other facts regarding opportunity afforded, matter challenged and submission of the respective counsel regarding cross-examination of the above witnesses, learned counsel submits that in the larger interest of justice, if they may be

given an opportunity to cross-examine those witnesses, they will cross-examine them and the Court may pass judgment thereafter as per provisions of law after hearing arguments by the parties.

4. On behalf of the respondents, it is submitted that they are disputing all the contents as submitted on behalf of the petitioner. They also submit that if at all, any opportunity to cross-examine the above witnesses is given to the petitioner, then as the defendants are not having control on those witnesses, hence, the petitioner is required to summon those witnesses after paying process fee and after their appearance they may be cross-examined.

5. For the purpose of appreciation of the entire submission made in this behalf by the parties, I have perused the instant WP(227) and other material available on record. In the larger interest of justice, in the considered view of this Court, one reasonable opportunity would be appropriate for the petitioner to cross-examine the defendants' witnesses namely Subhashish Jain, Sitaram Prajapati and Mahesh Kumar Bataviya and as prayed on behalf of the respondents that they are not in control of the respondents and they are not in position to present them as and when directed, it would also be appropriate that the petitioner shall pay P.F. along with prayer to call those witnesses through summons in this behalf and after their appearance before the Court below, an opportunity to cross-examine them be given and thereafter after hearing the arguments of the parties, the trial Court dispose of the matter as per provisions of law.

6. On due consideration, the instant WP(227) is disposed of without any appreciation on its merit. Both the parties are directed through their respective counsel to remain present before the Court below either in person or through their counsel on **17th February, 2016**, the petitioner is directed to pay P.F. along with due process to summon Subhashish Jain, Sitaram Prajapati and Mahesh Kumar Bataviya through summon on the same day. The Court below

is directed to issue summon to those defendants' witnesses on the same day and fix a date for their presence and also for their cross-examination by the petitioner on a date fixed by the trial Court upon consideration of the entire facts regarding presence of the witnesses. Thereafter, the petitioner is directed to cross-examine those witnesses on a date fixed by the Court below in this behalf. After cross-examination, the trial Court after hearing both the parties shall dispose of the matter as per direction given in WP227 No.703 of 2013.

7. The petition disposed of.

8. No order as to cost.

9. Certified copy today.

10. The parties may file certified copy before the Court below for compliance.

11. Registrar (Judicial) is also directed to send a copy of this order to the Court below through usual mode and fax mode, in addition, for compliance.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE