

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.434 of 2021

- Shrawan Tiwari S/o Makhan Prasad Tiwari Aged About 60 Years Resident Of Village- Pandarbhattha, Tahsil, Police Station And District- Bemetara, Chhattisgarh

---- Petitioner

Versus

1. Dwarika Tiwari S/o Makhan Tiwari Aged About 50 Years R/o Village- Pandarbhattha, P.H.No. 16, Tahsil, Police Station And District- Bemetara, Chhattisgarh (Plaintiff)
2. State Of Chhattisgarh Through The Collector, District- Bemetara, Chhattisgarh (Defendant No. 2)

---- Respondent

For Petitioner	– Mr. Harishankar Patel, Advocate.
For State	– Mr. Sameer Oraon, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

02-09-2021

Heard.

1. This petition has been brought being aggrieved by the order dated 13.08.2021, passed by the Court of First Civil Judge, Class-2, Bemetara, District- Bemetara, C.G., by which the application filed by the petitioner under Order 18 Rule 16 of C.P.C. has been dismissed.
2. It is submitted by learned counsel for the petitioner that the petitioner is defendant in the Civil Suit No.14-A/2021 filed by the respondent No.01. The respondent No.1 has filed Civil Suit praying for partition of the joint family property, whereas the petitioner/defendant is defending the suit

on the ground that the property is already partitioned. The only witness of this partition is the father of both plaintiff and defendant. He is aged about 97 years at present and therefore, looking to the uncertainty of his life, the application under Order 18 Rule 16 of C.P.C. was filed for immediate recording of evidence of this material important witness- Shri Makhan Prasad Tiwari, but the learned trial Court has rejected the application mentioning that it is not the stage of recording of evidence.

3. It is further submitted that the order 18 Rule 16 of C.P.C. provides for recording of the evidence of the witness who is likely to leave the jurisdiction of the Court or there is some other reason which satisfy the recording of evidence at any stage after institution of the Civil Suit. Therefore, the impugned order is unsustainable.
4. Heard learned counsel for the parties and perused the documents present on record.
5. The provision under Order 18 Rule 16 of C.P.C. is provides as under:-

“(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner herein before provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.”

6. Considered on the submissions, the learned trial Court has recorded incorrect reasons for rejecting the application stating that the stage of recording of evidence has not arrived and it is not a correct proposition of law in view of the provision under Order 18 Rule 16 of C.P.C., therefore, this petition is disposed off. The application under Order 18 Rule 16 of C.P.C. filed by the petitioner/defendant is restored.
7. The learned trial Court is directed to reconsider on the application in the light of the provision under Order 18 Rule 16 of C.P.C. and the observation made in this order.
8. Accordingly, this petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge