

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 240 of 2015**

(Arising out of order dated 19.01.2015 in Civil Suit No. 40-A/2013 of the learned 2<sup>nd</sup> Additional Civil Judge, Class -I to the Court of 1<sup>st</sup> Civil Judge, Bilaspur)

1. Pappu Gond S/o Shri Ganesh Gond Aged About 49 Years R/o Village Uslapur, tahsil Sakri, District Bilaspur, (Chhattisgarh)
2. Prakash Yadav S/o Shri Ram Kumar Yadav Aged About 19 Years R/o Village Uslapur, Tahsil Sakri, District Bilaspur (Chhattisgarh)
3. Rahul Bajpai S/o Shri Rohini Kumar Bajpai Aged About 52 Years R/o Jial Road, Bilaspur, tahsil & District Bilaspur (Chhattisgarh)

**---- Petitioners****Versus**

1. Government Of India S/o Through The General Manager, South East Central Railway, Bilaspur, District Bilaspur (Chhattisgarh)
2. Teej Ram Gond S/o Shri Rameshar Aged About 57 Years R/o Village Uslapur, Tahsil Sakri, District Bilaspur (Chhattisgarh)
3. Hari Ram Gond S/o Shri Melau Ram Aged About 52 Years R/o Village Uslapur, Tahsil Sakri, District Bilaspur (Chhattisgarh)
4. Shivram Yadav S/o Late Udal Yadav Aged About 30 Years R/o Village Uslapur, Tahsil Sakri, District Bilaspur (Chhattisgarh)

**---- Respondents**

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|--------------------------|---|---------------------------------------------------------|
| For Petitioners          | : | Shri Jitendra Pali, Advocate                            |
| For Respondent No.1/SECR | : | Shri Abhishek Sinha and Shri Ghanshyam Patel, Advocates |

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**Hon'ble Thottathil B. Radhakrishnan, Chief Justice**

**Order on Board****04.12.2017**

1. This application under Article 227 of the Constitution of India arises from a suit pending before a Civil Court. By virtue of an interlocutory order issued in this writ petition, further proceedings in that suit stand stayed.
2. Heard the learned Counsel for the Petitioner who are the plaintiffs No.1, 2 & 6 and the learned Counsel for the 1<sup>st</sup> Defendant – South Eastern Central Railway.

3. Five plaintiffs, namely, the writ petitioners Nos. 1 & 2 and three others filed a suit. Among other claims, they also set up a plea of easementary right over an item of property. Another person, Rahul Bajpai, who is the 3<sup>rd</sup> Petitioner in this writ petition, applied for impleadment under Order 10 Rule 2 of the CPC, essentially pleading that he has cause of action at par with that of the other plaintiffs. The Court below impleaded him as an additional plaintiff. Thus he became plaintiff No.6. Thereafter, it appears that he filed an application seeking to withdraw the plea of easementary right. That was allowed by the trial Court recording that the other plaintiffs had not objected to that course. Thereafter, an application was filed by the said additional 6<sup>th</sup> plaintiff to withdraw his earlier concession or withdrawal of the plea of easementary right. That has been rejected by the trial Court. Hence, this writ petition under Article 227 of the Constitution by the plaintiff Nos. 1, 2 & additional plaintiff No. 6.
4. The learned Counsel for the Petitioners argued that the situation in hand is essentially the result of an error of judgment of the plaintiffs and is a matter which could be rectified under authority of Article 227 of the Constitution to secure the ends of justice. The learned Counsel for the Defendant – SECR argued that the impleadment of Rahul Bajpai as the 6<sup>th</sup> plaintiff was not objected to by the other plaintiffs and his application for withdrawal of plea of easementary right was also not objected to by the other plaintiffs. It is further submitted that the said withdrawal order was not challenged by the other plaintiffs and that the present order of the Court below dismissing the plea of the 6<sup>th</sup> plaintiff to withdraw his earlier concession on the question of easementary right through an amendment was ordered after the trial was essentially closed.
5. The fact of the matter remains that the Petitioners No.1 & 2 herein who are the plaintiffs No.1 & 2 and the other three plaintiffs, who had joined them in instituting the suit, had set up the case of easementary right. The 6<sup>th</sup> plaintiff's intrusion into the array of plaintiffs was essentially a situation obtained by him by projecting a case that his plea is at par with that of the plaintiffs who sued. Obviously,

therefore, he could not have been permitted to take away, by himself, the plea of easementary right set up by the other plaintiffs as well. But, the fact of the matter remains that other plaintiffs did not object to such action by the 6<sup>th</sup> plaintiff. They also could be accused of not having taken due care of their interest as well. But weighing the entire facts and circumstances of the case, I am of the view that this is an abundantly fit case where plaintiffs No.1 to 5 should be permitted to preserve for themselves all the pleadings that they had, including the plea of easementary right while the 6<sup>th</sup> plaintiff who obtained leave to withdraw such plea should be pinned down to such situation where he will not be entitled to claim any easementary right against the defendant – SECR. Ends of justice require that the trial Court ought to proceed with the suit in such direction.

6. For the aforesaid reasons, this writ petition under Article 227 of the Constitution is ordered directing that the Court below will proceed with the suit insofar as it is instituted by plaintiffs No.1 to 5 by adjudicating, in accordance with law, the plea of easementary right as has been pleaded by them and by not considering such plea as having been raised by plaintiff No.6, namely, Rahul Bajpai. It is also the requirement that the adjudication of the suit from which this writ petition arises is expedited having regard to the interest of the Railways which is a public sector institution. It is ordered further that the impugned order and the preceding orders in the suit from which this writ petition arises shall stand modified in terms of what is stated hereinabove and the trial Court will proceed with the suit as directed herein above.

Sd/-  
**(Thottathil B. Radhakrishnan)**  
Chief Justice