

**HIGH COURT OF MADHYA PRADESH,**  
**BENCH AT INDORE**  
**M.P. No.1886/2017**  
**(Ashok Ojha V/s. Suresh Chandra)**

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**Indore, Dated : 28.12.2017**

Shri Deepak Tiwari, learned counsel for the petitioner.

Heard on IA No.18702/2017, an application for urgent hearing during vacation and IA No.18705/2017, an application for urgent hearing.

Considering the averments made in these applications, both IAs (IA No.18702/2017 & IA No.18705/2017) are allowed. The case is taken up during vacation.

Heard on the question of admission.

Petitioner/plaintiff has filed the present petition being aggrieved by order dated 19.12.2017 passed in Civil Suit No.3-A/2013 by the District Judge Alirajpur by which application filed under Order 6 Rule 17 read with Section 151 of Cr.P.C. has been rejected.

The plaintiff initially filed the suit against respondents No.1 to 5 seeking relief of declaration, partition and possession. On 04.03.2009, the defendant No.4 & 5 filed the written statement on 17.06.2009. The defendant No.1 & 2 filed the written statement on 21.08.2009.

Vide order dated 15.07.2011 the Trial Court

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framed the issue for adjudication. The defendant No.6 being a tenant was impleaded as defendant No.6 in the suit, thereafter he filed the written and on the basis of pleading in the written statement additional issues were framed on 30.06.2016. The plaintiff examined himself and his witnesses on 19.08.2016, thereafter the defendants have also closed their evidence and the final argument took place on 21.12.2017.

Vide order dated 04.08.2016 the defendant No.6 has been proceeded ex-parte, thereafter he filed an application under Order 9 Rule 7 on 13.12.2017 along with an application under Order 13 Rule 4 of CPC and another application under Order 6 Rule 17 of CPC. In the said application the defendant No.6 has disclosed that the defendant No.1 & 2 have executed registered deed dated 18.07.1977 by which they have relinquished their rights in the suit property and the said deed was mortgaged with the defendant No.6 by Kanhaiyalal in Rs.10,000/-. On disclosure of this fact the plaintiff filed an application under Order 6 Rule 17 of CPC seeking amendment in the plaint. The said application was filed on 19.12.2017. The learned Trial Court has considered all the applications together and rejected all the

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applications with cost. The present petitioner has filed the present petition being aggrieved by rejection of his application filed under Order 6 Rule 17 of CPC.

I have heard learned counsel for the petitioner Shri Deepak Tiwari.

Shri Tiwari submits that the proposed amendment is necessary for adjudication of the dispute and, therefore, in the interest of justice same is liable to be allowed. The proposed amendment would not change the nature of the suit. In support of his contention he placed reliance over the judgment of Apex Court passed in **Abdul Rehman and another V/s. Mohd. Ruldu and others** reported in (2012) 11 SCC 341, **Surendra Kumar Sharma V/s. Makhan Singh** reported in (2009) 10 SCC 626 and **M/s. Chakreshwari Construction Pvt. Ltd. V/s. Manohar Lal** reported in LAWS (SC) 2017 277.

The petitioner/plaintiff filed the suit in the year 2009 for seeking partition and possession. The defendant filed the written statement in the year 2009 and the issues have been framed long back. The evidence of the defendants and plaintiffs have been concluded. The final argument in suit has already taken

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place and now the case is fixed for judgment. At this belated stage plaintiffs filed an application for amendment under Order 6 Rule 17 of CPC. The Trial Court has observed that there is a collusion between the plaintiff and the defendant No.6 and the application has been filed for the purpose of delaying the trial. The proposed amendment is not based on subsequent events.

The defendant No.6 is only a tenant in the suit premises. He is not related with the plaintiffs and defendants No.1 to 5. The eviction suit has already been filed against him. It appears that he is supporting the plaintiff, therefore, at this stage the application for amendment cannot be allowed, when the Trial Court has already heard the final arguments. The petition is **dismissed**, however, the plaintiff is having liberty to file these documents in the First Appeal, if occasion so arises.

C.c. as per rules.

**(Vivek Rusia)**  
**Vacation Judge**

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**Neeraj  
Sarvate**

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