

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CMPMO No.157 of 2007

Date of decision: 30.5.2008.

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Sh.Kuldip Singh	.....Petitioner
-Versus-	
Harsevak Singh and others	....Respondents

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Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner: Mr.Ajay Sharma, Advocate.

For the respondents: M/s. H.K. Bhardwaj & Y. Paul, counsel for respondents 1 to 5.

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**Deepak Gupta, J.(oral)**

This petition is directed against the order dated 30.5.2007 passed by the Civil Judge (Senior Division), Una whereby he has rejected the application filed by the petitioner (hereinafter referred to as the plaintiff) seeking permission to amend the plaint.

Briefly stated, the facts of the case are that the plaintiff filed a suit in which he claimed that he was the sole owner in possession of the suit land and the respondents were not the co-owners and had no right to seek partition of the said land. Alongwith the suit an application was filed that the partition proceedings pending before the Revenue authorities be stayed. This application was rejected by the learned trial Court. The learned District Judge in appeal stayed the partition proceedings. The defendants filed a Revision Petition in this Court and the said Civil Revision was numbered as CR No.113 of 1999. It was decided on 2.11.2000 and a learned Single Judge of this Court directed that the partition proceedings would go on but the final order would not be passed.

By means of the amendment the plaintiff wants to challenge what has happened subsequent to the filing of the suit in the partition proceedings.

This application was rejected by the learned trial Court on the ground that in terms of proviso to Order 6 Rule 17 CPC this application could not be allowed since the trial had commenced. As far as this ground is concerned the order of the learned trial Court is based on the judgment of the Single Judge of this Court in **Jeet Ram Kishore and others vs. Sunder Singh, Latest HLJ 2004(1) 582**. This judgment cannot be said to be a good law in view of the pronouncement of the judgment of the Apex Court in **State Bank of Hyderabad vs. Town Municipal Council, (2007) 1 SCC 765**, wherein the Apex Court has held that this amended proviso will not apply to cases filed before 1st July, 2002.

However, I do not find any merit in the application for amendment. It is pertinent to mention that the suit was filed on 1.2.1996. In the suit challenge has been laid to the partition proceedings on the ground that the defendants are not the co-sharers and as such are not entitled to seek partition of the land. In case it is held that the defendants are not the co-sharers, obviously they would not be entitled to claim partition. This is a question which is already in issue and all subsequent action in the partition proceeding which have taken place during the pendency of the suit are subject to the final decision of the suit. The partition proceedings have proceeded under the orders passed by this Court in Civil Revision No.113 of 1999. Therefore, the suit is not required to be amended. The question whether the defendants are entitled to seek partition or not is a question which is already in issue in this Suit. Hence, there is no merit in the petition which is rejected.

The suit has been pending since the year 1996. It is ripe for arguments. The parties through their counsel are directed to appear before the learned trial Court on 4<sup>th</sup> August, 2007 and the learned trial Court is directed to ensure that the suit is positively decided by 30<sup>th</sup> September, 2008. No order as to costs.

May 30, 2008.  
PV

( Deepak Gupta ),  
Judge