

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.935 of 2015**

1. Pushpa Dey Wd/o Late Arun Kumar, Aged About 80 Years R/o Mission Hospital Road, Old Law College Road, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh).....Defendant
2. Utsav Dey S/o Late Arun Kumar, Aged About 55 Years R/o Mission Hospital Road, Old Law College Road, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh).....Defendant
3. Utpal Dey, S/o Late Arun Kumar, Aged About 53 Years R/o Mission Hospital Road, Old Law College Road, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh).....Defendant

---- Petitioners

Versus

1. Sanjay Dey S/o Late Satyendra Nath Dey, Aged About 61 Years Presently Residing At 5 Aastagan Lane, Kolkota (West Bengal) Through Their Attorney General Deepak Khandelwal, S/o Prabhudayal Khandelwal, Aged 27 Years, Resident Of Deep Hotel, Tahsil And District Bilaspur (Chhattisgarh).....Plaintiff
2. Sutapa Dey, Wid/o Late Sujay Dey, Aged About 57 Years Presently Residing At 5 Aastagan Lane, Kolkota (West Bengal) Through Their Attorney General Deepak Khandelwal, S/o Prabhudayal Khandelwal, Aged 27 Years, Resident Of Deep Hotel, Tahsil And District Bilaspur (Chhattisgarh).....Plaintiff
3. Soumik Dey, S/o Late Sujay Dey, Aged About 32 Years Presently Residing At 5 Aastagan Lane, Kolkota (West Bengal) Through Their Attorney General Deepak Khandelwal, S/o Prabhudayal Khandelwal, Aged 27 Years, Resident Of Deep Hotel, Tahsil And District Bilaspur (Chhattisgarh).....Plaintiff
4. State Of Chhattisgarh Through Collector, Bilaspur (Chhattisgarh).....Defendant No. 4
5. Minakshi Dey, Wd/o Late Rathindra Nath, Resident Of 43, G. T. Road, First Floor, Near Punjab National Bank, Kolkata (West Bengal).....Defendant No. 5

---- Respondents

Shri Amrito Das, counsel for the petitioners.
 Shri Devarshi Thakur, counsel for respondents 1 to 3.
 Shri SC Khakharia, Dy. Advocate General for the State/
 respondent No.4.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****03.02.2016.**

Heard.

2. Learned counsel for the petitioners submits that respondent No.5 is not a necessary party in the present petition as the petitioners are not claiming any relief from respondent No.5 and also respondent No.5 is arrayed in the cause title of the suit as defendant No.5, hence, the instant petition may be disposed of in the motion stage itself.

3. On due consideration, the petition is heard finally at the motion stage itself.

4. Facts in brief in the instant petition is that the petitioners are the defendants 1 to 3 in Civil Suit No.143A/15 pending before the Court below. During trial of the aforementioned civil suit, the petitioners/defendants 1 to 3 had filed list of witness on 24.6.2013 and thereafter on 23.10.2015 they filed an application under Order 16 Rule 1 & 2 of the CPC and prayed that Nazool Inspector, a Government Servant, be summoned to give evidence for the petitioners and the petitioners are ready to bear the expenses for summoning the revenue inspector as witness. Vide order dated 28.10.2015, the trial Court held that the matter is pending since 14.4.2014 for the defendants' evidence, many opportunities were granted and also on 26.9.2015 last opportunity was granted along with cost of Rs.500/- and thereafter the defendants/petitioners had

filed an application and as no reason to file such application was shown, the application is dismissed by the trial Court. Against the said order, the petitioner has filed the instant petition prayed that the matter may be admitted for hearing and after hearing, order passed by the trial court on 28.10.2015 be quashed.

5. Learned counsel for the petitioner supported the ground taken in the petition and prayed that the petition may be admitted for consideration and after due hearing, relief as sought may be granted. Learned counsel would further added that though they have filed documents those are public documents in relation with nazool and they have also filed documents regarding rate of market value near by of the suit land and for the documents regarding actual ownership by abundant caution they prayed before the trial Court to prove those documents in addition. They have not caused any delay. Hence, the petition may be admitted for hearing.

6. To appreciate the arguments advanced in this behalf petition and other record are perused.

7. As a settled law, under the provisions of Section 74(1) of the Evidence Act, any documents in relation with records of the acts of public officer along with other category of documents are public documents. Any certificate or true copy if admissible under the law, status of those documents may be well appreciated under Section 74 of the Evidence Act and during hearing in any matter,

the question is always open to the court for determination whether those documents filed by any of the parties may fall under the ambit of Section 74 of the Evidence Act or not and also the matter is always open before the Court regarding admissibility of any documents under the entire facts and circumstances of the case.

8. On due consideration, I do not find any reason to interfere with the order passed by the Court below on an application made by the petitioner under the relevant provisions of Order 16 Rule 1 of the CPC. Needless to mention the petitioners may raise all facts and legal position to any of the documents adduced by them during evidence regarding their admissibility as public documents or admissibility as otherwise. With this observation, the petition disposed of. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE