

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 87 of 2018

Mohan S/o Late Shri Uderam, Aged About 45 Years By Caste -
Kalar, R/o Village Geetpahar Thana And Tahsil Charama Civil And
Revenue District North Baster Kanker Chhattisgarh.

---- Petitioner

Versus

1. Jagesh Ram Jain S/o Shri Bideram Jain Aged About 49 Years By
Caste Kalar , R/o Village Geetpahar Thana And Tahsil Charama
Civil And Revenue District North Baster Kanker Chhattisgarh.
2. Smt. Siyabati Wd/o Late Shri Uderam Aged About 65 Years.
3. Smt. Hirmotin Bai W/o Late Shri Maniram Aged About 49 Years,
4. Mahendra S/o Late Shri Uderam Aged About 42 Years
5. Bideram S/o Late Shri Budhram Aged About 70 Years.
6. Kulesh S/o Shri Bideram Aged About 50 Years.
7. Smt. Bisobai D/o Shri Budhram Aged About 62 Years.

Respondent No.2 to 7 are by Caste Kalar, R/o Village Geetpahar
Thana And Tahsil Charama , Civil And Revenue District North
Baster Kanker Chhattisgarh.

8. State Of Chhattisgarh Through Collector Kanker District North
Baster Kanker Chhattisgarh.

---- Respondents

For petitioner – Shri Sunil Sahu, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

30/01/2018

Heard.

1. Instant petition is against the order dated 17/11/2017 whereby an
application under Order 8 Rule 1 (3) of CPC whereby certain documents
were filed by the defendant/petitioner was dismissed.
2. Learned counsel for the petitioner would submit that initially an
ex-parte decree was passed on 31/01/2014 which was eventually set
aside on 10th May, 2017 and the parties were directed to appear before

the court below on 24/06/2017. Subsequently, plaintiff's evidence was closed and after closure of the witness, the defendant has produced documents on the ground that documents could not be produced earlier and the nature of the documents as such that plaintiff and defendant are asserting right over the same property wherein certain partition had taken place, therefore that documents would be relevant. Consequently, if documents are not allowed to be placed on record, the defendant will suffer irreparable loss and case cannot be decided on merits.

3. Perused the plaint. Suit was filed by Jagesh Ram Jain for declaration, possession and permanent injunction in respect of the certain properties which are described in the plaint. Appellate Court order dated 10th May, 2017 shows that initially ex-parte decree was passed which was set aside and the parties were directed to appear before the court below on 24/06/2017. Thereafter, order sheet as would reveal that parties appeared before the court below and adduced evidence and when the case was fixed for defence evidence, application under Order 8 Rule 1 (3) of CPC was filed alongwith list of documents. The list of documents which is sought to be produced is also examined. Prima facie it reflects that in respect of the property which is subject matter of the suit property, mutation record and one partition and the letter of consent has been sought to be produced. Considering the fact that suit was in between family members wherein one of the defendants claiming right over the property in question which was subject of partition and claim relinquishment, without any observation on the merits of the documents, in the opinion of this court documents appears to be reasonable to adjudicate the case on merits. Consequently, the same is allowed subject to the payment of Rs.2500/- to the plaintiff. It is further directed that defendant's documents having been produced, plaintiff shall get chance of rebuttal and shall get chance to re-examine so as to accept existence and

authenticity of the documents. Thereafter, defendant shall be at liberty to adduce his evidence before the court.

4. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE