



2025:CGHC:18310

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 364 of 2025

• Sunanda Sharma Wd/o Late Sushil Sharma Aged About 65 Years R/o Vill. Dewada Tah. Patan District - Durg (C.G.) (Plaintiff)
... **Petitioner(s)**

versus

- 1. Bahura Devi Choubey W/o Late Shri Puranjan Prasad Choubey Aged About 72 Years R/o Village Deorgaon Tah. Saja District - Bemetara (C .G.) (Defendants)
- 2. Chandramouli Choubey S/o Manharanlal Choubey Aged About 61 Years R/o Village Deorgaon Tah. Saja District - Bemetara (C .G.)
- 3. Devrat Choubey S/o Chandramouli Choubey Aged About 30 Years R/o Village Deorgaon Tah. Saja District - Bemetara (C .G.)
- 4. Yashpal Choubey S/o Shri Vidyanand Choubey Aged About 46 Years Kadambari Nagar Durg Tehsil And District - Durg (C.G.)
- 5. Maa Mahamaya Mandir Village Deorgaon Tehsil Saja District - Bemetara (C.G.)
- 6. Pt. Aacharya Narendra Tiwari S/o Shri Rupnath Tiwari Aged About 75 Years R/o Village Charbhantha Tehsil Sahaspur Lohara District - Kabirdham (C.G.)
- 7. State Of Chhattisgarh Through District Collector Bemetara (C.G.)
... **Respondent(s)**

For Petitioner	:	Mr. Hemant Kumar Agrawal, Advocate
For State/ Respondent No. 7	:	Mr. Shubham Bajpai, P.L.

Hon’ble Shri Justice Rakesh Mohan Pandey
Judgment On Board

23-04-2025

Heard on admission.

1) The petitioner has challenged the order passed by the learned Principal District Judge, Bemetara, District Bemetara in Civil Suit No. A/ 7/ 2021 dated 11.03.2025, whereby the application moved by the petitioner under Order 16 Rule 2 of CPC has been rejected.

2) Facts of the present case are that:-

(i) The petitioner/plaintiff filed a civil suit for declaration of title, permanent injunction and possession after eviction over the suit property on the basis of the will-deed dated 10.06.2016. Defendants No. 1, 2, 3 and 5 filed a written statement and defendants No. 6 and 7 were proceeded ex-parte.

(ii) The learned trial Court framed issues; the plaintiff led evidence. On 11.03.2025, the plaintiff was cross-examined and on the same date, she moved an application U/o 16 Rule 2 of CPC to examine the Sub-Registrar, Saja before whom the registered will-deed dated 10.06.2016 was executed and registered. The application was objected to by the defendants.

(iii) Learned Trial Court rejected the application on the ground that this witness was not in the list of witnesses submitted by the plaintiff. It was also observed that the plaintiff was afforded sufficient opportunity to lead evidence but the listed witnesses were not present and thus closed the right of the plaintiff to lead evidence. Another application under Order 17 Rule 2 of CPC was also moved and it was also rejected.

3) Learned counsel for the petitioner submits that according to the provisions of Order 16 Rule 2 of CPC, it is not necessary to examine

the listed witnesses and the parties to the lis may examine any witness and summons may be issued to such witnesses. In support thereof, he placed reliance on the judgment passed by the Hon'ble Supreme Court rendered in the matter of ***Mahaboosa Begum & Ors. Versus Tamil Nadu Waqf Board & Anr.*** reported in **(2016) 16 SCC 653** wherein it is held that *it would be open to the parties to raise all the contention available to them at law and produce documents which should have been produced by the trial Court.* He prays to set-aside the order passed by the learned trial Court.

- 4) On the other hand, learned State counsel opposes. He submits that sufficient opportunity of hearing was afforded to the petitioner to lead evidence but she failed, therefore, her right was closed. He further submits that the Sub-Registrar, Saja was not a listed witness, therefore, the application moved under Order 16 Rule 2 of CPC was rejected.
- 5) Heard learned counsel for the parties and perused the documents placed on the record.
- 6) Order 16 Rules 1 and 2 of CPC reads as under:-

1. List of witnesses and summons to witnesses. -

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for

the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the [Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).]

1A. Production of witnesses without summons- *subject to the provisions of sub-rule (3) of rule 1, and party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.*

2. Expenses of witnesses to be paid into Court on applying for summons. -

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the traveling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts-In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses.-Where the Court is subordinate to High Court, regard shall be had, in fixing the scale of such expenses to any rules made in that behalf.

(4) Expenses to be directly paid to witnesses.-Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party or his agent.

7) The Hon'ble Supreme Court in the matter of **Vidhyadhar Versus Manikrao** reported in **AIR 1999 SC 1441** has opined in relation to these rules that "*it is open to the parties to summon the witness or without applying the summons, bring the witness to lead evidence or to produce documents*". It is further held that "*Sub-rule (1) of Rule 1*

provides that although the name of a witness may not find place in the list of witnesses filed by a party in the Court, it may allow the party to produce a witness though he may not have been summoned through the Court. The leave of the court may be necessary but this by itself will not mean that Rule 1A was in derogation of sub-rule (3) of Rule 1."

Relevant para of the aforementioned judgment is reproduced herein below:-

30. *These two Rules read together clearly indicate that it is open to a party to summon the witness to the Court or may, without applying for summons, bring the witnesses to give evidence or to produce documents. Sub- rule (3) of Rule 1 provides that although the name of a witness may not find place in the list of witnesses filed by a party in the Court, it may allow the party to produce a witness though he may not have been summoned through the Court. Rule 1A which was introduced by the Code of Civil Procedure (Amendment) Act, 1976 with effect from 01.02.1977 has placed the matter beyond doubt by providing in clear and specified terms that any party to the suit may bring any witness to give evidence or to produce documents. Since this Rule is subject to the provisions of sub-rule (3) of Rule 1, all that can be contended is that before proceeding to examine any witness who might have been brought by a party for that purpose, the leave of the Court may be necessary but this by itself will not mean that Rule 1A was in derogation of sub-rule (3) of Rule 1. The whole position was explained by this Court in Mange Ram Vs. Brij Mohan, AIR 1983 SC 925: (1983) 4 SCC 36: (1983) 3 SCR 525, in which it was held that sub-rule (3) of Rule 1 and Rule 1A operate in two different areas and cater to two different situations."*

8) The Hon'ble Supreme Court in the matter of **Sangram Singh Versus Election Tribunal, Kotah** reported in **AIR 1955 SC 425** held that "*it is "procedure", something designed to facilitate justice and further its*

ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against."

9) The Hon'ble Supreme Court in the matter of **Sushil Kumar Sen Versus State of Bihar** reported in **1975 (1) SCC 774** has held that *"morality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable."*

10) The Hon'ble Supreme Court in the matter of **State of Punjab Versus Shamlal Murari** reported in **1976 (1) SCC 719** held that *"processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."*

11) In the present case, the learned trial Court rejected the application moved under Order 16 Rule 2 of CPC on the ground that the Sub-Registrar, Saja was not a listed witness. In this respect, the approach of the learned trial Court appears to be erroneous.

12) Taking into consideration the above-discussed facts and the law laid down by the Apex Court in the matters of **Vidhyadhar (supra)**, **Sangram Singh (supra)**, **Sushil Kumar Sen (supra)** and **Shamlal Murari (supra)**, the order passed by the learned trial Court dated 11.03.2025 whereby the application moved by the plaintiff under Order

16 Rule 2 of CPC was rejected is hereby set-aside and the petition stands **allowed**.

13) The application moved under Order 16 Rule 2 of CPC stands allowed and the learned trial Court is directed to issue a summons to the proposed witness to record his evidence.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

Ajinkya

WP227 No. 364 of 2025**Head Note**

Order 16 Rule 2 CPC – It is open to the parties to summon the witness or without applying the summons, bring the witness to lead evidence or to produce documents subject to relevancy.

आदेश 16 नियम 2 सी.पी.सी. – पक्षकारों को सुसंगता के अधीन साक्षी को समन जारी कराने अथवा समन के लिए आवेदन दिए बिना साक्षी को, साक्ष देने या दस्तावेज पेश करने के लिए, प्रस्तुत करने की स्वतंत्रता है ।