

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 749 of 2016

1. Umashanker Kumhar, S/o. Sukhaiya Prasad, age 42 years, Occupation-Business,
2. Chandrashekhar Kumhar, S/o. Sukhaiya Prasad, age 37 years, Occupation-Business,

Both are R/o. Kumharpara, Indira Nagar, Raigarh, Tahsil and District – Raigarh (C.G.)

----Petitioners

Versus

1. Dinesh Kumar Agrawal, S/o. Late Mahavir Agrawal, age 51 years, Occupation- Business, R/o. In front of Main Hospital Raigarh, Tahsil and District – Raigarh (C.G.).
2. Hanuman Prasad Agrawal, S/o. Late Gopiram Agrawal, age 57 years, Occupation-Business, R/o. Sawariya Building Ramniwash Talkies Chowk, Raigarh (C.G.).
3. Rajendra Kumar Agrawal, S/o. Late Nagarmal Agrawal, age 57 years, Occupation-Business, R/o. Ramniwash Talkies Road, Raigarh (C.G.).
4. Sukhaiya Prasad, S/o. Bhaiyalal Kumhar, age 64 years, R/o. Indira Nagar, Kumharpara, Raigarh (C.G.)
5. State of Chhattisgarh, Through : Collector, Raigarh (C.G.)

---- Respondents

For Petitioners	: Mr. Amit Sharma, Advocate
For Respondent/State	: Mr. Anupam Dubey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09/12/2016

1. Challenge in this petition is to the order dated 19.10.2016, passed in Civil Suit No.104/2010, by the learned 3rd Additional District Judge of 1st Additional District Judge, Raigarh, District – Raigarh, whereby an application filed under Order 1 Rule 10 of C.P.C. by the petitioners has been rejected.

2. Learned counsel for the petitioners submits that a suit was filed by the Dinesh Kumar Agrawal, Hanuman Prasad Agrawal and Rajendra Kumar Agrawal i.e. the respondents No.1 to 3 against the defendant – Sukhaiya Prasad, who has been arrayed as respondent No.4 in this petition and the suit land which is subject of suit property also hold the interest of the present petitioners as the petitioners are co-parceners and since their rights are being affected and during the pendency of the suit, partition has taken place as such the petitioners would be the necessary party in civil suit. Therefore, the trial Court has committed gross error in dismissing the application filed by the petitioners under Order 1 Rule 10 of C.P.C.
3. Perused the order dated 19.10.2016. The suit appears to have been filed by Dinesh Kumar Agrawal, Hanuman Prasad Agrawal and Rajendra Kumar Agrawal against the defendant- Sukhaiya Prasad for specific performance of agreement, wherein along with specific performance of agreement possession was also claimed for. During the pendency, an application was filed by the present petitioners under Order 1 Rule 10 of C.P.C. claiming that they are the co-parceners and they are in part of possession of the land.
4. It is settled proposition that plaintiff is *dominus litis*. Against the choice of the plaintiffs, third party can not join the suit. Taking into the fact the suit was filed for specific performance and the issue agitated by the present petitioners would amount to converting the suit into title suit, the prayer to add the petitioners in civil suit can not be ordered. Further after going through the order, in my considered

opinion as appears no jurisdictional error has been committed or it can be stated that it is a case where the Court has exceeded the jurisdiction vested in it by law. Consequently I am of the opinion that this is not a case where the power under Article 227 of the Constitution of India is to be invoked.

5. Accordingly, the petition is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge