

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.187 of 2017**

1. Chandrahas, S/o Shiviram Kalyani, Aged about 45 years,
2. Puranlal, S/o Shiviram Kalyani, Aged about 40 years,
3. Saraswati D/o Shiviram Kalyani, Aged about 48 years,
All petitioner No.1 to 3 are resident of Village Nipani, Tahsil and District Balod, Chhattisgarh
4. Birambai, D/o Late Harilal, Aged about 62 years, Resident of Village Dandesara, Tahsil-Gurur, District Balod, Chhattisgarh
5. Sulochana D/o Late Harilal, Aged about 60 years, Resident of Village Ghogopuri, Tahsil-Gurur, District Balod, Chhattisgarh
6. Bindabai, D/o Late Harilal, Aged about 58 years, Resident of Village-Charaigodi, Tahsil and District Balod, Chhattisgarh

---- Petitioners

Versus

1. Birkumar, S/o Late Hiralal, aged about 64 years, Resident of Village Ramtara, Tahsil - Gurur, District-Balod, Chhattisgarh
2. State of Chhattisgarh, Through Collector-Balod, District-Balod, Chhattisgarh

---- Respondents

For Petitioners	:	Mr.Ravi Bhagat, Advocate
For Respondent No.1	:	Mr.P.P.Sahu, Advocate
For Respondent No.2	:	Mr.Majid Ali, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**28/06/2017

1. The plaintiff/respondent No.1 herein filed a suit for declaration of title and partition and also for declaration that the order passed by the Tahsildar, Gurur dated 4.3.2016 and the order passed by the Board of Revenue dated 21.1.2016 is null and void. During pendency of the suit, the plaintiff/respondent No.1 filed an application under Section 151 of the CPC read with Section 178(1) of the Chhattisgarh

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Land Revenue Code, 1959 (hereinafter called as 'Code') that order passed by the Tahsildar, Gurur in Revenue Case No.24A/27/2011-2012 dated 4.3.2016 be stayed during the pendency of civil suit.

2. The trial Court by its impugned order allowed the application filed by the plaintiff/respondent No.1 herein and stayed the order of the Tahsildar, Gurur dated 4.3.2016 directing partition.
3. Feeling aggrieved against the order passed by the trial Court granting application under Section 151 of the CPC, this writ petition has been filed.
4. Mr.Ravi Bhagat, learned counsel for the petitioners, would submit since there is specific provision for granting interim injunction under Order 39 Rule 1 & 2 of the CPC that has not been invoked into and application under Section 151 of the CPC has been filed bypassing that provision and that has been allowed by the trial Court as the inherent power of the court to do justice is in addition to and complementary to powers conferred under CPC, expressly or by implication and object of Section 151 is to supplement and not to override or evade other express provisions of the CPC, therefore, the impugned order be set aside.
5. On the other hand, Mr.P.P.Sahu, learned counsel for respondent No.1, would submit jurisdiction under Section 151 of the CPC has rightly been exercised by the trial Court

directing stay of partition proceeding till the disposal of civil suit. He would rely upon the judgment of the Supreme Court in the matters of **Mahohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal**¹ and **Vareed Jacob Vs. Sosamma Geevarghese and others**².

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
7. In a suit filed by respondent No.1/plaintiff for declaration of title and partition, he has sought declaration that the order passed by the Tahsildar, Gurur directing partition dated 4.3.2016 is null and void. He did not claim any temporary injunction under Order 39 Rule 1 & 2 of the CPC and straightway filed an application under Section 151 of the CPC read with Section 178(1) of the Code. In fact, the plaintiff/respondent No.1 simply relied upon the provisions contained in Section 178 (1) of the Code that till the suit is decided, partition proceeding be suspended, whereas the partition proceeding has already been concluded and order of partition has already been passed.
8. It is well settled that the inherent power of the court to do justice is in addition to and complementary to powers conferred under CPC, expressly or by implication (See **Vareed Jacob** (supra). It is also well settled that object of

1 AIR 1962 SC 527

2 (2004) 6 SCC 378

Section 151 is to supplement and not to override or evade other express provisions of CPC or other statutes (See **State of U.P. Vs. Roshan Singh**³).

9. In the matter of **Durgesh Sharma Vs. Jayshree**⁴ the Supreme Court has held that inherent powers may be exercised *ex debito justitiae* in those cases, where there is no express provision in CPC. The said power cannot be exercised in contravention or in conflict of or ignoring express and specific provision of law.

10. Likewise, the Constitution Bench in the matter of **Bharat Aluinium Company Vs. Kaiser Aluminium Technical Services Inc.**⁵ has clearly held that a court's power to grant interim relief is traceable to Section 94 and in exceptional cases Section 151 CPC. It was observed as under:-

“192. So far as the Indian law is concerned, it is settled that the source of a court's power to grant interim relief is traceable to Section 94 and in exceptional cases Section 151 CPC. The Civil Procedure Code presupposes the existence of a substantive suit for final relief wherein the power to grant an interim relief may be exercised only till disposal thereof.”

11. Coming back to the facts of the case, respondent No.1/plaintiff had a remedy of filing an application under Order 39 Rule 1 & 2 of the CPC for grant of interim injunction, if any and as such, there is an express provision for claiming

3 (2008) 2 SCC 488

4 (2008) 9 SCC 648

5 (2012) 9 SCC 552

temporary injunction which respondent No.1 has not claimed and straightway filed an application under Section 151 of the CPC for which respondent No.1 has failed to make out an exceptional case for grant of interim injunction as held in **Bharat Aluminium Company** (Supra).

12. Since grant of application under Section 151 of the CPC is in contravention and ignoring the specific provision contained in Order 39 Rule 1 & 2 of the CPC which are exhaustive in nature, application under Section 151 of the CPC has no application and application filed under Section 151 of the CPC cannot be said to be an application under Order 39 Rule 1 CPC as three ingredients for claiming temporary injunction i.e. prima facie case, balance of convenience and irreparable loss are missing in the said application.

13. As a fallout and consequence of the aforesaid discussion, the order passed by the trial Court granting application under Section 151 of the CPC read with Section 178(1) of the Code is set aside. However, this order would not come into way of respondent No.1/plaintiff to make a duly constituted application under Order 39 Rule 1 & 2 of the CPC before the trial Court. If such an application is filed, the trial Court would decide the same strictly in accordance with law on its own merit without being influenced by the order of this court passed while considering the challenge to the

impugned order passed by the trial Court.⁶

14. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-