

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WP227 No. 341 of 2017**

1. Bal Krishna Dani S/o Shri Ram Gulam Dani, Aged About 60 Years
2. Muktesh Dani S/o Shri Bal Krishna Dani Aged About 38 Years
3. Awadhesh Dani S/o Shri Bal Krishna Dani Aged About 36 Years
4. Abhishek Dani S/o Shri Bal Krishna Dani, Aged About 35 Years  
Through Power Of Attorney Shri Bal Krishna Dani

All R/o Navbharat Chowk, Kankali Para, Raipur, Civil And Revenue District Raipur, Chhattisgarh.

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

1. Smt. Alka Agrawal W/o Shri Ajay Agrawal, Aged About 47 Years R/o New Gayatri Nagar Raipur, District Raipur, Chhattisgarh.  
Other Address : Through Anu Enterprises, Below Karma Hospital, In Front Of Telibandha Talab, Raipur, District Raipur (Chhattisgarh)
2. The State Of Chhattisgarh, Through The Collector, District Balodabazar, Chhattisgarh.

**----Respondents**

|                           |   |                                   |
|---------------------------|---|-----------------------------------|
| For Petitioners           | : | Mr. Rajesh Kumar Tiwari, Advocate |
| For Respondent No.1       | : | Mr. Sourabh Sharma, Advocate      |
| For State/Respondent No.2 | : | Ms. M. Asha, Panel Lawyer         |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****14/09/2017**

1. Present is a petition under Article 227 of Constitution of India assailing the order dated 05.12.2016, passed by the Civil Judge Class-2, Baloda Bazar, in Civil Suit No.10-A/2014. Vide the said impugned order the Court below had rejected an application filed by the plaintiff/petitioner under Order 7 Rule 14(iii) of Code of Civil Procedure.
2. The plaintiff i.e. the petitioner in the instant case had filed a Civil Suit before the Civil Judge Class-2, Baloda Bazar seeking for declaration, possession, permanent injunction and for grant of ***mesne profits***. The suit was originally filed by original plaintiff Smt. Saraswati Dani through her power of attorney holder namely Shri Balkrishna Dani, husband of Smt. Saraswati Dani.

3. Pending the suit before the trial Court, the original plaintiff namely Saraswati Dani has expired on 13.05.2015. After the pleadings were complete, the matter was fixed for evidence. For the purpose of leading evidence affidavit of the power of attorney holder Shri Balkrishna Dani was filed as their examination in chief under Order 18 Rule 4 of Code of Civil Procedure. The affidavit was filed on 12.05.2015, however it was on 13.05.2015 the original plaintiff namely Saraswati Dani had died and subsequently substitution was allowed and the present petitioners were brought in as the legal representatives of the original plaintiff. Later on, on 21.10.2016 a fresh affidavit under Order 18 Rule 4 was filed by Balkrishna Dani, the husband of late Saraswati Dani. On the same date i.e. 21.10.2016 an application under Order 7 Rule 14(iii) was filed by the plaintiff for taking some documents on record which the plaintiff intended to rely upon in the suit. According to the plaintiff the documents were recovered only after the plaintiff had died that these documents are relevant for establishing their case before the trial Court.
4. According to the plaintiff, it is a case where the documents have a direct relevance to prove the contentions which they have raised in the plaint and to establish their case. Further it was also the contentions that these documents were not in their possession earlier and were received by them during the course of search of the documents, which were in possession of the original plaintiff after her death.
5. According to the petitioners the Court below could not have rejected the said application, as these documents are very much relevant for their proper adjudication of their respective claim. These documents would be able to prove the purchase and establish it to be a self acquired property. It was further contended that the documents if they are not taking on records may cause substantial prejudice to their right of establishing their case and claim and therefore ought to have allowed by the Court below.
6. Shri Sourabh Sharma appearing for the respondent No.1 however opposes the petition on the ground that the impugned order does not

warrant any interference in exercise of the power of superintendence by this Court under Article 227 of the Constitution of India. According to Shri Sourabh Sharma, no prejudice whatsoever has been caused to the petitioners, neither are these documents relevant for the adjudication of the case and that these documents are not admissible since they are only photocopies and their original have not been produced along with the application and for all these reasons the writ petition deserves to be rejected.

7. The State counsel also takes the same plea.
8. Having considered the contentions put forth on either side and on perusal of record, what is primarily to be seen is whether the request that has been made is proper, legal and justified upon and whether the trial Court was justified in refusing to accept the same. The admitted fact is that the suit was filed on 16.01.2014 by Smt. Saraswati Dani. During the pendency of the suit the said plaintiff died and subsequently the present petitioners have been substituted as legal representatives. After the present petitioners have been impleaded in place of the plaintiff, they have at the first available opportunity moved an application under Order 7 Rule 14(iii) of Code of Civil Procedure, seeking to produce certain documents which they intend to rely upon in support of their case before the Trial Court.
9. So far as whether these documents are admissible or not, whether it can be accepted to be proved in accordance with the provisions of the Evidence Act or not, is a matter which would be left upon the Court to take note of in the course of evidence. At this juncture all that was required to be seemed is whether the plaintiffs have been able to show sufficient cause as to under what circumstances they have obtained these documents and whether these documents were in their possession all along or had been subsequently obtained by them and whether these documents are relevant for the proper adjudication of the case.
10. Considering the fact that the death of Saraswati Dani took place only on 13.05.2015 and thereafter the present petitioners were substituted on 19.08.2016. The plaintiff had on the first available

opportunity moved an application under Section 7 rule 14(iii) of Code of Civil Procedure. The plaintiffs have also categorically stated that they could get hold these documents only after the death of the original plaintiff i.e. Saraswati Dani. Further whether it is of any relevance or not can also be established after it is brought on record and proved properly. In view of the same, this Court is of the opinion that the rejection of application does not appear to be proper, legal and justified and the same is deserves to be set-aside and is accordingly set-aside. Further what is also pertinent is the fact that the evidence in the instant case have not yet started and as such no prejudice has been caused to the respondents. Their right is still open to question the admissibility of these documents and also to elaborately cross examination the plaintiffs witnesses

11. So far as the scope of judicial review under Article 227 is concerned, this Court is of the opinion that since it is the stand of the petitioner that their right shall be adversely prejudiced is sufficient to look into in a petition under Article 227 while exercising the supervisory jurisdiction.
12. As a result, the impugned order dated 05.12.2016 is set aside and the application under Order 7 Rule 14(iii) stands allowed. However, it shall be left open for the respondents to question the admissibility of these documents at the time of evidence.
13. This Court is further inclined to make an observation that the Court below shall not get influenced of any observation made by this Court while disposing of the present writ petition. The suit shall be decided purely in accordance with the merits which comes on record.
14. The writ petition stands allowed and disposed of.

Sd/-  
(P. Sam Koshy)  
Judge