

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 284 of 2018**

1. Amru, aged about 24 years, son of Shri Khorbahra Sahu, R/o. Village Bhathagaon, Tahsil Baloda Bazar, District Baloda Bazar – Bhatapara (C.G.)
2. Champa Bai, Widow of late Khorbahra Sahu, aged about 55 years, R/o. Village Bhathagaon, Tahsil Baloda Bazar, District Baloda Bazar – Bhatapara (C.G.)
3. Minor Amit Son of Amru, aged about 04 years, presented through his mother Bhuneshwari, W/o Amru Sahu, R/o. Village Bhathagaon, Tahsil Baloda Bazar, District Baloda Bazar – Bhatapara (C.G.)

---- Petitioners/defendants**Versus**

1. Juglu Ram, son of Uderam Sahu, aged about 42 years,
2. Gopal, S/o Uderam Sahu, aged about 32 years,

Both are R/o. Village Bhathagaon, Tahsil Baloda Bazar, District Baloda Bazar- Bhatapara (C.G.)

3. Chandrika Bai, wife of Mayaram Sahu, aged about 39 years, R/o. Rawan Tahsil Baloda Bazar, Distt. Baloda Bazar, Bhatapara (C.G.)
4. State of Chhattisgarh, through the District Collector, Baloda Bazar – Bhatapara (C.G.)

---- Respondents/plaintiffs.

For Petitioners : Shri Sanjay Dewangan, Advocate.
 For Respondents 1 to 3 : Shri Sunil Tripathi, Advocate.
 For Respondent No. 4 : Shri Ashish Surana, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****29/10/2018**

(1) This writ petition is directed against the order dated 28.02.2018 passed by First Civil Judge, Class, Baloda Bazar, in Civil Suit No. 09A/2012 (Juglu and others

Vs. Amru and others) whereby the trial Court has proceeded the case in compliance of the order dated 17.06.2016, in which application under Order 16 Rule 3 of the CPC filed by respondents No. 1 to 3/plaintiffs is allowed by giving opportunity to adduce evidence of kotwar of the village after completing the evidence of defendant witnesses.

(2) Counsel for the petitioners/defendants submits that the order impugned is bad and unsustainable in law, which is liable to be set aside.

(3) Per contra, counsel for the respondents No.1 to 3/plaintiffs would support the order impugned.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) This Court by order dated 11.07.2016 passed in Writ Petition (227) No. 413 of 2016 filed by the petitioners pleased to direct as under:-

“5. For the foregoing, the writ petition is disposed of with a direction that the examination of the kotwar shall be completed by the plaintiffs before commencement of examination of defendants' witnesses so that the defendants are aware as to what evidence adduce by the entire witnesses of the plaintiffs which they are required to meet.”

(6) Copy of order passed by this Court in W.P. (227) No. 413 of 2016 was not produced by the defendants before the trial Court well in time and in the meanwhile defendants' witnesses were examined by the trial Court. Thereafter, on 28.02.2018, they produced the copy of order passed by this Court in W.P. (227) No. 413 of 2016 before the trial Court when the defendants' witnesses had already been closed

(7) The trial Court, by its impugned order, has clearly recorded a finding that since defendants produced the order passed by this Court in W.P. (227) No.

413/2017 after closure of defendants' witnesses, and in view of that trial Court directed to examine the Kotwar after closure of defendants' witnesses, which they have not availed and filed the instant writ petition under Article 227 of the Constitution of India challenging the same. In the considered opinion of this Court that It is the fault of the petitioners/defendants that they have not produced the order dated 11.07.2016 passed by this Court well in time and as recorded by trial Court the same has been produced before the trial Court after closure of defendants' witnesses, and therefore, the trial Court is absolutely justified in directing the examination of kotwar after closure of evidence of defendant witnesses.

(8) In view of above, I do not find any illegality in the order impugned warranting interference of this court under Article 227 of the Constitution of India.

(9) Thus, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-