

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 56 of 2020

1. Jagdish, S/o Late Baratram, Aged About 52 Years, Resident of Sarangarh, District-Raigarh, Chhattisgarh.
2. Surednra, S/o Baratram Aged About 40 Years, Resident Of Sarangarh , District-Raigarh, Chhattisgarh.
3. Savitri, W/o Lakhan Yadav, Aged About 55 Years, Resident Of Kumharpara Sarangarh , District-Raigarh, Chhattisgarh.
4. Smt. Geeta W/o Ramlal Yadav Aged About 40 Years Resident Of Kumharpara Sarangarh, District-Raigarh, Chhattisgarh.(Petitioners/Defendant No. 1, 3 To 5).

---- Petitioners

Versus

1. Smt. Vimla, D/o Late Baratram Yadav, Aged About 42 Years, Resident Of Pailpara, Wad No. 15, Tehsil Sarangarh, District-Raigarh, Chhattisgarh.(Respondents Plaintiff No. 01).
2. Smt. Kamla, W/o Shyam Kumar Yadav, Aged About 54 Years, Resident Of Village Charouda, Tehsil and Police-Station-Markharouda, District Janjgir Champa, Chhattisgarh...(Plaintiff No. 2 Wrongly Mentioned As Defendent No. 6 In The Cause Title).
3. Shivcharan Sahu, S/o Seetaram Sahu, Aged About 36 Years, Caste Sahu Occupation Agriculturist, Resident of Village-Lendhari, Tehsil Sarangarh, District-Raigarh, Chhattisgarh..(Defendant No. 8 But Not Mentioned In The Cause Title).
4. Afroz Khan, S/o Gaffar Khan, Aged About 31 Years, Caste-Musalman, Occupation Agriculturist Resident of Nanda Chowk Sarangarh, Tehsil Sarangarh, District-Raigarh, Chhattisgarh.(Defendant No. 9 But Not Mentioned In The Cause Title).
5. State of Chhattisgarh Through Collector Raigarh, District Raigarh Chhattisgarh.(Defendant No. 7).

---- Respondents

For petitioners	:	Mr. Vineet Kumar Pandey, Advocate.
For respondents	:	Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

21/01/2020

1. This petition has been brought being aggrieved by the order dated 3.1.2020 (Annexure P-1) passed by the learned Civil Judge Class-II, Sarangarh, Chhattisgarh in Civil Suit No.A/21/2012 by which the learned Court below has permitted the plaintiffs to withdraw the evidence affidavit filed under Order 18 Rule 4 of the Code of Civil Procedure (for short 'CPC') and to file another affidavit under Order 18 Rule 4 of CPC.
2. It is submitted by learned counsel for the petitioner that Order 18 Rule 4 of CPC nowhere permits withdrawal of affidavit evidence once submitted before the Court and because of this order of withdrawal, the petitioner, who is defendant No.1 in that civil suit, has been deprived of his right to cross-examine the respondent on the basis of earlier affidavit evidence filed by him. Hence, the order passed is arbitrary, erroneous and against the provisions of law and the same is liable to be set aside.
3. Learned State Counsel appearing for respondent No.5 has formally opposed the petition.
4. Considering on the submissions made by the learned counsel for the parties and also perused the documents filed along with the petition.
5. The affidavit evidence, which was permitted to be withdrawn by the respondent, still appears to be part of the record of the case and Section 145 of the Evidence Act permits the opposite party to cross-examine the witness on the basis of such previous statement. Hence, the right of petitioner to cross-examine the respondent on the basis of previous affidavit filed by him still exists and the same is not taken away. Petitioner can very well cross-examine the respondent on the said affidavit.
6. With the above observations, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge