

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 24 of 2018**

1. Smt. Kamala Devi Jain W/o Late Parasmal Jain, Aged About 64 Years R/o Bayron Bazar, Raipur (Chhattisgarh) Through Power Of Attorney Shri Parasmal Bhansali, S/o Late Chandanlal Bhansali, Aged About 77 Years, R/o Malviya Road, Raipur (Chhattisgarh)
2. Subhashish Jain, S/o Late Parasmal Jain, Aged About 44 Years R/o Bayron Bazar, Raipur (Chhattisgarh)

---- Petitioners**Versus**

- Smt. Rajni Bai Alias Mannu Bai W/o Shri Basant Lal Katela, Aged About 69 Years R/o Civil Lines, Raipur (Chhattisgarh)

---- Respondent

For Petitioners : Shri Ankur Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10/01/2018**

1. Heard.
2. The present petition is against the order dated 17.11.2017, whereby an application filed under Order 16 Rule 1 CPC to call the Revenue Inspector, Nazul along with the documents, has been dismissed.
3. Learned counsel for the petitioners would submit that initially after the closure of the evidence of the plaintiff, the statement of the defendant witness were placed under O 18 Rule 4 of the CPC, which the plaintiff failed to cross-examine, henceforth, their rights were closed, however, the same order was subject to challenge before this Court in WP (227) 82/2016,

wherein vide order dated 11.02.2016 this Court has allowed the prayer of the plaintiff, whereby the defendants' witnesses were allowed to be cross-examined and during their evidence certain facts came to fore that the lis in respect of the suit property touches upon the Nazul land, as such an application under Order 16 Rule 1 CPC to summon the R.I. Nazul along with document was filed, so that the case can be decided on merits. He would further submit that the prayer was also supported by the plaintiff since the property in dispute is in the Nazul land, the evidence of the R.I., Nazul would be necessary.

4. Perused the order dated 17.11.2017, which shows that the rejection of the application has been made simplicitor without going into the merits or any valid reason has been assigned. The rejection is on the ground that the application is delayed since the suit was pending for last 27 years. The fact remains that if the lis is decided without the appropriate evidence, then certainly all the parties' right would be prejudiced and also the judgments would be on defective grounds. In the instant case, the record would show that by order dated 11.02.2016 the right to cross-examine of the defendant witnesses was allowed by this Court, thereafter, the present application under Order 16 Rule 1 has been filed by the defendants to call the Nazul Officer i.e. R.I. along with the record, which was supported by the plaintiff that the evidence of the Nazul Officer i.e. R.I. would be necessary.
5. In the circumstances, when both the parties agreed to the fact that the suit is required to be decided after the evidence of the Nazul Officer, then such submission cannot be ignored as in absence of any such evidence if the case is decided at the first stage of adjudication, then all the time to come, the relevant evidence would not be on record. Consequently, order dated 16.11.2017 is set aside. The application under Order 16 Rule 1 CPC to call

for the Nazul Officer i.e. R.I. along with the records is allowed. On payment of process fee the Nazul Officer i.e. R.I. shall be summoned and the trial Court is directed not to give any long date of adjournment unnecessarily and the service of the summons to the witness shall be done by the special messenger.

6. With such observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu