

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.376 of 2015

Dinesh Modi, Son of late Shri Kanhaiyalal Modi, aged about 53 years, resident of In front of Government High School, Mainroad, Juna Bilaspur (CG).

---- **Petitioner**

Versus

Ashutosh Saav, son of Shri Shivpratap Saav, aged about 29 years, resident of Krishnanagar Ward, Juna Bilaspur, Tahsil & District Bilaspur (CG).

--- **Respondent**

For Petitioner : Mr. Vivek Chopda, Advocate

For Respondent : Mr. Ravindra Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

03/10/2017

(1) By the impugned order dated 24.04.2015 the trial Court has rejected the petitioner/defendant's application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, against which this writ petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant herein.

(2) Learned counsel appearing for the petitioner/defendant would submit that the impugned order passed by the trial court is unsustainable and bad in law.

(3) On the other hand, learned counsel appearing for the respondent/plaintiff would support the impugned order and oppose the submission made by learned counsel for the petitioner/defendant.

(4) I have heard learned counsel for the parties and perused the impugned order.

(5) The petitioner/defendant seeks to amend his written statement *inter alia* that the suit for permanent injunction is not maintainable, which

the trial Court has rejected on the ground that it is hit by proviso to Order 6 Rule 17 of CPC and in view of the decision of Supreme Court in the matter of **Vidyabai & Others Vs. Padmalatha & another**¹. I do not find any jurisdictional error in the impugned order. However, the petitioner/defendant is at liberty to argue at the time of final hearing before the trial Court that the suit as framed and filed by the respondent/plaintiff is not maintainable.

(7) Consequently, the writ petition deserves to be and is accordingly dismissed. No order as to costs.

(8) A copy of this order be sent to the trial Court for information and needful action.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-

1 (2009) 2 SCC 409