

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 643 of 2018**

Smt. Shivlochani D/o Late Shiv Prasad, W/o Shyam Lal, Aged About 28 Years, Occupation - Agriculture And Housewife , R/o Village Malgawa Khurd, Tahsil Ambikapur District Surguja Chhattisgarh.

---- Petitioner

Versus

1. Smt. Sahodari D/o Late Shiv Prasad, W/o Kamal Yadav Aged About 32 Years, R/o Village Kardoni, Tahsil Lundra, District Surguja Chhattisgarh.
2. Smt. Basanti D/o Late Shiv Prasad, W/o Rama Yadav, Aged About 32 Years R/o Village Rata, Tahsil Lundra, District Surguja Chhattisgarh.
3. Smt. Parmeshwari D/o Late Shiv Prasad Yadav, W/o Chalita Yadav Aged About 27 Years, R/o Village Malgawa Khurd, Tahsil Ambikapur, District Surguja Chhattisgarh.
4. State Of Chhattisgarh, Through Collector , Surguja Ambikapur Chhattisgarh.

---- Respondents

For petitioner – Shri P.K. Patel, Advocate.
For State-Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order**

30/07/2018

Heard.

1. Instant petition is against the order dated 12/07/2018 whereby an application under Order 16 Rule 2 of CPC to summon the witness Sub Registrar and attesting witness to prove the registered WILL has been dismissed.
2. Learned counsel for the petitioner submits that though application of the like nature was earlier disallowed by the court to summon the witness, however when case was fixed for evidence and request was made to the witness they refused to come unless and until they are served with summons or receive the summons from the court. Under the circumstances again an application was moved to call the attesting witness of the WILL and the Sub Registrar wherein WILL is registered. It is contended that entire suit is based

on the basis of WILL dated 9/01/2006 which was executed by father of the plaintiff/petitioner in her favour. It is stated that if the WILL is not proved there will be irreparable loss to the petitioner.

3. Perused the order and the application under Order 16 Rule 2 of the CPC. Perusal of the order shows that plaintiff/petitioner is claiming her right over the WILL which appears to be registered WILL registered in the office of Sub Registrar, Ambikapur. The application purports that the WILL was typed by independent witness who is also required to be examined alongwith the Sub Registrar. Reasons which is assigned in the order dated 12/07/2018 simply on the ground that earlier like nature of application were dismissed. Application filed under Order 16 Rule 2 of CPC assigns reason that the witness have refused to come to the court to be examined as a witness unless they are served with the summons. Taking into background of this case that since entire claim is based on a WILL which too is claimed to be registered, therefore under the circumstances unless if the Sub Registrar and the person who typed the WILL are not examined, plaintiff/petitioner shall suffer irreparable loss and the evidence which is necessary to prove the WILL shall not come to the court so as to evaluate authenticity of the same. Under the circumstances order dated 12/07/2018 is set aside. Application under Order 16 Rule 2 read with 151 of CPC moved by the petitioner is allowed. On payment of PF and diet money, Sub Registrar and the typist who has typed the WILL shall be summoned to give their evidence. Plaintiff/petitioner is also entitled to take dasti summons to procure their evidence before the court.

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

Sd/-

(Goutam Bhaduri)

JUDGE