

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.485 of 2018

Dhaneshwar, S/o Mehattar Verma, aged about 35 years, Occupation
Agriculturist, R/o Village Saigona, Tahsil and District Bemetara (C.G.)

(Plaintiff)

---- Petitioner

Versus

1. Mehattar, S/o Basavan, aged about 70 years, Occupation Agriculturist,
 2. Fekan Bai, W/o Mehattar Verma, aged about 55 years,
 3. Gudiya, D/o late Goutam Verma, aged about one year, through legal guardian mother Fekan Bai, W/o Mehattar Verma,
- All R/o Village Kanteli, Tahsil and District Bemetara (C.G.)
4. Laxmi Bai, D/o Mehattar Verma, aged about 25 years, R/o Village Durg, District Durg (C.G.)
 5. Shashi, D/o Mehattar Verma, aged about 22 years, Occupation Agriculturist, R/o Goutiya Para, Bemetara, District Bemetara (C.G.)
 6. Sharda, D/o Mehattar Verma, aged about 20 years, Occupation House wife, R/o Village Kanteli, Tahsil and District Bemetara (C.G.)
 7. Sarita, D/o Mehattar Verma, aged about 40 years, Occupation House wife, R/o Village Kurmipara, Bemetara, Tahsil and District Bemetara (C.G.)
 8. State of Chhattisgarh, Through the Collector Bemetara, District Bemetara (C.G.)

(Defendants)

---- Respondents

For Petitioners: Mr. Yogesh Kumar Chandra, Advocate.

For Respondents No.1 to 6: -

Mr. Vaibhav A. Goverdhan, Advocate.

For Respondent No.8 / State: -

Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/02/2019

1. This is writ petition preferred under Article 227 of the Constitution of India by the plaintiff aggrieved and dissatisfied with the order passed

on the application under Order 8 Rule 1(3) of the CPC as well as application under Order 1 Rule 10 of the CPC granted by the trial Court directing the plaintiff to implead nine persons as defendants.

2. Mr. Yogesh Kumar Chandra, learned counsel appearing for the plaintiff / petitioner, would submit that the plaintiff has already closed his evidence and the defendants cannot be allowed to bring the documents on record and the said persons are neither proper nor necessary party.
3. Mr. Vaibhav A. Goverdhan, learned counsel appearing for respondents / defendants No.1 to 6, would support the impugned order and would submit that those nine persons are necessary party in view of the decision of the Supreme Court in the matter of Kasturi v. Iyyamperumal and others¹.
4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the impugned order and other documents annexed with the writ petition with utmost circumspection.
5. Firstly, the application under Order 8 Rule 1(3) of the CPC has been allowed by the trial Court. Since the plaintiff has closed his evidence and the defendants are yet to commence their evidence, this order granting application cannot be faulted with as such, the trial Court is absolutely justified in granting the said application.
6. The next application the trial Court has allowed is, the application under Order 1 Rule 10 of the CPC. The plaintiff son has filed suit against his father and mother for partition, possession and declaration. The suit was filed on 16-11-2016 in which defendants No.1 to 6 appeared and filed their written statement stating that they have

¹ (2005) 6 SCC 733

already given share to the plaintiff and the plaintiff has sold his share to the proposed defendants. The written statement was filed on 11-8-2017. Now, when the plaintiff has already closed his evidence, the defendants have filed this application that since the plaintiff has sold the share allotted to him, therefore, the persons to whom he has sold are necessary party and they be impleaded which the trial Court has found favour with and allowed the application directing the plaintiff to implead them and to serve them by summons. The suit is for partition and possession by son against his father and mother and his sisters. The alleged sale which is said to have been made by the plaintiff is ranging from 2003 to 2004 and suit has already been filed on 16-11-2016. The plaintiff's evidence has already been closed. It is the plaintiff's suit and he is the *dominus litis* and he cannot be compelled to implead a party against his wish. The defendants cannot command the plaintiff to implead a person as a party defendant which the plaintiff does not wish to implead. In the facts of the case also, the suit being for partition, the said persons cannot be said to be neither proper nor necessary party, particularly when the plaintiff is ready to suffer the consequences of not being impleading them as party. In view of that, the impugned order granting application under Order 1 Rule 10 of the CPC is set aside.

7. Resultantly, the writ petition is partly allowed and the order impugned to the effect of allowing the application under Order 8 Rule 1(3) of the CPC is maintained and that of the application under Order 1 Rule 10 of the CPC is set aside. No order as to cost(s). A copy of order be sent to trial Court.

Sd/-
(Sanjay K. Agrawal)
Judge