CGHC010392262026 2026:CGHC:44123

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1317 of 2026

SUMIT KUMAR Digitally signed by SUMIT KUMAR Date: 2026.10.13 11:27:07 +0530

1 - Chandratan Lakhotiya Son Of Late Ramnarayan Lakhotiya, Aged About 97 Years Resident Of Village Khandsara, P. S. Tehsil And District Bemetara C.G.

2 - Girish Kumar Lakhotiya, Son Of Shri Chandratan Lakhotiya, Aged About 62 Years Resident Of Village Khandsara, P. S. Tehsil And District Bemetara C.G.

3 - Shyamsundar Lakhotiya, Son Of Shri Chandratan Lakhotiya, Aged About 60 Years Resident Of Village Khandsara, P. S. Tehsil And District Bemetara C.G.

4 - Hukumchand Urf Govind Lakhotiya Son Of Shri Chandratan Lakhotiya, Aged About 56 Years Resident Of Village Khandsara, P. S. Tehsil And District Bemetara C.G.

5 - Gopal Lakhotiya, Son Of Shri Chandratan Lakhotiya, Aged About 52 Years Resident Of Village Khandsara, P. S. Tehsil And District Bemetara C.G.

6 - Smt. Leela Devi, Wife Of Shri Chandratan Lakhotiya, Aged About 87 Years Resident Of Village Khandsara, P. S. Tehsil And District Bemetara C.G.

... Petitioner(s)

versus

1 - Smt. Padma Urf Anushri Wife Of Shri Harish Laddhad, Daughter Of Shri Chandratan Lakhotiya, Aged About 57 Years Resident Of Khandsara, P. S., Tehsil And District Bemetara C.G. Presently Resident Of 101 Shri Ganpati Apartment, Khare Town, Dharampet, Nagpur, Maharasthra

2 - Smt. Megja Bafma. W/p Shri Abhishek Bafna, Aged About 32 Years Resident Of Ward No. 1, Near Union Bank, Ahiwara, Tehsil Dhamdha, District Durg C.G.

3 - Smt. Hemlata, W/o Shri Rakesh Jain, Aged About 52 Years Resident Of Ward No. 5, Nagar Panchayat Berla, Tehsil Berla, District Bemetara C.G.

4 - Sharda Devi, W/o Of Shri Subhash Jain, Aged About 61 Years Resident Of Ward No. 5, Nagar Panchayat Berla, Tehsil Berla, District Bemetara C.G.

5 - Lobhan Singh Verma, S/o Bhagirathi Verma, Aged About 50 Years Resident Of Village Singpur, Post Jhal, Tehisl And District Bemetara C.G.

6 - State Of Chhattisgarh Through Collector District Durg C.G.

... Respondent(s)

For Petitioner(s)	**:**	Mr. Ankur Agrawal, Advocate
For Respondent No.6	**:**	Mr. Karan Kumar Baharani, P.L. for the State

(Hon'ble Shri Justice Ravindra Kumar Agrawal, J.)

Order on Board

12/10/2026

1. Heard.

2. Present is writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 11.08.2026 passed by learned Second Civil Judge, Junior Division, Bemetara in Civil Suit No. 2A/2025, whereby the application filed by the petitioner under Order 14 Rule 5 of CPC has been rejected.

3. Learned counsel for the petitioners would submit that the petitioners are the defendants No.1 to 6 before the learned trial Court where the respondent No.1 is prosecuting a suit for declaration of title, partition, separate possession and permanent injunction over the suit properties shown in the Schedule – A, B, C, D and E annexed with the plaint. The plaintiff is claiming that she is the grand daughter of Late Ram Narayan and the defendant No.1 is son of Late Ram Narayan, who is the father of the plaintiff and the defendants No.2 to 5 are her brothers and the defendant No.6 is her mother. The defendant No.1 is still alive and the plaintiff being the daughter of the defendant No.1 can not claim

partition during lifetime of her father as the property is the ancestral property. The learned trial Court though have framed issues with respect to entitlement of the property, however, the relevant issue with respect to the right and title of the defendant No.1 and their entitlement of the suit property, no issue has been framed by the learned trial Court. The defendants No.1 to 6 have filed an application under Order 14 Rule 5 of the CPC for framing of additional issues but the same has been rejected by the learned trial Court saying that the issues which have already been framed by the learned trial Court covers the entire controversy between the parties and there is no need to frame additional issues as has been proposed by the defendants No.1 to 6. In support of his submission, he would rely upon the judgment of *Kritika Jain v. Rakesh Jain & Anr., 2025 SCC OnLine Del 7712*. He would further submit that without there being any proper issue, the parties may deprive from leading evidence and to decide the real controversy between the parties, the additional issue is required to be framed, therefore, the impugned order may be set aside and the learned trial Court may be directed to decide the allow the application filed by the petitioners and to frame additional issues, which has been proposed by the defendants No.1 to 6.

4. I have heard learned counsel for the petitioner and perused the document annexed with the petition.

5. The controversy in the present case revolves around the partition of the ancestral property between the parties and their right to claim the partition, as the defendants No.1 to 6 have raised objection that the father of the plaintiff is still alive, who is defendant No.1 and during his

lifetime, the plaintiff cannot claim partition over the ancestral property.

6. After having gone through the pleadings of the parties, the learned trial Court has framed the following issues in the suit :-

"1. क्या वादपत्र के साथ संलग्न अनुसूची-द भाग 1-4 में वर्णित ग्राम खसरा, रायखेड़ा, बंसापुर, जगमड़वा तह० व जिला बेमेतरा स्थित वाद ग्रस्त भूमि वादिनी एवं प्रतिवादी कं0 01 से 05 के संयुक्त स्वामित्व की पैतृक संपत्ति है?

2. क्या वादी, वादपत्र के साथ संलग्न अनुसूची - द भाग 1-4 में वर्णित ग्राम खण्डसरा रायखेड़ा, बंशापुर, जगमड़वा तह० जिला बेमेतरा वादग्रस्त संपत्ति पर वादिनी एवं प्रतिवादी क्रं० (1) से (05) के साथ बराबर-बराबर हक एवं हिस्सा होने की घोषणा पाने प्राप्त करने के अधिकारी है?

3. क्या वांदिनी उक्त वादग्रस्त संपत्ति का विभाजन कराकर प्रतिवादी क्रं० (1) से (05) से 1/6 अंश का रिक्त आधिपत्य प्राप्त करने के अधिकारी है?

4. क्या प्रतिवादी कं0 7 से 10 की भूमि जो कि वादपत्र के साथ संलग्न अनुसूची ई में वर्णित वादग्रस्त भूमि जिसे प्रतिवादी कं0 2 एवं 3 के द्वारा विक्रय की गई है, उसे अंतिम विभाजन के समय विक्रेतागण प्रतिवादी क्रं० (2) एवं (3) के हिस्से में समायोजित किया जाये?

5. क्या वादिनी उक्त वादग्रस्त भूमि के संबंध में प्रतिवादीगण के विरूद्ध स्थायी निषेधाज्ञा का अनुबोध प्राप्त करने के अधिकारी है?

6. सहायता एवं व्यय?"

7. The defendants No.1 to 6 have filed an application and proposed the following issues:-

"(i) क्या प्रतिवादी क्रमांक 2 एवं 3 के द्वारा जो भूमि प्रतिवादी क्रमांक 7 से 10 का विक्रय किया है वह उनके स्वयं की भूमि थी?

(ii) क्या ग्राम जगमड़वा की भूमि खसरा नंबर 45 एवं 54 प्रतिवादी क्रमांक 2 गिरीश लखोटिया को श्रीमती सुनीता लखोटिया एवं मयंक लखोटिया से विनिमय में प्राप्त भूमि है?

(iii) क्या वाद में पक्षकारों का असंयोजन है?

(iv) क्या अनुसूची द भाग 1 की ग्राम रायखेड़ा की भूमि खसरा नंबर 47/1, 47/2, 70, 72 एवं 74 की भूमि की प्रतिवादी क्रमांक 4 एवं 5 के द्वारा क्रय कर उनकी स्वयं की अर्जित भूमि है?

(v) क्या अनुसूची अ से स की भूमि के एक मात्र स्वामी प्रतिवादी क्रमांक 1 है, इसलिये वादिनी द्वारा प्रस्तुत उद्घोषणा एवं बटवारा का वाद पोषणीय है?"

8. The framing of the issues has been provided under Order 14 of the CPC and Rule 1 of Order 14 provided the framing of the issues and the material propositions of law or facts which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Issue arises when a material proposition of fact or law is affirmed by one party and denied by other. Rule 3 of Order 14 provided the materials from which the issue may be framed. The learned trial Court after considering the pleadings of the plaint as well as written statement filed by the parties, framed the aforesaid issues. Admittedly, there is no counter-claim filed by the defendants. Rule 5 of Order 14 empowered the learned trial Court to amend the issues or frame additional issues on such terms as it thinks fit and to amend the issues before passing the decree as may be necessary for determining the matters in controversy between the parties. After having gone through the pleadings and proposed issues and the controversy involved in the present suit, the learned trial Court has observed that the issues proposed by the petitioners/defendants No.1 to 6 are already covered within the issues which has already been framed and there is no need to frame additional issues.

9. From perusal of the proposed issues, it transpires that the defendants are claiming their own right over the subject property for which they sought framing of the additional issues and since there is no counter-claim filed by the defendants, such issue cannot be framed as has been proposed by the defendants. From perusal of the proposed issues in their application, it further transpires that the controversy is entirely covered in the issues which has already been framed by the

learned trial Court.

10. After having gone through the entire material produced in the present writ petition and the issues which has already been framed by the learned trial Court and the proposed issues, this Court does not find any illegality or perversity or any jurisdictional error in rejecting the application filed by the petitioners. The judgment relied upon by the learned counsel for the petitioners is distinguishable on the facts of the present case, and therefore, no benefit could be extended by the said judgment.

11. The writ petition accordingly fails and is hereby **dismissed.**

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sumit