

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 776 of 2016

Harvinder Singh S/o Balwant Singh Aged About 43 Years By Caste Sikh,
Occupation- Business, R/o Pathalgaon, Ward No. 11 Bazar, P.S.-
Pathalgaon, Civil And Revenue District- Jashpur, Chhattisgarh

---- Petitioner

Versus

1. (A) Mohammad Rajjak S/o Mohammad Salim Aged About 41 Years R/o Village- Sothi, P.S. & Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh
(B) Mohammad Ajij S/o Mohammad Salim Aged About 40 Years R/o Village- Sothi, P.S. & Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh
(C) Abadi Begum W/o Mohammad Salim Aged About 70 Years R/o Village- Sothi, P.S. & Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh
(D) Tabassum D/o Mohammad Salim Aged About 35 Years R/o Village- Sothi, P.S. & Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh
2. Mohammad Naim Khan S/o Mohammad Salim Aged About 34 Years R/o Village- Sothi, P.S. & Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh
3. State Of Chhattisgarh, Through The Collector, Jashpur, District- Jashpur, Chhattisgarh

---- Respondents

For Petitioner
For Respondent/State

Shri Awadh Tripathi, Advocate.
Shri SP Kale, Deputy Advocate General.

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

23/12/2016

1. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 22.11.2016 passed by the Civil Judge, Class-II, Pathalgaon, Distt. Jashpur, in Civil Suit No.10-A/2012.
2. The petitioner is the defendant No.2 in Civil Suit which was filed by the plaintiff/respondents No.1A to 1D which was registered as Civil Suit No. 10-A/2012 pending before the court of Civil Judge, Class-II, Pathalgaon. The suit was for declaration of title, possession and also for declaring the sale deed dated 26.02.2013 as null and void.

3. In the present case, the evidence of plaintiff had been completed and thereafter the matter stood fixed for the evidence of non applicants for the first time on 06.10.2016. On 06.10.2016, in the absence of witnesses of the non-applicants cost was imposed for Rs. 500/- and the matter was directed to be taken up on 25.10.2016. On 25.10.2016 the petitioner's statement under Order 18 Rule 4 CPC was filed and the plaintiffs took time for cross examination and the matter got adjourned for 08.11.2016. On 08.11.2016 since the petitioner-defendant No.2 did not appear, the matter was again adjourned by imposing cost of Rs. 200/- and the matter was fixed on 15.11.2016. On 15.11.2016 since the Presiding Officer was on leave, the matter got adjourned for further orders on 22.11.2016.
4. According to petitioner-defendant, the date given by the court i.e. 22.11.2016 was a formal date fixed for proper orders, however, on the same day, without the original counsel of the plaintiff entering appearance, presence of some other counsel was marked without proper authority. The said counsel submitted before the court below that neither he intends to produce any evidence nor the petitioner-defendant No.2 intends to enter appearance for cross-examination, and therefore, the right to lead evidence of the petitioner was closed and the matter was taken up for final hearing. The next date of hearing has been informed to be 05.01.2017.
5. Counsel for the petitioner submits that the witness did not enter appearance on 22.11.2016 on the ground that the said date i.e. 22.11.2016 was a formal date as on the previous date, the presiding officer was on leave. It is further submitted that in case if he is granted one opportunity, on the next date, he shall keep all his witnesses present along with necessary affidavits under Order 18 Rule 4 CPC in respect of other witnesses also.

6. Taking into consideration the peculiar facts and circumstances of the case, particularly the date i.e. 22.11.2016 being a formal date of hearing as on the previous date the Presiding Officer was on leave and secondly; the fact that the petitioner-defendant No.2 had already filed his affidavit under Order 18 Rule 4 CPC, ends of justice would meet if an opportunity of leading evidence is granted to the petitioner-defendant No.2. Thirdly, on 22.11.2016 the lawyer who had entered appearance on behalf of the petitioner was not authorised.
7. Accordingly, the order dated 22.11.2016 and consequential proceedings stand quashed.
8. It is directed that on the next date of hearing, which according to the petitioner is 05.01.2017, the petitioner shall keep all his witnesses present before the court below along with necessary affidavits, if any, for recording their evidence.
9. It is further directed that the court below should ensure that evidence of all the witnesses produced on behalf of the petitioner on the next date be recorded on the same day without further granting any adjournment to the petitioner, and thereafter the matter may be proceeded for being adjudicated upon on its own merits.
10. It is made clear that if the witnesses of behalf of petitioner do not appear before the court below on the next date of hearing to lead their evidence, their opportunity to lead evidence shall be closed and the court below would have liberty of hearing and passing an order.
11. With the aforesaid observations, the petition stands allowed.

Sd/-
(P.Sam Koshy)
Judge