

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 112 of 2016

1. Rikhi Ram S/o Pachkaud Satnami, aged about 62 years, R/o Paraswani, Tahsil Simga, District Baloda Bazar-Bhatapara, Chhattisgarh
2. Motiram S/o Pachkaud Satnami, aged about 56 years, R/o Paraswani, Tahsil Simga, District Baloda Bazar-Bhatapara, Chhattisgarh
(Plaintiffs)

---- Appellants

Versus

1. Ultratech Cement Company Limited Hirmi, Tahsil Simga, through General Manager Hirmi, Authorized Officer, Manoj Purntambkar Ultratech Hirmi, Tahsil Simga, District Raipur now Baloda Bazar-Bhatapara, Chhattisgarh(Defendant No.7)
2. Domar S/o Bahuram Satnami, aged about 40 years, R/o Village Bhaisa, Khorsi Bhatiya, Tahsil Arang, District Raipur, Chhattisgarh
3. Prabhuram S/o Bahuram Satnami, aged about 38 years, R/o Village Bhaisa, Khorsi Bhatiya, Tahsil Arang, District Raipur, Chhattisgarh
4. Bhaisram S/o Bahuram Satnami, aged about 35 years, R/o Village Bhaisa, Khorsi Bhatiya, Tahsil Arang, District Raipur, Chhattisgarh
5. Mu. Firat Bai D/o Bahuram Satnami, aged about 32 years, R/o Village Bhaisa, Khorsi Bhatiya, Tahsil Arang, District Raipur, Chhattisgarh
6. Rajkumar S/o Bahuram Satnami, aged about 27 years, R/o Village Bhaisa, Khorsi Bhatiya, Tahsil Arang, District Raipur, Chhattisgarh
7. Mu. Bhuri Bai D/o Bahuram Satnami, aged about 24 years, R/o Village Bhaisa, Khorsi Bhatiya, Tahsil Arang, District Raipur, Chhattisgarh(Defendant No.1 to 6)

---- Respondents

For Appellants – Shri Pushpendra Kumar Patel, Advocate.
For Respondents – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

02-12-2016

1. Heard on admission.
2. As per facts in brief required for consideration of the instant MA on merit that the present appellants/plaintiffs had filed Civil Suit No.65A/07 before the Civil Judge Class II Simga, C.G. against the present respondents for declaration of title and permanent injunction and possession. After hearing to the parties, pleadings and evidence, the trial Court vide judgment and decree dated 11-08-2009 allowed the civil suit with direction that the decree shall be

executable after the payment court fee as required, the trial Court declared that the plaintiffs/present appellants are having title and possession in the suit land and the present respondents are restrained permanently, not to interfere with the title and possession of the plaintiffs/present appellants. Against the said order, the defendant D-7 preferred an appeal before the Additional District Judge, Bhatapara, C.G. The learned appellate Court vide judgment and decree dated 26-10-2016 in Civil Appeal No.14A/2009 allowed the application under Order 41 Rule 27 of the CPC on payment of cost of Rs.3000/- and held that the lease deed filed by the appellant/respondent No.1 over the suit land is necessary and relevant document permitted to accept that document as additional evidence, granted liberty to the plaintiffs/present appellants to file document in rebuttal, set aside the decree and judgment dated 11-08-2009 and directed that the parties be re-heard and thereafter the matter be disposed of on its merit, with this direction remanded the matter for consideration to the trial Court; further directed that the appellant/present respondent No.1 is free to amend the pleadings regarding those documents. Against the said order of remand, the appellants have preferred the instant MA under Order 43 Rule 1(u) of the CPC.

3. Learned counsel for the appellants would pray that the said lease deed is not relevant and necessary document for disposal of the matter filed before the trial Court, hence, the matter may be admitted and may be disposed of on its merit by hearing the respondents.

4. The trial Court vide judgment and decree dated 11-08-2009 declared the title and possession of the plaintiffs/present appellants over the suit land. During pendency of the first appeal, the appellant/respondent No.1 filed an application under Order 41 Rule 27 of the CPC for taking the additional evidence and document, the letter of intent for mining lease through a registered sale deed dated 08-02-1993 in the favour of Larsan and Tubro Company, preceding

company of the the present respondent No.1. The appellate Court held that the said document is for the suit land, registered document and as per the application, factum of possession was also shown before the appellate Court by present respondent No.1 and the said letter of intent was issued by the then State Government., defendant No.8. The defendant No.8/State Government is not made party before the first appellate Court in First Appeal No.14A/2009 and also not made party in the present MA, reasons best known to the appellant in the appellate Court and present appellants/plaintiffs.

5. The appellate Court allowed the said application on cost, permitted said document as additional evidence, permitted the present appellants to rebut the same, permitted respondent No.1 to made amendment in the pleadings, permitted the parties for hearing and thereafter directed that the matter be disposed of on its merit afresh, also set aside the judgment and decree passed by the trial Court. With this, opportunity to both the parties are available including the present appellants to rebut that document and demonstrate that said document though on the very suit land, but not a necessary and relevant document, granted liberty to the parties for hearing. Prima facie, looking to the entire facts and material, the said judgment and decree of the remand cannot said to be improper and illegal as the parties have been granted liberty to present their matter on the said document through a principle of law of due opportunity of hearing to the parties.

6. In addition to above, respondent No.1 as the appellant not made the State Government as party as the State Government was defendant D-8 before the trial Court. Present appellants also not made party to State Government which is a necessary party in the eyes of law as the matter involves dispute over immovable property and as the said lease was issued by the State Government. In addition, the State Government is a necessary party to answer regarding issuance of said letter of intent, registered sale deed dated

08-02-1993 and authority of the State Government for such action.

7. On due consideration, the instant MA is not liable for admission, also the same is having no substance. Consequently, the instant MA is dismissed as not maintainable in the motion stage itself.

8. To part with, the trial Court is directed to hear the matter, also afford opportunity to hear defendant D-8 as the said defendant D-8 is a necessary party to the issue.

9. The MA dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE