

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.40 of 2017**

1. Narbadeshwar Prasad Gupta S/o Late Heera Chand Gupta, Aged About 58 Years
2. Kapil Prasad Gupta, S/o Late Heera Chand Gupta, Aged About 55 Years
3. Triveni Prasad Gupta, S/o Late Heera Chand Gupta, Aged About 57 Years
4. Naresh Kumar Gupta, S/o Late Heera Chand Gupta, Aged About 48 Years
5. Shyamlal Gupta, S/o Late Heera Chand Gupta, Aged About 45 Years
6. Govind Prasad Gupta, S/o Late Heera Chand Gupta, Aged About 38 Years

All R/o Imlipara, Ambikapur, P.S. & P.O. Ambikapur, District Surguja At Ambikapur, (Chhattisgarh).

---- **Petitioners****VERSUS**

1. Rajkumar S/o Ramprasad, Aged About 40 Years R/o Ambikapur, District Surguja, (Chhattisgarh) At Present R/o Village Parsa, P.S. & P.O. Ambikapur, District Surguja, (Chhattisgarh).
2. Sonamati, D/o Late Heera Chand Gupta, Aged About 60 Years R/o Imlipara, Ambikapur, District Surguja (Chhattisgarh).
3. Anita Gupta, S/o Late Heera Chand Gupta, Aged About 55 Years R/o Bauripara, Ambikapur, District Surguja, (Chhattisgarh).
4. State Of Chhattisgarh, Through Collector, Surguja, Ambikapur, District Surguja, (Chhattisgarh).

---- **Respondents**

For Petitioners
For respondent/State

Ms. Priyanka Mehta, Advocate.
Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****17/01/2017**

1. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 28.11.2016 passed by the 5th Additional Sessions Judge, Ambikapur in Civil Suit No.4-A/2014. Vide the said impugned order, the court below has rejected the application

under Section 151 CPC filed by the petitioners-defendants before the court below.

2. Facts in brief is that the respondent No.1-plaintiff has filed a suit seeking for relief of partition. The said suit was registered as Civil Suit No.4-A/2014. The matter was proceeded and after framing of issues, the plaintiff's evidence was recorded and after closure of plaintiff's evidence, the matter for the last couple of dates of hearing was adjourned for the evidence of defendants. Meanwhile, the petitioners-defendants No.1 to 6 moved an application under Section 151 CPC seeking for stay of further proceedings of the suit on the ground that one writ petition has been filed by the petitioners before the High Court which has been registered as Writ Petition (C) No.1352 of 2016 seeking for demarcation of the property as per settlement map. The said writ petition was admitted for hearing by this court on 13.06.2016. Therefore, as long as the said petition is pending before the High Court, the court below should not proceed with the trial.
3. The trial court vide impugned order has rejected the said application and have ordered to proceed with the matter with a direction to the petitioners-defendants to produce all the evidence which they intend to produce.
4. Counsel appearing for the petitioners submits that it would be proper if the suit itself is kept on hold till the writ petition pending before this court is decided finally. According to the petitioners, unless the property gets demarcated, it would be difficult for the trial court to

reach to a proper conclusion. It is also submitted that without the property being demarcated, the actual property which has to be partitioned would be difficult to be ascertained. The claim of the plaintiffs is in respect of 0.27 Acre of land which is sought to be partitioned. According to the petitioners, the same are self acquired property of the father of the petitioners and that as of now there are only 0.08 Acres of land left. The remaining portion of the land have been sold fraudulently by fake transaction allowed by the revenue authorities to different persons and it was for this reason the petitioners have moved the petition before this court for demarcation.

5. Having heard the rival contentions put forth by the petitioners and on perusal of records what clearly reflect is that the suit has been filed by the plaintiffs in the year, 2014 and the present petitioners-defendants No. 1 to 6 have already entered appearance and filed their detail written statement, issues were framed and based on the issues, the plaintiffs evidence has also been recorded and the trial court has reached the stage of defendants evidence and it is at this juncture, the petitioners though it proper to prefer a writ petition in the High Court and a subsequent application for stay of the proceeding.
6. Another aspect which cannot be brushed aside is the fact that the writ petition which the plaintiffs is referring to was filed in the year, 2016 whereas, the suit was pending before the trial court since 2014 onwards. Further, since the defendants did not seek such a relief all along and participated in the suit from the beginning and even during

the stage when plaintiff's evidence were being recorded, in the opinion of this court, the court below has not committed any illegality or infirmity while rejecting the application.

7. Though the counsel for the petitioners states that the application which has been rejected is an application under Section 151 CPC, but a perusal of the document shows that infact it has been filed under specific provision, but has also been filed with a heading for stay of further proceeding of the suit.
8. For all these reasons, this court does not find any illegality or infirmity in the order impugned warranting interference of this court under Article 227 of the Constitution of India. Accordingly, the petition being devoid of merit is liable to be and is dismissed.

**Sd/-
(P.Sam Koshy)
JUDGE**