CGHC010092592026 2026:CGHC:46098

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 293 of 2026

1 - Mantora Bai W/o Late Mukund Singh @ Lalaram Patel Aged About 50 Years R/o Village Hedaspur, Post Karesara, Police Station And Tahsil - Thankhamhariya, District Bemetara Chhattisgarh

2 - Pawan Kumar S/o Late Mukund Singh Patel Aged About 30 Years R/o Ward No. 4, Punjabipara, Sunder Nagar, Ram Cloth Collection Ram Medical Store, Raipur Road, Bemetara, Police Station, Tahsil And District - Bemetara Chhattisgarh

3 - Ramnath S/o Late Mukund Singh Patel Aged About 26 Years R/o Ward No. 4, Punjabipara, Sunder Nagar, Ram Cloth Collection Ram Medical Store, Raipur Road, Bemetara, Police Station, Tahsil And District - Bemetara Chhattisgarh

4 - Durga Bai D/o Mukund Singh, W/o Devraj Singh Lodhi Aged About 28 Years R/o Village Parsuli, P.S. Dhamdha Tahsil - Dhamdha, District - Durg Chhattisgarh

... Petitioner(s)

versus

1 - Tamaskar @ Tamrakar Patel S/o Khem Singh Patel Aged About 50 Years R/o Village - Hedaspur, Post - Karesara, Police Station And Tahsil Thankhamhariya, District - Bemetara Chhattisgarh

2 - Nirmala Bai D/o Khem Singh, W/o Taran Singh Aged About 52 Years Patel Krishi Kendra, R/o Village - Hadgaon (Ghuthmura), Post Office Devarbija, P.S. And Tahsil And District Bemetara Chhattisgarh

3 - Kumari @ Usha Bai D/o Khem Singh W/o Leelsingh @ Leelaram Lodhi Aged About 48 Years R/o Khairjhitikala, Police Station - Thankhamhariya, Tahsil - Thankhamhariya, District - Bemetara Chhattisgarh

4 - Rani Bai D/o Khorbahra, W/o Munnuram Lodhi Aged About 55 Years R/o Village Tura Semeriya, P.S. Bemetara, Tahsil - Thankhamhariya, District - Bemetara Chhattisgarh

5 - Chaunpi Bai @ Purain D/o Khorbahra, W/o Balram Patel Aged About 50 Years R/o Village Hathmudi, Post Office Karesara, Tahsil - Thankhamhariya, District - Bemetara Chhattisgarh

6 - State Of Chhattisgarh Through The Collector, Bemetara, District Bemetara Chhattisgarh (During Pendency Of The Suit, The Plaintiff Khem Singh Patel Has Been Died, Therefore His Name Has Been Deleted, The Plaintiff Tamaskar @ Tamrakar Patel Is The Legal Heir Of Late Khem Singh Patel)

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner(s)	**:**	Mr. Harishankar Patel, Advocate.
For Respondent No. 1	**:**	Mr. Bharat Rajput, Advocate.
For Respondent No. 2 to 5	**:**	None, though served.
For State	**:**	Mr. Karan Kumar Baharani, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.
Order on Board

30/10/2026

1. Heard.

2. Present is a writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 17.02.2026 passed by learned Additional Judge to the Court of First Civil Judge Senior Division, Saja District Bemetara (C.G.), In Civil Suit No. 01-A/2024, whereby the application filed by the petitioner under Section 140 of the Bharatiya Sakshya Adhiniyam, 2023 (Section 135 of the Indian Evidence Act, 1872) has been rejected.

3. Learned counsel for the petitioner would submit that the petitioners are the defendant No. 1 to 4 before the learned trial Court where the respondent No. 1 plaintiff is prosecuting a suit for declaration of title partition and separate possession and permanent injunction over the suit properties shown in Schedule-A and B annexed with the plaint. The petitioners are the contesting defendants and duly contested the claim of the plaintiffs before the learned trial Court whereas the defendant Nos. 5 to 8 are supporting the case of the plaintiffs. The defendant Nos. 1 to 4 have filed their written statement denying the averment

made in the plaint whereas the defendant Nos. 5 to 8 have admitted the claim and plaintiff by their written statement.

4. On the basis of the pleading made by the parties, the learned trial Court framed issues and proceeded for recording evidence of the plaintiffs. In the meantime the defendant Nos. 1 to 4 have filed the application under Section 140 of the Bharatiya Sakshya Adhiniyam, 2023 (Section 135 of the Indian Evidence Act, 1872) on the ground that since the defendant Nos. 5 to 8 are supporting the plaintiffs case, therefore, they may corss-examine the plaintiffs witnesses first and then only the defendants may be cross-examined the plaintiffs witnesses for the reason that there is every possibility to fulfill the gap which the defendant Nos. 1 to 4 taken out from the evidence of the plaintiffs. He would further submit that no prejudice is being caused to the plaintiffs even if the defendant Nos. 5 to 8 may be permitted to cross-examine the plaintiffs witnesses as they are the supporting party to the plaintiffs. The defendants would be prejudice if the lacuna or deficiency brought out from the evidence of the plaintiffs by the defendant Nos. 1 to 4 and in further cross-examination by defendant Nos. 5 to 8 may fulfill the such lacuna by putting their questions in cross-examination from them. Therefore, the defendants Nos. 5 to 8 may be permitted to cross-examine first and then only the defendant Nos. 1 to 4 may cross-examine plaintiffs witnesses. He would also submit that the learned trial Court has not considered the provisions of Order 18 Rule 2 of CPC as well as Section 135 of Indian Evidence Act, 1872 and Section 140 of the Bharatiya Sakshya Adhiniyam, 2023. Therefore, the impugned order may be set aside and the application may be allowed.

5. On the other hand, learned counsel appearing for the respondent No. 1 opposes the submissions made by learned counsel for the petitioner and would submit that even if the plaintiffs would be cross-examined by defendant Nos. 1 to 4 first, there would be prejudice to any of the parties as in the sequence of their array in the cause title of the suit it is for the defendant Nos. 1 to 4 who first cross-examine the witness as has been provided in Order 18 Rule 2 of CPC and provisions of under Section 140 of the Bharatiya Sakshya Adhiniyam, 2023 (Section 135 of the Indian Evidence Act, 1872), therefore, the learned trial Court has rightly rejected the application filed by the petitioners and no merit is there in their writ petition.

6. I have heard learned counsel for the parties and perused the documents annexed with the petition.

7. The controversy in the present writ petition between the parties are that the who will cross-examine the plaintiffs witness first either the defendant Nos. 1 to 4 who was contesting party or the defendant Nos. 5 to 8 who are supporting the plaintiffs. Right to begin re-evidence and the sequence of production fo evidence is provided under Order 18 of CPC. The Order 18 Rule 1 of CPC provided that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin." Order 18 Rule 2 of CPC provided that “On the date fixed for hearing, the party having the right to begin (usually the plaintiff) states their case and presents evidence (oral and documentary) to support the issues they are bound to prove”. Section 135 of the Indian

Evidence Act, 1872 provided that the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

8. From perusal of the plaint filed by the petitioners Annexure P/2 it transpires that the plaintiffs are claiming partition over the suit property separate possession and permanent injunction the written statement filed by the defendant Nos. 1 to 4 reveals that they are contesting the claim of the plaintiffs by denying the material facts and pleadings of the plaint whereas the defendant Nos. 5 t 8 have admitted the claim of the plaintiffs as has been reflected from their written statement Annexure P/4. It is the apprehension of the defendant No. 1 to 4 that in the process of recording evidence of the plaintiffs, even if the defendants would be able to extract certain discrepancies in their favour, that would be diluted by the defendant Nos. 5 to 8 by cross-examining the plaintiffs witness as they supporting them in the suit. The apprehension of the petitioners/defendant Nos. 1 to 4 cannot be said to be basis from the written statement of defendant Nos. 5 to 8 when they were supporting the plaintiffs, they may cross-examine the plaintiffs witness first and they only the contesting defendant Nos. 1 to 4 may cross-examine the plaintiffs witnesses and in which there would be prejudice cause to any of the parties whereas if the plaintiffs would be cross-examined by defendant Nos. 1 to 4, the prejudice may cause to them by further cross-examination of the defendant Nos. 5 to 8.

9. As provided under Section 135 of the Indian Evidence Act, 1872 The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and

criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court. There is no any provisions prescribed in the law as to who will the cross-examine the witnesses first. Therefore, is the for the discretion of the Court to permit the parties to cross-examine the witnesses in the facts and circumstances of the case if they form an opinion that any particular should cross-examine the wintesses first.

10. Since the defendant Nos. 5 to 8 are the supporting party of the plaintiffs, there appears to be no prejudice cause to any of the parties if they be directed to cross-examine the plaintiffs evidence first and then only the defendant No. 1 to 4 .

11. Accordingly, this Court is of the considered opinion that the defendant No. 1 to 4 are able to make out a case to interfere with the order and to direct the learned trial Court to permit the defendant Nos. 5 to 8 to cross-examine the plaintiffs witness first and then only the defendant Nos. 1 to 4.

12. The impugned order is accordingly set aside, the application filed by the defendant Nos. 1 to 4 Annexure P/5 is allowed and the defendant Nos. 5 to 8 are directed to cross-examine the plaintiffs witness first and then only defendant Nos. 1 to 4 shall cross-examine the plaintiffs witness.

13. With the aforesaid observation the present writ petition is **allowed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Alok