

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 213 of 2015

- Raju Deshmukh S/o Late Bisan Deshmukh Aged About 33 years R/O In Front Of Vivekanand Ashram, Ramkund, Rawan Patti, Raipur, District Raipur, Now Residing At Behind Jain Bagicha, Thakur Daiyaya, Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. Suresh Rao Deshmukh S/O Late Bisan Deshmukh Aged About 48 Years R/O Near Shivam School Mini Talkies Road, Raipura, District Raipur Tahsil And District Raipur, Chhattisgarh
2. Mohan Rao Deshmukh S/O Late Bhagchand Deshmukh Aged About 25 Years R/O Samta Colony, Arjun Nagar, In Fornt Of Mira Datar, Raipur Tahsil & District Raipur, Chhattisgarh
3. Jyoti Baghmare W/O Shri Rajendra Rao Baghmare Aged About 40 Years R/O Shikari Pali, Bagbahara District Mahasamund, Chhhtisgarh
4. Smt. Vimladeshmukh W/O Late Bhagchand Deshmukh Aged About 50 Years
5. Smt. Radhika D/O Late Bhagchand Deshmukh Aged About 24 Years
6. Sonu Deshmukh S/O Late Bhagchand Deshmukh Aged About 19 Years R

Respondent No. 4 to 6 Resident of Samta Colony, Arjun Nagar, In Front Of Mira Datar, Raipur, Tahsil And District Raipur, (Chhattisgarh)

---- Respondents

For Petitioner	: Shri Rajesh Kumar Tiwari, Advocate
For Respondent/State	: Shri Gary Mukhopadhyay, Dy. Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/03/2015

1. The trial Court has dismissed petitioner's/plaintiff's application under Order 6 Rule 17 of the Code of Civil Procedure (for short, 'CPC') on the ground that the said prayer is hit by the proviso to Rule 17 of order 6 of CPC.
2. Admittedly plaintiff's evidence has already begun and he has already

examined few of his witness. To move out of the mischief of the proviso to Rule 17 of Order 6 of CPC, learned counsel for the petitioner has contended that in January 2013 the plaintiff changed his counsel and the newly appointed counsel informed him that it would be necessary to seek relief of partition, therefore, the requirement of the proviso is satisfied.

3. In the considered opinion of this Court, the said plea would not relieve the petitioner of the clutches of the requirement of law because the counsel was appointed in January 2013 and the instant application was moved in June 2014.

4. Moreover the proposed amendment also makes a prayer for partition, in addition to the relief of declaration and permanent injunction. Thus the proposed amendment also changes the nature of the suit.

5. Learned counsel has relied on the judgment of Supreme Court in the matter of ***Abdul Rehman and Another v. Mohd. Ruldu and Others*, 2012 AIR SCW 5419.**

6. Considering the law laid-down by the Supreme Court in the matter of ***Surya Dev Rai Vs. Ram Chander Rai and Others* {(2003) 6 SCC 675}; *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil* {(2010) 8 SCC 329} and *Sameer Suresh Gupta through pa holder Vs. Rahul Kumar Agarwal* {(2013) 9 SCC 374}, reiterating the scope of interference under Article 227 of the Constitution of India, the present is not a fit case for interference.**

7. Accordingly, the writ petition is dismissed.

J U D G E