

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 15 of 2014

1. Jaleshwar, S/o. Tararam, Aged About 30 Years, R/o. Village Tendua, Police Station & Tahsil Saja, Civil & Revenue Distt. Bemetara (C.G.) (Old Distt. Durg.)
2. Poornima, W/o. Khelan, Aged About 28 Years, R/o. Village Sagni, Police Station & Tahsil Dhamdha, Civil & Revenue Distt. Bemetara (C.G.) (Old Distt. Durg).

---- Petitioners

Versus

1. Tararam, S/o. Pooran, Aged About 55 Years.
2. Kunti, D/o. Tararam, Aged About 25 Years.
3. Sunti, D/o. Tararam, Aged About 23 Years.
4. Kaina Bai, W/o. Tararam, Aged About 52 Years.

All are R/o. Village Tendua, Police Station & Tahsil Saja, Civil & Revenue Distt. Bemetara (C.G.) (Old Distt. Durg.)

5. State Of Chhattisgarh, Through Collector Bemetara, Civil & Revenue Distt. Bemetara (Old Distt. Durg) (C.G.)

---- Respondents

For Petitioners	:	Mr. Vaibhav A Goverdhan, Advocate
For Respondent No.1 to 4	:	Mr. Viprasen Agrawa, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31.01.2018

Heard

1. The present petition is against the order dated 25.11.2013 whereby the Court has refused to accept the two statement of the witnesses which was filed under Order 18 Rule 4 of C.P.C.
2. Learned counsel for the petitioners would submit that according to the enlisted witness initially on 16.09.2013, three witnesses were examined and cross-examined and thereafter on the next date on 25.09.2013 two statement of the witness Ramadhar & Satruhan were produced under Order 18 Rule 4 of C.P.C. which was taken on record without any objection and one of the listed witness i.e.

Patwari, prayer to procure his attendance by summon to him. Subsequently, by the order dated 25.11.2013 the Court refused to accept the statement of two of the witnesses whose statement was filed on 25.09.2013 after examination of three witnesses without assigning any reason, however, notice to summon the Patwari was allowed. Learned counsel submits that the order suffers with gross illegality and no reason have been assigned and the Court cannot on the discretion restrain the evidence to be adduced and specially when the statement was already taken on record. Consequently, the order dated 25.11.2013 may be set aside and the statement of the witnesses Ramadhar & Satruhan may be taken on record.

3. Learned counsel for the respondents opposes the same and submits that the statements have been made in the piecemeal; consequently, the same cannot be accepted. He submits that the order is well merited, which do not call for any interference.
4. Perused the order sheets of the Court below, which would show that on 16.09.2013 three witnesses namely Jaleshwar, Taran Singh & Jagrakhan were examined, cross-examined and discharged and on that date the application under Order 16 Rule 2 of C.P.C. was filed which was posted for reply. The order sheet would reveal that the plaintiff has not closed his evidence. Subsequently, on the next date on 25.09.2013 two statement of Ramadhar & Satruhan were produced under Order 18 Rule 4 of C.P.C., which was placed on record, however, time was sought for reply to the application under Order 16 Rule 2 of C.P.C. In the meanwhile few of the dates passed by however no evidence adduced and on 25.11.2013 the trial Court by its order has refused

to take affidavit of the two witnesses which was subsequently filed on 25.09.2013 that of Ramadhar & Satruhan assigning reason that taking into the circumstances, the statement cannot be allowed to be taken on record.

5. Perusal of the order dated 25.11.2013 would show that no reason was assigned as to what was playing in the mind of the Court and it cannot be presumed unless it is reflected in the order sheet. Simply a cryptic order is passed to disallow the evidence quoting it that under the circumstances the evidence cannot be justified. The Court below was conferred with unfettered right to allow and disallow any evidence without giving any reason thereof. Consequently, the order dated 25.11.2013 is set aside. The plaintiff is allowed to lead the evidence of Ramadhar & Satruhan whose statement was filed under Order 18 Rule 4 of C.P.C. and further shall be at liberty to call the witness Patwari by issuing of summons to procure his attendance through the intervention of the Court.
6. The parties shall appear before the Court below on the next date of hearing, thereafter, a date shall be fixed for evidence and on that date the plaintiff be allowed to adduced his evidence without any further adjournment. Thereafter, the defendant may lead his evidence, if so advised.
7. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge