

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 410 of 2018

Vinod Kumar Tembhre S/o Namdev Tembhre, Aged About 64
Years R/o Qr. No.14, Shastri Nagar, Ward No.19, Near Chouhan
Plaza, Bhilai Tahsil And District Durg, Chhattisgarh

---- Petitioner

Versus

1. Manish Kumar Agrawal S/o Manhar Lal Agrawal, Aged About 41
Years R/o Daldali Marg Mahasamund Tahsil And District
Mahasamund, Chhattisgarh, Present Address Flat No. J/24 II Floor,
Vandematram Apartment, Ward No.2, Model Town, Bhilai Tahsil And
District Durg, Chhattisgarh
2. Mohammad Ilias S/o Sheikh Bismillah Musalman, Aged About 75
Years R/o Noori Masjid Road, Beside Noori Masjid Faridnagar,
Supela, Bhilai, Tahsil And District Durg, Chhattisgarh
3. Jwala Singh S/o Rameshwar Singh Kushwaha, Aged About 48
Years R/o Jwala Transport, Sunder Nagar Kohaka, In Front Of
Faridnagar Ground, Kohka Bhilai Tahsil And District Durg,
Chhattisgarh
4. Smt. Neelam Chowksi W/o Chowki Benjamin, Aged About 46
Years R/o Trimukha Bhawan Plot No.93 Ayappa Nagar, Near Shiva
College, Faridnagar, Supela Bhilai Tahsil And District Durg,
Chhattisgarh
5. Abhijeet Marathe S/o S.R.Marathe, Aged About 45 Years R/o
H.N.431/97 Shantinagar Supela Bhilai Tahsil And District Durg,
Chhattisgarh, Present Address Qr.No.124 Road No.1 Near Shitla
Mandir Shantinagar Supela Bhilai, Tahsil And District Durg,
Chhattisgarh
6. Jayant Marathe S/o T.S.Marathe, Aged About 55 Years R/o 5/1
Railway Colony, Railway Station Bhilai Nagar District Durg,
Chhattisgarh, Present Address Qr.No.2, Road No.27, Suruchi
Beauty Parlour, Anand Enclave, Smritinagar Bhilai, Tahsil And
District Durg, Chhattisgarh
7. Ramesh Sawai S/o Kishan Sawai, Aged About 52 Years R/o
Near Chandi Mandir, Bhatapara Kohaka Bhilai Ward No.9 Tahsil
And District Durg, Chhattisgarh
8. Rajendra Kumar Binjhlekar S/o Bachhan Lal Binjhlekar, Aged
About 45 Years R/o Road No.15, Ward No.11, Chandra Nagar,
Behind Lal Lakdi Tal, Kurud Road, Kohka Bhilai, Tahsil And District
Durg, Chhattisgarh
9. State Of Chhattisgarh, Through Collector Durg, District Durg,
Chhattisgarh

---- Respondents

For petitioner - Shri P.R. Patankar, Advocate.

For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

7/05/2018

Heard.

1. Instant petition is against the order dated 16/04/2018 passed by the 4th Additional District Judge, Durg.
2. Learned counsel for the petitioner submits that initially against order of the trial court, whereby application to demarcate the land was dismissed a writ petition was filed. It is stated that same writ petition was allowed by the order dated 12/04/2018 and copy of which was received on 20/04/2018 and in the meanwhile on 16/04/2018 case came up for hearing before the trial court. It is contended that an affidavit was filed alongwith adjournment was moved informing the fact that High Court has set aside the order of the trial court and has allowed the application. It is stated that it was necessary for the plaintiff and the counsel to go through the actual order and observation made by the High Court wherein an application for demarcation of the land was allowed. It is submitted that the court below without application of mind though granted time to file copy of the order of the High Court but at the same time closed the evidence of the plaintiff which was uncalled for. It is contended that such order over reaches the order of the High Court and despite it was submitted before the court supported by an affidavit that High Court has ordered for demarcation of land thereby the right to evidence was allowed the court below has closed the evidence.
3. Perusal of the order dated 16/04/2018 reflects that when case came up for hearing before the trial court, the trial court though has granted time to file order dated 12/04/2018 of High Court before the court but at the same time has closed the evidence of the plaintiff as witness of

the plaintiff were not present. Perusal of the order would show that despite the fact at one part the court granted time to place on record order of the High Court but at the same time closed the evidence of the plaintiff.

4. Order of this court passed in W.P.(227) No.860/2017 on 12/04/2018 is with respect to the application under Order 26 Rule 9 of CPC and it was directed that the trial court shall refer the matter to the concerned Tahsildar who shall appoint Revenue Inspector and the concerned Revenue Officer shall demarcate the disputed land to show actual holding of the parties with their actual derivation of title qua the area and traced through their nucleus of title which they derived from their predecessor so as to adjudicate the actual lis between the parties.

5. The order would show that plaintiff was allowed to lead evidence. Reasons which has been assigned by the plaintiff that the plaintiff and the counsel waited and infact prayed for some time to go through the order of the High Court appears to be plausible when the fact on affidavit was before the court below that the High Court has allowed the application filed by the petitioner/plaintiff which meaning them to lead evidence, trial court could not have closed the evidence in entirety. It appears that the trial court acted in haste and the order apparently appears to over reach the order of this court when the application to lead evidence of the petitioner/plaintiff was allowed, trial court could have waited and could have gone through the order of High Court but instead it appears that the trial court without even waiting for the same closed the evidence, which is uncalled for. The concern of trial court in facts of the case appears to be misplaced. Order reflects that the trial court has pre decided the cause to happen on 16/04/2018.

6. Considering the facts of this case, it appears that genuine reason existed in favour of the plaintiff/petitioner to wait for the order dated

12/04/2018 passed by High Court which was placed on record subsequently after obtaining copy of the same. Circumstances point out that the court should have responded to request made by plaintiff as denial and non-examination of witness was not deliberate. Under the circumstances, order dated 16/04/2018 is set aside. The plaintiff is allowed to lead his evidence on the next date of hearing and the trial court is further expected to follow the directions made by this court in W.P.(227) No.860/2017 on 12/04/2018. It is also directed that the plaintiff shall adduce his evidence on the next date of hearing, thereafter the trial court shall proceed to follow the order dated 12/04/2018 after going through the same and further shall proceed in the civil suit.

7. With such observation, the petition stands allowed.

Sd/-

(Goutam Bhaduri)

JUDGE