

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 675 of 2015

1. Vikram Kumar Sahu S/o Shivnandan Sahu Aged About 48 Years R/o Bhaiyathan Road, Subhash Chandra Bose Ward No.5, Surajpur, P. S., Tahsil And District Surajpur, (Chhattisgarh)

---- Petitioner

Versus

1. Rakesh Kumar Agrawal S/o Vishnu Ram Agrawal Aged About 37 Years R/o Ward No. 13, Pt. Jawahar Lal Nehru Ward, Ketka Road, Surajpur, P. S., Tahsil And District Surajpur, (Chhattisgarh)
2. State Of Chhattisgarh Through Collector, District Surajpur, (Chhattisgarh)

---- Respondents

For Petitioner.	: Shri Sushil Dubey Advocate.
For Respondent/State.	: Shri Manish Nigam, Panel Lawyer.

Order

27/08/2015

Heard.

1. The petitioner by this petition under Article 227 of the Constitution of India has assailed correctness and validity of order dated 4.07.2015 passed in appeal whereby petitioner's application under Order 1 Rule 10 read with Section 151 of Civil Procedure Code has been rejected.
2. Learned counsel for the petitioner argued that the proposed respondent is necessary party to the proceedings because the property which is subject matter of dispute in the present case is a joint family property of which proposed respondent is also a co-sharer.

3. The scope and ambit of the suit in the present case is confined to issue arising on the basis of pleadings and relief claim by the plaintiff for specific performance of agreement to sell executed by defendant Vikram Kumar sahu. The issue of partition or share of respective share holders is not a matter for consideration in the present case.

4. The submission of learned counsel for the petitioner that as Laxmi Sahu is the one of the share holder and occupants of the house in dispute, no effective decree could be passed without impleading her as party is also liable to be rejected. Whether or not, a decree of specific performance could be granted in favour of the plaintiff Rakesh Kumar Agrawal on the ground that the subject matter of agreement is joint family property itself, may be an issue for consideration. But on that basis in a suit for specific performance, inclusion of other party on the ground that they are also entitled to the share in the disputed property can not be allowed by applying the principle under Order 1 Rule 10 CPC.

4. Reliance placed by the petitioner on the decision of the Supreme Court in the case of **Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and Others (2013) 5 Supreme Court Cases** is misplaced as that related to a case of transferee/purchaser *pendente lite*.

5. Petition is therefore, dismissed.

Sd/-

Manindra Mohan Shrivastava

Judge