

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 672 of 2018**

- Ramtula Bai W/o Shri Baldu Ram Chandrakar Aged About 74 Years R/o Shakti Nagar Durg, Tahsil And District Durg, Chhattisgarh. Through Power Of Attorney Holder Meghashyam Chandrakar, S/o Late Dhaniram Chandrakar, Aged About 69 Years, R/o Village Limora, Post Sikosa, Tahsil Gunderdehi, District Balod, Chhattisgarh.Plaintiff

---- Petitioner**Versus**

1. Smt. Saraswati Bai (Dead) Through Lrs.
 1. (A). Nutan Kumar S/o Late Mahadev Prasad Chandrakar Aged About 43 Years
 1. (B). Jayan Kumar S/o Late Mahadev Prasad Chandrakar Aged About 38 Years
 1. (C). Tushar Kumar S/o Late Mahadev Prasad Chandrakar Aged About 34 Years
 1. (D). Shakun Chandrakar D/o Late Mahadev Prasad Chandrakar Aged About 51 Years
 1. (E). Usha Chandrakar D/o Late Mahadev Prasad Chandrakar Aged About 45 Years
 1. (F). Saroj Chandrakar D/o Late Mahadev Prasad Chandrakar Aged About 48 Years
 1. (G). Sunita Chandrakar D/o Late Mahadev Prasad Chandrakar Aged About 41 Years
 1. (H). Maya Chandrakar D/o Late Mahadev Prasad Chandrakar Aged About 39 Years
 1. (I). Damini D/o Late Mahadev Prasad Chandrakar Aged About 32 Years

All are R/o Village Achoud, Tahsil Gunderdehi, District Durg, Chhattisgarh
2. State of Chhattisgarh, Through The Collector/ Secretary, Durg, District Durg, Chhattisgarh
3. Nazul Officer, Durg, District Durg, Chhattisgarh
4. Mukesh Kumar Adtiya S/o Shiv Lal Bhai Adtiya R/o Shanti Sadan, Motipara, Durg, Tahsil And District Durg, Chhattisgarh.Defendant No. 5
5. Vinod Kumar Adtiya S/o Shiv Lal Bhai Adtiya R/o Shanti Sadan, Motipara, Durg, Thasil And District Durg, Chhattisgarh.Defendant No. 6.,

---- Respondents

For Petitioner	:	Shri Praveen Dhurandhar, Advocate
For Respondent/State	:	Ms. Astha Shukla, PL for the State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10/08/2018

1. Heard.
2. The present petition is against the order dated 03.07.2018, whereby an application filed by the respondents No.4 & 5 under Order 8 Rule 1 (A) 3 CPC was allowed, whereby certain revenue documents were filed and an application under Section 45 of the Indian Evidence Act, has been allowed. Wherein the expert has been allowed to examine.
3. Learned counsel for the petitioner submits that the entire case of the petitioner is that the subject land which is under dispute was given to the petitioner/plaintiff with the consent of the owner Mahadev Prasad Chandrakar and Jivrakhan Lal and on that basis of the consent letter, the petitioner became the owner and those consent letters have been proved before the Court. It is stated that after closure of the evidence of the plaintiff, an application has been filed along with the revenue records to show that the signature on the consent letter of Mahadev and Jivrakhan are different as the likewise signature also contained in the revenue papers. He further submits that the expert application under Section 45 of the Indian Evidence Act compared with the consent which is existing on the revenue records, since after closure of the evidence, the same has been done, it will cause a serious prejudice and the plaintiff would not get any right to rebut the same and nothing was on record prior to examination of the plaintiff.

4. After perusal of the order dated 03.07.2018 I am not inclined to interfere with such order as it appears that the document accepted in evidence may be necessary to decide the actual controversy in between the parties. In any case, it appears that the said documents were filed after closure of plaintiff's evidence. The order reflect that the application filed under Order 8 Rule 1 A (3) CPC was allowed along with the application under Section 45 of the Indian Evidence Act for the reason that the cross-examination of the defendant has not yet begun, which shows that the evidence of the plaintiff has already closed. The documents though have been filed at the belated stage but at as of now have been allowed in records and in case the adverse facts & evidence are lead, in such case the plaintiff cannot be taken by surprise. Therefore, in all fairness, it is directed that since the application accepting certain document has been allowed to show that the revenue papers have different signatures of consenting parties from whom the plaintiff is claiming her title and application has been allowed to lead evidence of expert and the fact that these efforts were carried out after plaintiffs evidence was over, in all fairness, the plaintiff should get an opportunity to rebut the same by adducing evidence confined to the fact which would be brought on record by way of revenue record and the expert evidence. Therefore, after the evidence of defendant is closed the plaintiff would be at liberty to adduce evidence in rebuttal to the evidence brought on record by defendant.
5. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu