

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 985 of 2018**

Ram Kumar Chandrakar, S/o Late Bisahu, Aged about 62 years, Caste-Kurmi,
Village – Janta, Tahsil -Bemetara, District Bemetara (C.G.)

----Petitioner

Versus

1. Rajkumar Chandrakar, S/o Late Bisahu, Aged about 60 years, Caste-Kurmi,
Village -Janta, Tahsil -Bemetara, District-Bemetara (C.G.)

2. State of Chhattisgarh, through the Collector Bemetara, District Bemetara (C.G.)

----Respondents

For Petitioner : Mr. A.K. Yadav, Advocate.
For respondent No. 2 : Mr. Ashish Surana, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/11/2018

(1) By the impugned order dated 29.10.2018, petitioner / plaintiff's application under Order 18 Rule 17 of the Code of Civil Procedure for his re-examination *and* application under Order 16 Rule 1 of the CPC for summoning the patwari have been rejected, against which instant writ petition has been filed questioning that order.

(2) Learned counsel for the petitioner/plaintiff would submit that re-examination for the said witness is absolutely necessary and the trial Court ought to have granted that application. He placed reliance upon the order of this Court in the matter of ***Gokul Vs. Rajwantin Bai & others***¹ in support of his submission.

(3) I have heard learned counsel appearing for the parties and perused the impugned order with utmost circumspection.

¹ 2005 (1) C.G.L.J. 215

(4) This Court in the matter of Ajay Kumar Agrawal Vs. Smt. Sushila Bai & another² had clearly held that provisions contained in Order 18 Rule 17 of the CPC nowhere provides for permission for proving document. It was observed as under:-

“9. A bare reading of the provision would clearly indicate that power to recall a witness has been conferred on the Court for putting such questions to him as it thinks fit, but it nowhere entitles a party to recall a witness for further cross-examination or for making some additional statements or for exhibiting and proving the documents.

14. Even otherwise, a reading of the subject application would clearly indicate that no prayer for recall of the witness was made. The only prayer made in the application was for permitting the plaintiff to prove the documents. Rule 18 Order 17 of the CPC nowhere provides for such permission for proving the document. It appears, the plaintiff being aware of the limitation that a witness cannot be recalled at the instance of a party to the suit, the application has been couched in such a language where he has sought permission to prove the document which once allowed would automatically have the effect of recalling a witness.”

(5) In view of above, the trial Court is absolutely justified in rejecting the petitioner's application for his re-examination under Order 18 Rule 17 of the CPC as evidence of the both the parties have already been closed and the petitioner's/plaintiff another application filed Order 16 Rule 1 of the CPC for examination of the plaintiff's witnesses i.e. Patwari has also been rejected on the ground that both the parties have closed their evidence. Since the case is fixed for final hearing, I do not find any illegality in the order impugned warranting interference under Article 227 of the Constitution of India and the case cited by the counsel for the petitioner in the matter of **Gokul** (supra) is distinguishable to the facts of the present case.

- (6) In view of above, the writ petition is dismissed as having become infrastucture.
- (7) Copy of this order be sent to the trial Court through concerned District for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

