

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 15 of 2016**

1. Jahuran Bibi Wd/o Samiurkhan, aged about 80 (65) years, caste Muslim, R/o Village Tokopara, Raikera, P.S. and Tahsil Seetapur, Revenue and Civil District Surguja (Chhattisgarh).....(Plaintiff)

---- Petitioner**Versus**

1. Aabid Khan, S/o Late Samiurkhan, aged about 65 years, R/o Village Tokopara, Raikera, P.S. and Tahsil Seetapur, Revenue and Civil District Surguja (Chhattisgarh).....(Defendant)
2. Khalillah, S/o Late Samiurkhan, aged about 65 years, R/o Village Tokopara, Raikera, P.S. and Tahsil Seetapur, Revenue and Civil District Surguja (Chhattisgarh).....(Defendant)
3. State of Chhattisgarh, Through : Collector, Ambikapur, District Surguja (Chhattisgarh).....(Defendant No.3)

---- Respondents

For Petitioner – Mr. Sunil Tripathi, Advocate.

For Respondent No.1 – Ms. Priyanka Mehta, Advocate.

For Respondent No.2 – None, though served.

For Respondent No.3 – Mr. S.C.Khakhariya, Deputy Advocate General.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****03/05/2016**

1. With the consent of the parties, the matter heard finally at the motion stage itself.
2. At the outset learned counsel for the petitioner submits that the contesting parties before the Court below are mother and sons. The petitioner/plaintiff had filed the civil suit for declaration of title and permanent injunction. The Mehar is one of the material issue. The petitioner/plaintiff may be given an opportunity on the basis of mercy. She will pay all the cost imposed before adducing evidence on behalf of the petitioner and further submits that respondents 1 and 2 may get an opportunity to adduce additional evidence in case they so advised. They will adduce their evidence before the

Court below on a date fixed by the trial Court; they will produce their witnesses on their own responsibility. Hence, an opportunity may be granted for the same.

3. Learned counsel for respondent No.1 has opposed the above submission.

4. To appreciate the submission made on behalf of the petitioner, perused the impugned order dated 09-10-2015, copy of the plaint and other material.

5. Though from perusal of the impugned order, it goes to show that the matter is long pending, many opportunities have been granted to the petitioner/plaintiff, in the interest of justice, looking to the entire pleadings, facts and circumstances, an opportunity would be just so as to enable the petitioner/plaintiff to present her evidence and to get a judgment and decree on the merits and pleadings of the parties.

6. Consequently, the submission made in this behalf seems to be justified and proper, hence, the instant WP(227) is disposed of and the petitioner is directed to pay all the cost imposed as a condition precedent before examination of her witnesses. The petitioner is directed to present all her witnesses before the Court for examination; the trial Court is directed to fix a date for recording the evidence of the petitioner as per convenience of the court after next date of hearing. It is however made clear that if before examination of the petitioner's witnesses the remaining cost is not paid and the petitioner fails to produce her entire witnesses on the date so fixed by the trial Court, no second opportunity would be granted for evidence of the petitioner/plaintiff. It is further observed that after recording of the evidence of the plaintiff/petitioner, the respondents may be granted reasonable opportunity to adduce their witnesses in rebuttal if they wish so. In case, the

petitioner/plaintiff fails to comply this order of this Court, then impugned order dated 09-10-2015 shall remain operative and effective.

7. The petition disposed of.

8. No order as to cost.

9. Parties may file copy of this order before the trial Court for compliance and further proceedings.

10. Registrar (Judicial) is also directed to transmit copy of the order to the Court below for compliance and further proceeding through usual mode and fax mode immediately.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE