

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 224 of 2018**

Radheshyam Gupta, Aged About 70 Years, son of Late Munni Lal Gupta, R/o Village Madhaura , Tahsil Sonhat, District Korea (since deceased) through legal heirs:

1. Smt. Saraswati Devi, widow of late Radheshyam Gupta , Aged About 65 Years,
2. Anil Kumar Gupta, aged About 42 Years, S/o Late Radheshyam Gupta,
3. Kailash Chandra Gupta, aged about 36 Years, son of Late Radheshyam Gupta,
4. Vijay Kumar Gupta, Aged About 36 Years, son of Late Radheshyam Gupta,
5. Sanjay Kumar Gupta, Aged About 32 Years, son of Late Radheshyam Gupta,

All are R/o Village Madhaura, Tahsil Sonhat District Korea Chhattisgarh.

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Versus

1. Vishwanath Prasad Gupta, Aged About 62 Years, son of Late Dhaneshwar Prasad Gupta R/o Village Sundarpur Post Katgori Tahsil - Sonhat District Korea Chhattisgarh.
2. Sudama Prasad Gupta, Aged About 47 Years, S/o Late Dhaneshwar Prasad Gupta R/o Village Sundarpur , Post Katgori Tahsil Sonhat District Korea Chhattisgarh, Presently Resided At Togpal District Korapur (Odisha).
3. The State Of Chhattisgarh, Through The District Collector Korea , Head Quarter (Baikunthpur) District Korea Chhattisgarh.

-- Respondents

For petitioners- Shri P.K. Patel, Advocate.
For State – Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order**

15/03/2018

Heard.

1. Instant petition is against the order dated 6/02/2018 passed by the Second Civil Judge, Class-I, Baikunthpur, District Korea in Civil Suit No. 290-A/2014 whereby three applications which was preferred by the plaintiffs/petitioners one under Order 14 Rule 5 CPC to frame additional issues was dismissed, second application under Order 1 Rule 10 (2) CPC

to implead sister of the plaintiff was dismissed and third application under Order 6 Rule 17 CPC was dismissed.

2. Perusal of the plaint would show that suit was filed by the plaintiff for declaration, permanent injunction and confirmation of possession. In the said civil suit when defendants filed their written statement objection was raised that the suit property which has been claimed wherein declaration has been claimed is joint family property and objection was raised that the necessary party have not been impleaded i.e. sister and others. Consequently, an application under Order 1 Rule 10 (2) CPC was filed. Court dismissed the application on the ground that no document has been filed to show that proposed defendant is necessary party and it is a matter of evidence. Perusal of the plaint would show that suit has been filed with prayer that plaintiff is the exclusive owner. As against these prayer by reply of one of defendant contended that one sister is the necessary party.

3. Subsequently, an application under Order 1 Rule 10 (2) CPC was moved after written statement was filed to implead one Gayatri Devi wife of Kishori Prasad as a necessary party. Under the facts of this case, when one party was claiming that the property is exclusive one and one of the defendant has raised objection that it was joint family property and after such objection of non-joinder of parties an application has been filed to implead one of the sister as defendant, in the opinion of this court, application to implead sister of the plaintiff cannot be dismissed on the ground that no document has been filed by the parties. To demonstrate the necessity of parties the allegations of plaint and in cases counter reply would be relevant. When the lis in respect of the property wherein one party is claiming it to be joint owner and another is claiming it to be exclusive owner then in such case family members i.e. sister of the plaintiff would be a necessary party. Apart from the nature of lis, plaintiff is

always dominus litus to implead party of his choice. Consequently, considering the stage of this case, trial is at its inception, no prejudice would be caused to either of the party since in absence of the party if necessity is felt always that cannot be denied and there has to be unnecessary *denovo* trial, therefore application under Order 1 Rule 10 (2) CPC is allowed. Gayatri Devi wife of Kishori Prasad is been directed to be impleaded as defendant in the suit. Necessary amendment be carried out within a period of two weeks in the plaint and thereafter notice be issued by ordinary and registered post.

4. Now with respect to order passed in respect of application under Order 6 Rule 17 of CPC the perusal of the proposed pleading would show that denial is proposed for the averments of written statement. In the opinion of this court, since trial has begun and the nature of amendment which is sought for it is only in form of denial to the averments of written statement it would be irrelevant for that purpose. It is for the plaintiff to prove his case. Any pleading made by the defendant cannot be accepted unless and until it is proved. Plaintiff has to succeed on his own strength. Therefore, considering the nature of the amendment sought for, amendment appears to be not necessary. So in the facts of this case as trial has commenced and no reason exist to allow the application for amendment the dismissal of application under Order 6 Rule 17 of CPC cannot be said to be illegal.

5. Now turning to the application under Order 14 Rule 5 CPC additional issues have been proposed to be framed. Perusal of the issues would show that the issues so proposed are not necessary for adjudication of this case as it would appear that it is in the form of repetition of the pleading and when no counter claim has been made by the defendant, framing of additional issues would be superfluous. Consequently, no reason exist to allow the application. In the result,

finding whereby application under Order 14 Rule 5 CPC was rejected cannot be faulted with.

6. Accordingly, the petition is disposed of wherein application under Order 1 Rule 10 (2) CPC is allowed whereas rejection of application under Order 14 Rule 5 CPC and application under Order 6 Rule 17 CPC are affirmed.

Sd/-

(Goutam Bhaduri)
JUDGE