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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 895 of 2014***{Arising out of Order dated 03.11.2014 passed in Appeal No. 22A/2013 by the District Judge, Surajpur}*

Rajkumari Wd/o Late Jasman Singh, aged about 55 years, Occupation: Agriculturist, R/o village Parri, Police Station and Tahsil Surajpur, District Sarguja, Now District Surajpur, Chhattisgarh.

---- Petitioner**Versus**

1. Harmaniya W/o Shri Alam, aged about 52 years, R/o village Gopalpur, Police Station and Tahsil Surajpur, District Sarguja, Now District Surajpur, Chhattisgarh.
2. Ranmatiya D/o Late Rajaram Gond W/o Shri Sukham, aged about 50 years, R/o Gandhinagar, Ambikapur, District Sarguja, Chhattisgarh.
3. Chandramaniya W/o Shri Kunwar Sai, by caste Gond, aged about 55 years, R/o village Dimama, Police Station and Tahsil Ambikapur, District Sarguja, Chhattisgarh.
4. State of Chhattisgarh, Through Collector, Surajpur, District Surajpur, Chhattisgarh.

---- Respondents**AND****Writ Petition (227) No. 13 of 2015***{Arising out of Order dated 15.12.2014 passed in Appeal No. 22A/2013 by the District Judge, Surajpur}*

Rajkumari Wd/o Late Jasman Singh, aged about 55 years, Occupation: Agriculturist, R/o village Parri, Police Station and Tahsil Surajpur, District Sarguja, Now District Surajpur, Chhattisgarh.

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1. Harmaniya W/o Shri Alam, aged about 52 years, R/o village Gopalpur, Police Station and Tahsil Surajpur, District Sarguja, Now District Surajpur, Chhattisgarh.
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4. State of Chhattisgarh, Through Collector, Surajpur, District Surajpur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Sushil Dubey, Advocate.
For Respondents No. 1 to 3	: Ms. Sharmila Singhai, Advocate.
For Respondent No. 4	: Shri R.K.Gupta, Deputy Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Order on Board

04/12/2017

1. Heard the learned counsel for the Petitioner and the learned counsel for the contesting Respondents.
2. These writ petitions are by the Plaintiff in a suit for declaration and permanent injunction in relation to immovable property. That was dismissed. Plaintiff filed an appeal under Section 96 of the Code of Civil Procedure, 1908; for short 'CPC', against the dismissal of the suit. That appeal is still pending before the first appellate Court. Article 227 of the Constitution has been invoked by the Plaintiff challenging two different orders, one dismissing an application for impleadment invoking Order 1 Rule 10 CPC and the other, dismissing application filed under Order 41 Rule 27 CPC seeking admission of additional evidence in appeal.
3. The parameters of jurisdiction of an appellate Court and the vistas through which it will proceed in adjudicating interlocutory matters during the pendency of an appeal under CPC are well settled in terms of the decisions laid down by the Supreme Court. As has been rightly observed by this Court through an order issued on 10.12.2014, in Writ Petition (227) No. 895 of 2014, the application under Order 41 Rule 27 is one that was relevant for consideration for issuance, if need be, only on consideration of the appeal. The question whether a particular person has to be impleaded at the instance of the Plaintiff, is not a matter to be entertained now, by this Court, in exercise of authority under Article 227 of the Constitution. The final hearing of the first appeal instituted under Section 96 by the Plaintiff is still pending before the appellate Court in view of the stay order

issued by this Court.

4. Having considered the materials on record, it is found necessary to vacate the order issued on the application under Order 41 Rule 27 CPC which is challenged in Writ Petition (227) No. 895 of 2014 thereby paving way for the consideration of that application alongwith the first appeal. Similarly, it is necessary in the ends of justice to vacate the order impugned in Writ Petition (227) No. 13 of 2015. The application for impleadment will be considered *de novo* and orders will be issued afresh. If any of the party including the Plaintiff is aggrieved by such order that would be issued by the appellate Court, it would be available for challenge alongwith any further appeal against the decree that may be passed in the appeal, notwithstanding the decision in these writ petitions.
5. In the result, these writ petitions are allowed and the order dated 03.11.2014 impugned in Writ Petition (227) No. 895 of 2014 and the order dated 15.12.2014 impugned in Writ Petition (227) No. 13 of 2015 are set aside. The Court below will proceed to reconsider the applications on which the impugned orders were passed at the final hearing of the appeal.
6. The parties are directed to mark their appearance before the Court below on 11th January, 2018 in furtherance of this order.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE