

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 73 of 2017**

1. Gaurishankar Nayak S/o Late Kedarnath Nayak, Aged About 63 Years
Caste Bhuiya, R/o New Vegetable Market, Dongargarh, District
Rajnandgaon, (Chhattisgarh)
2. Girjashankar Nayak, S/o Late Kedarnath Nayak, Aged About 41 Years
Caste Bhuiya, R/o N. F. R., Purnima, District Purnia (Bihar)

---- Petitioners**Versus**

1. Raviendra Pradhan S/o Late Parasnath Pradhan, Aged About 37 Years
Caste Bhuiya, R/o Village Jashpurnagar, Near Saal House,
Khajaanchitoli, Tahsil And District Jashpur, (Chhattisgarh)
2. Jagdish Nayak, S/o Late Kedarnath Nayak, Aged About 55 Years Caste
Bhuiya, R/o R. D. Colony, Tikarapara, House No. 136, Raipur, District
Raipur (Chhattisgarh) Civil And Revenue District Raipur,
(Chhattisgarh).....(Defendant No. 2)
3. Nageshwar Nayak, S/o Late Ishwarnath Nayak, Aged About 55 Years
Caste Bhuiya, R/o Matasi, Tahsil Kunkuri, District Jashpur
(Chhattisgarh), Civil And Revenue District Jashpur,
(Chhattisgarh).....(Defendant No.4)
4. Gupteshwar Nayak, S/o Late Ishwarnath Nayak, Aged About 55 Years
Caste Bhuiya, R/o Matasi, Tahsil Kunkuri, District Jashpur
(Chhattisgarh) Civil And Revenue District Jashpur,
(Chhattisgarh).....(Defendant No.5)
5. Girdhari Nayak, S/o Late Ishwarnath Nayak, Aged About 55 Years
Caste Bhuiya, R/o Matasi, Tahsil Kunkuri, District Jashpur
(Chhattisgarh) Civil And Revenue District Jashpur,
(Chhattisgarh).....(Defendant No.6)
6. Nityanand Yadav, S/o Shri Tarun Chand Yadav, Aged About 43 Years
Caste Mahakul, R/o Bhagalpur Road, District Jashpur,
(Chhattisgarh).....(Defendant No.7)
7. Balram Sinha, S/o Late Kishun Prasad Sinha, Aged About 62 Years
Caste Kayast, R/o Bhagalpur Road, Dist. Jashpur
(Chhattisgarh)(Defendant No.8)
8. Joyti Sinha, S/o Vishwanath Lal, Aged About 30 Years Caste Kayast,
R/o Bhagalpur Road, District Jashpur (Chhattisgarh).....
(Defendant No. 9)
9. Ramlal Gupta, S/o Shri Bairagi Gupta, Aged About 36 Years Caste

Kolta, R/o Bhagalpur Road, District Jashpur
(Chhattisgarh).....(Defendant No.10)

10. Meena Pradhan, S/o Shri Buneshwar Pradhan, Aged About 40 Years
Caste Uraon, R/o Kashpurnagar, District Jashpur
(Chhattisgarh).....(Defendant No.11)

11. The State Of Chhattisgarh, Through Collector, Jashpurnagar, District
Jashpur, (Chhattisgarh).....(Defendant No.12)

---- Respondents

For Petitioners
For State

Mr. A.K. Prasad, Advocate
Mr. S.P. Kale, Dy. Advocate General

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

30.01.2017

1. The present Petition under Article 227 of the Constitution of India has been preferred assailing the order dated 10.01.2017 passed by the Additional District Judge (FTC), Jashpur in Civil Suit No. 31/2013 (renumbered).
2. According to the Counsel for the Petitioners, in the civil suit they were defendant No. 1 and 3. The suit pertains to the year 2007. The plaintiff's evidence was closed on March, 2016 and thereafter the matter was posted for evidence of the defendants on 10.01.2017. The Defendants No.1 and 3 had produced two witnesses namely Gauri Shankar and Anuj Kumar Mishra. The evidence of the witness Anuj kumar Mishra and Gaurishankar were recorded on the same day and they were discharged. Thereafter, the Defendant No.1 and 3, sought the matter to be adjourned for evidence of the remaining witness as one of the witnesses namely Nairatya Pal could not appear before the Court below on 10.01.2017 on account of ill health. The same was refused by the Court below stating that though the other witness was not present no satisfactory explanation or documentary proof was given for the absence of the witness and the evidence of the defence

was closed and the matter was fixed for final argument on 13.01.2017. The argument on the said date could not take place and the matter now stood adjourned for 31st January, 2017 for final argument.

3. Learned Counsel for the Petitioners submits that though the suit was filed about 10 years back but the plaintiffs' evidence was closed only in March, 2016 i.e. it took about 10 years for conclusion of the plaintiff's evidence. Thereafter, the defendant witness started since March, 2016 onwards. The Petitioners herein produced two witnesses on 10.01.2017. However the third witness namely Nairatya Pal could not appear because of ill health.
4. Mr. Prasad prays that if they are given one opportunity for leading evidence on behalf of the Petitioners the Defendants No. 1 and 3, he would ensure to produce all the evidence before the Court below which may be recorded on the same day and the matter can be proceeded thereafter in accordance with law.
5. The request of the Mr. Prasad seems to be fair and reasonable as the suit though it was more than 10 years old but the evidence of the defendants witness started only recently and therefore they are entitled for a reasonable time to produce all their evidence. In case a defence witness could not appear on account of ill health on a particular date this Court does not see any reason why the Court below could not have granted a short time so that the Petitioners could have produced the remaining witnesses. The impugned order dated 10.01.2017 is therefore set aside on this limited ground.
6. It is ordered that the Petitioners i.e. the Defendants No.1 and 3 shall enter their appearance before the Court below tomorrow i.e. the date fixed by the Court below and shall inform that they shall produce their entire witnesses, if any, on 9th February, 2017 and thereafter the Court below

shall proceed further. No further time shall also be permitted for the defendant / Petitioners for the same.

7. It is made clear that if on 9th February, 2017 the evidence of the defence witness on behalf of the Defendant No. 1 and 3 are not produced, the Court below shall proceed with the hearing of the case and finally decide the matter in accordance with law.
8. With the aforesaid observations the present Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE