

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 125 of 2018

Sanatan Choudhary S/o S/o Laxman Choudhary, Aged About 77 Years Caste Aghariya, Occupation Agriculturist R/o Village And Post Pata, Tahsil Gharghoda, District Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh --- **Petitioner**

Versus

1. Lal Kumar S/o S/o Neelkanth Aghariya Aged About 36 Years Occupation Agriculturist, R/o Village & Post Gourbahari, Tahsil Gharghoda, District Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh
2. Badrinath S/o S/o Shri Neelkanth Aghariya, Aged About 34 Years Occupation Agriculturist, R/o Village & Post Gourbahari, Tahsil Gharghoda, District Raigarh (Chhattisgarh) At Present R/o Occupation- Electric Contractor, through Urmila Verma, Apsara Drycleaners, Karbala Turning Old High Court Road, Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh
3. Thirthanand S/o S/o Shri Sanatan Choudhary Aghariya, Occupation Service & Agriculture, R/o Village And Post Pata, Tahsil Gharghoda, District Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh
4. Purnanand S/o S/o Shri Sanatan Choudhary Aghariya, Aged About 56 Years Occupation Service And Agriculture, R/o Village & Post Pata, Tahsil Gharghoda, District Raigarh (Chhattisgarh), District : Raigarh, Chhattisgarh
5. State of Chhattisgarh, through District Magistrate Dhamtari (Chhattisgarh), District : Dhamtari, Chhattisgarh --- **Respondents**

For Petitioners	:	Mr. R.S. Patel, , Advocate
For the State	:	Mr.S.R.J. Jaiswal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12.02.2018

1. This petition is against the order dated 27.01.2018 passed in Civil Suit No.4-A/2006 by the Civil Judge, Class-I, Gharghoda whereby the application under Order 16 Rule 1(3) of the Code of Civil Procedure to summon the witness namely Jairam Rathia, Sarpanch of Gram Panchayat, Pata was dismissed.
2. Learned counsel for the petitioner submits that after the instructions received, 3 witnesses including the plaintiff have

already been examined and this is the last witness and the said application was moved before the evidence of the defendant was taken. Consequently, no prejudice would be caused if the witness is summoned as it would not have any serious impact on the merits of the case. Therefore, the same may be allowed and one chance may be given to the plaintiff petitioner to summon the witness and adduce evidence.

3. Perused the order dated 27.01.2018 and the application filed under Order 16 Rule (3) read with section 151 of CPC. The application purports that the petitioner prayed to summon one Jai Ram Rathia being Sarpanch of village Pata along-with original document and it is stated that apart from those documents, no evidence is available which are in possession of the plaintiff. It has been stated that the evidence of said witness would be necessary. The impugned order purports when the case was fixed for evidence, an application was moved and no plausible reason has been assigned. The order shows that the document which was sought to be proved was placed on record on 05.01.2017. Thereafter, in order to prove the documents, the prayer was made to serve on Sarpanch namely Jairam Rathia. Considering the facts of the case, it appears no prejudice would be caused to the parties if the witness is allowed to be summoned. To prove the case on merits, the evidence of Sarpanch may be necessary as the documents appears to be of Gram Panchayat and can be proved by the Sarpanch. Therefore, in the interest of justice to advance the cause of justice on merits, one more opportunity is granted to the petitioner to call the witness and adduce his evidence to prove the document. Consequently the order dated 27.01.2018 is set aside. The petitioner/plaintiff is

allowed to adduce evidence of Sarpanch Jairam Rathia of Gram Panchayat, Pata and he may call and procure the the attendance of the said witness through the intervention of the Court, for which, necessary *Dasti* summons may also be issued on payment of process. It is further made clear that on the next date of hearing when the case is fixed for evidence, the petitioner shall procure the attendance of the witness and thereafter shall not seek any further adjournment for his default.

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

**Sd/-
(Goutam Bhaduri)
Judge**

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