

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 846 of 2017

Gopal @ Ram Gopal, S/o. Suritram, Aged About 54 Years, Caste Suryawanshi (Hindu), R/o. Village Sirgitti, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. Feku, S/o. Late Bodda, Aged About 65 Years, Caste Suryawanshi (Hindu) R/o. Village Sirgitti, Tahsil & District Bilaspur, Chhattisgarh.
2. State Of Chhattisgarh, Through : Collector, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Smt. Renu Kochar, Advocate
For Respondent No.1	:	Shri Arvind Shrivastava, Advocate
For Respondent No.2	:	Shri S.K.Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

30.01.2018

Heard

1. The instant writ petition is against the order dated 27.10.2017 whereby an application to add the defendants filed under Order 1 Rule 10 read-with Section 151 of C.P.C. has been dismissed at the threshold on the ground that if the proposed defendants have purchased the property their right would be covered under Section 52 of Transfer of Property Act.
2. Learned counsel for the petitioner would submit that a suit for declaration and injunction was filed against the defendant and the written statement was filed by the defendant wherein amendment was incorporated on 10.11.2016 whereby the defendant stated that the property in question has been sold to other persons. She submits thereafter after enquiry, it revealed that the property has been sold to as many as seven persons and after enquiry, an application was made with the particulars so that they may be

incorporated as defendants and thereafter the necessary amendment can be made. She further submits that the plaintiff is dominus litus and the right of the plaintiff would be seriously affected in absence to add the proposed defendant, therefore, the application under Order 1 Rule 10 read with Section 151 of C.P.C. may be allowed.

3. Learned counsel for the respondents opposes the same on the ground that the prayer which is made by the defendant at this stage addition of another parties would not have any effect on the merit, which can be granted even when their addition. Therefore, the order of the Court below is well merited which do not call for any interference.
4. Perused the order of the Court below dated 27.10.2017 and also the documents filed along-with the petition. The written statement shows disclosure was made by the defendant that the properties have been sold to different persons, thereafter, the application moved under Order 1 Rule 10 read with Section 151 of C.P.C. and seven persons have been proposed to be added in the array of the defendant. If the suit property has been sold according to the averments of the written statement then the right of the purchaser though may be covered under Section 52 of the Transfer of Property Act is sub-surveillant to the right of the defendant but the fact cannot be ignored that the plaintiff is dominus litus and if the parties are not added at this stage then subsequently if it is found that the proposed parties are in possession, then in absence of any claim for possession, the right of the plaintiff may seriously prejudice. It appears that denial of the proposed parties, at this

stage, may give rise to multiplicity of the proceedings subsequently.

5. In a result, the order dated 27.10.2017 is set aside. The trial Court is directed to issue notice on the application under Order 1 Rule 10 read with Section 151 of C.P.C. to the proposed defendants. The petitioner shall be obliged to pay the process fee by ordinary and registered mode and also shall be obliged to take dasti summons to serve the proposed parties. Thereafter, the trial Court after hearing shall decide the application under Order 1 Rule 10 read with Section 151 of C.P.C.
6. In view of the change of circumstances, the direction given on 31.08.2017 in W.P. (227) No.616 of 2017 is further extended for a period of six months from today.
7. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge