

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 12 of 2016**

1. Saji Mathai S/o Late Shri M.K. Mathai, Aged About 38 Years
2. Smt. Usha Trivedi, W/o Shri N. Trivedi, Aged About 61 Years
3. Rajkumar Garg, S/o Shri Bhuraji Garg, Aged About 76 Years

All R/o Nehru Nagar, P.S. Civil Lines, Bilaspur, Tahsil, Civil And Revenue District Bilaspur, (Chhattisgarh)

---- **Petitioners**

Versus

1. (A) Mahendra Singh Aged About 38 Years
1. (B) Mukesh Singh, Aged About 33 Years
1. (C) Vikarm Singh, Aged About 33 Years
All S/o Late Shri Bhagwan Singh, R/o Kududand, Near Mungeli Naka Chowk, P.S. Civil Lines, Bilaspur, Tahsil, Civil & Revenue Distt. Bilaspur, (Chhattisgarh)
2. Arjun Bhojwani, S/o Shri Sevakram Bhojwani, Aged About 58 Years R/o Pindidas Lane, Gondpara, Bilaspur, Tahsil, Civil & Revenue District Bilaspur, (Chhattisgarh)
3. State Of Chhattisgarh, Through Collector, Bilaspur, (CG)
4. Shatruhan Singh, S/o Late Phekan Singh, Aged About 51 Years Caste Thakur Occupation Business
5. Meera, Aged About 55 Years occupation House wife
6. Saraswati, Aged About 57 Years occupation house wife
7. Sunita, Aged About 57 Years occupation House wife
8. Premlata, Aged About 44 Years occupation House wife
Respondents No. 4 to 8 are D/o. Late Phekhan Singh, Caste Thakur, all R/o Mangla, Near Nakachowk, Kududand, Bilaspur, Post Bilaspur, P.S. Civil Line Bilaspur, Civil & Revenue Distt. Bilaspur, (CG)
9. Sevakram Bhojwani, Aged About 79 Years, son of late Jeewat Ram Bhojwani, occupation Business
10. Smt. Kanta Bhojwani, Aged About 51 Years W/o Arjun Bhojwani, Occupation House Wife, both Caste Sindhi, Hindu, R/o Gondpara, Subhash Nagar, Ward No. 21, Bhojwani Gali, Bilaspur, P.O. Gole Bazar, P.S. City Kotwali, Tahsil, Civil & Revenue District Bilaspur, (CG)
11. V. T. Thomas, S/o Shrithomas Thomas, Aged About 67 Years R/o Nehru Nagar, P.S. Civil Lines, Bilaspur, Tahsil, Civil & Revenue Distt. Bilaspur (Chhattisgarh) Presently At Valiyakalayil House, Elanthoor East (P.O.) Pathanamthitta (Kerala) Pin 689643
12. (A) Vinod Binkar, S/o Late Santram Binkar, Aged About 40 Years
12. (B) Arvind Binkar, S/o Late Santram Binkar, Aged About 38 Years
12. (C) Chetan Binkar, S/o Late Santram Binkar, Aged About 36 Years
12. (D) Alok Binkar, S/o Late Santram Binkar, Aged About 31 Years
12. (E) Snehlata Binkar, D/o Late Santram Binkar, Aged About 26 Years

12. (F) Mukesh Binkar, S/o Late Santram Binkar, Aged About 23 Years

12. (G) Smt. Sawitri Binkar, W/o Late Santram Binkar, Aged About 57 Years

All 12(A) to 12(G) R/o Nehru Nagar, P.S. Civil Lines, Bilaspur, Tahsil, Civil And Revenue District Bilaspur (Chhattisgarh), At Present Near Chhote Church, Tarbahar, Bilaspur (Chhattisgarh)

---- Respondents

For Petitioners	:	Mr. Ramkumar Tiwari, Adv.
For Respondent No. 3/State.	:	Ms. M. Asha, Panel Lawyer
For other Respondents	:	Not noticed.

Order On Board

24-02-2016

As the question of maintainability of the petition is involved, the matter is heard on motion without even noticing the respondents.

2. Brief facts necessary for disposal of this petition are that despite the order dated 28-11-2013 passed by this Court in W.P. (227) No. 803/2013 directing the court below to give one opportunity to the plaintiff for adducing additional evidence and to prove the document, the petitioner has not availed the opportunity and thereafter again prayed for the evidence. The same was dismissed with costs on 10-12-2014. Thereafter again plaintiff filed said application under Order 18 Rule 17 read with Section 151 of the C.P.C. The court below appreciated and dismissed the said application with cost of Rs. 1,000/-. The court below also rejected an application under Section 151 of the C.P.C. seeking permission to summon the revenue inspector, Masturi holding that the said document had been filed on 13-5-2014 and the application was filed after more than an year, such delay is unexplained, hence the court below refused to grant any relief. Against the said order, the petitioner has filed this petition under Article 227 of the Constitution of India praying for setting aside the impugned order dated 15-12-2015 as the same is not in accordance with law and facts and the plaintiff be re-examined to get the certified copy exhibited.
3. Learned counsel for the petitioner submitted that an opportunity be given for proving the document. They have not committed any mistake and without delay they came to the court for prayer. It is further submitted that on 9-7-2015, the plaintiff had filed notice to admit document under Order 12 Rule 3 of the C.P.C. wherein the court appreciated that as the defendant refused the said document, plaintiff may prove their document as per provisions of law and on 13-8-2015 they have filed the application for the prayer.
4. Perusal of the documents goes to show that in W.P.(227) No. 803/2013 on

11-4-2014, plaintiffs were permitted for examination of Raj Kumar thereafter on 14-12-2014, the Presiding Officer on repeat application dismissed the same with cost. Thereafter again, the application under question for evidence dated 15-12-2015 was filed. On due consideration, it goes to show that the order dated 28-11-2013 passed by this Court in W.P. (227) No. 803/2013 is not filed by the petitioner which goes to show that the petitioner has not approached this court with clean hands and further that an opportunity was granted as per order of this Court, but the petitioner may not choose to avail half of the opportunity and keep half of the opportunity reserved for further dates. On due consideration, the order dated 9-7-2015 whereby the court held that the plaintiff may prove his document as per provisions of law does not mean the said order has over riding effect for procedure of adducing of the evidence specially when there is an order of this Court in WP (227) No. 803 of 2013.

5. With due consideration, the opportunity granted by this Court as appreciated in the impugned order dated 15-12-2015 is not fully availed by the plaintiff, thereby he himself has not taken care of the opportunity granted by this Court.
6. With the above facts, I do not perceive any illegality or impropriety in the impugned order passed on 15-12-2015. The instant writition being sans substance is dismissed at motion stage itself.

Sd/-
(Chandra Bhushan Bajpai)
Judge