

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 770 of 2014**

1. Khem Singh, Aged about -28 years, S/o. Parasnath Rajwade,
2. Harish Chandra, Aged about -55 years, S/o. Late Ram Sunder,
3. Ramvati, Aged about -31 years, D/o. Late Ram Sunder, (as the petitioner No. 3 is major women, so the legal guardian as mentioned in the cause title is not necessary to implicate herein)
4. Ram Kumari, Aged about -26 years, D/o. Late Parasnath Rajwade,

All the above petitioners are Rajwar by Caste and R/o. Vill & P.O.- Tilsiwa, P. S. & Tehsil -Surajpur, Revenue & Civil District – Surajpur (C.G.)

----Petitioners/Defendants

Versus

1. Bhanu Pratap, S/o. Vijay Kumar Rajwade, Aged about -31 years,
2. Balkeshwar Prasad, S/o. Vijay Kumar Rajwade, Aged about -26 years,
3. Chandresh Das, S/o. Vijay Kumar Rajwade, Aged about -24 years,
4. Vijay Kumar Rajwade, S/o. Late Ramsunder, Aged about -50 years,
5. Kailasho, Rakhail -Jeetan, Aged about -50 years,

All the above Respondents are Rajwar by Caste and resident of village & post-Tilsiwa, P.S. & Tehsil – Surajpur, Revenue & Civil District – Surajpur (C.G.)

6. State of Chhattisgarh through Collector Surajpur, Revenue & Civil District – Surajpur (C.G.)

---- Respondents/Plaintiff

For Petitioners : Shri Sarfaraj Khan, Advocate.
For Respondents No. 1 to 3 : Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/10/2018

(1) By the impugned order dated 27.08.2014, defendants' application under Order 6 Rule 17 of the CPC filed in the first appeal has been rejected by the first appellate Court, against which instant writ petition has been filed questing the same.

- (2) I have learned counsel appearing for the parties.
- (3) It is well settled law that in first appeal, application under Order 6 Rule 17 of the CPC has to be decided after hearing the appeal on merits.
- (4) High Court of Madhya Pradesh in the matter of **Khemchand Mulchand Vs. Government of Madhya Pradesh, Bhopal**¹ has held as under :-

“5. What has been said in relation to an application under Order 41, Rule 27(1) applies equally to the disposal of an application for amendment of pleadings made at the appellate stage. The question whether a party should or should not be allowed to amend its pleadings at the appellate stage cannot in its very nature be decided unless the appeal is first heard on merits. The order of the Additional District judge, Chhindwara, permitting the non-applicants Nos. 4 and 5 to produce additional evidence and to amend their written statement must, therefore, be set aside and the Additional District Judge must be directed to consider the said non-applicants application under Order 41, Rule 27 and the application for amendment of the written statement after the appeal on merits.”

- (5) In view of the aforesaid legal position, impugned order is set aside. It is directed that the aforesaid application for amendment shall be considered by the first appellate court after hearing the appeal on merits expeditiously preferably within a period of 45 days from the date of receipt of certified copy of this order as the first appeal is pending since 23.04.2013.
- (6) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 1972 MPLJ 524

