

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 959 of 2017

***(Arising out of order dated 07.12.2017 passed by the District Judge,
Korba, Distt. Korba (C.G) in Civil Suit No. 1-A/2017)***

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1. Rakesh Kumar Agrawal S/o Subhash Chand Agrawal, Aged About 41 Years R/o Korba, Durpa Road Korba, District Korba Chhattisgarh.
2. Smt. Bhumika Devi Agrawal, W/o Rakesh Kumar Agrawal, Aged About 38 Years R/o Korba, District Korba Chhattisgarh.....
(Plaintiffs) **--- Petitioners**

Versus

1. Subhash Chand Agrawal S/o Late Lalchan Agrawal Aged About 67 Years R/o Agrasen Marg, Korba, District Korba Chhattisgarh.
2. Smt. Beena Devi Agrawal W/o Subhash Chand Agrawal Aged About 63 Years R/o Agrasen Marg, Korba, District Korba Chhattisgarh.
3. Nidhi Agrawal W/o Vikas Agrawal, Aged About 35 Years R/o Aroha Marg, Korba, District Korba Chhattisgarh.
4. Usha Agrawal, W/o Santosh Agrawal, Aged About 43 Years R/o Balco Korba, Tahsil And District Korba Chhattisgarh.
5. Shristi Goyal W/o Hemant Goyal, Aged About 27 Years R/o Korba, District Korba Chhattisgarh.
6. Municipal Corporation, Korba Through Its Commissioner, Municipal Corporation Korba, District Korba Chhattisgarh.
7. State of Chhattisgarh, through Collector, Korba, District Korba Chhattisgarh.....(Defendants) **--- Respondents**

For the applicant	:	Mr. Manoj Paranjpe Advocate
For respondent No.6	:	Mr. H.B. Agrawal, Sr. Advocate with Mr. Pankaj Agrawal, Advocate
For the State	:	Mr. Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

02.01.2018

1. The instant writ petition is against the order dated 07.12.2017 passed by the learned District Judge, Korba in Civil Suit No.1-A/2017 whereby the amendment sought by

the defendants/respondents in written statement has been allowed.

2. Learned counsel for the petitioners would submit that earlier it was stated in written statement that acknowledgement of partition dated 20.09.2004 was said to be executed but subsequently by way of amendment the plea was raised that the memorandum of partition dated 20.09.2004 though was executed but was not acted upon, therefore, there was withdrawal of admission made by the defendants which cannot be allowed consequently since by way of amendment, admission is said to be withdrawn the order allowing the amendment cannot be sustained.
3. Perused the plaint as also the written statement. At paras 2 & 3 of the plaint, the plaintiffs/ petitioners contended that the plaintiff was accepted as an adopted son and oral partition was executed which was subsequently reduced in writing on 20.09.2004 and it was further fortified by an affidavit dated 29.09.2004 wherein certain properties fell into share of the petitioners/plaintiffs. In reply to written statement at para 3 it shows that the defendants have denied the execution of the document dated 20.09.2004 and by way of amendment the explanation has been further given that on 20.09.2004 the plaintiff himself did not accept the partition and in lieu thereof he had accepted certain amount.
4. A perusal of the amended part would show that certain explanation has been given about the existence of document whether it was acted upon or not on 20.09.2004. if it is established at the end of the trial that the amount was paid in lieu of disclaimer then it requires the document which are

acceptable under the Evidence Act. Consequently, the challenge in this petition at this stage cannot be *prima facie* accepted that there is a denial of withdrawal of the admission. The amendment incorporated in the written statement involves the question of facts which the plaintiffs can always deny by way of consequential amendment. Taking into the nucleus of the dispute, I am not inclined to interfere with the impugned order 07.12.2017 as the plaintiffs shall always be entitled to rebut the same by way of consequential amendment.

5. This writ petition is dismissed with the above observation.

**Sd/-
GOUTAM BHADURI
JUDGE**