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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 785 of 2024

1 - Rajesh Mundra S/o Late Ghanshyam Das Ji Mundra, Aged About 39 Years R/o C-237/b, Sector-6, Vallabh Nagar, Raipur, Police Staiton- New Rajendra Nagar, District- Raipur (C.G.) -----(Plaintiff)

... Petitioner(s)

versus

- 1 - Moolchand Sahu S/o Late Parshottam Sahu (Legal Heirs Of The Late Parshottam Sahu), Aged About 36 Years R/o Village- Jurlakala, Tahsil-Khairagarh, District-Khairagarh-Chhuikhadan-Gandai (C.G.0 -----(Defendant No.1)
- 2 - Champa D/o Late Parshottam Sahu (Legal Heirs Of The Late Parshottam Sahu), Aged About 34 Years R/o Village-Jurlakala, Tahsil-Khairagarh, District-Khairagarh-Chhuikhadan- Gandai (C.G.) -----(Defendant No.2)
- 3 - Sundri D/o Late Parshottam Sahu (Legal Heirs Of The Late Parshottam Sahu) Aged About 32 Years R/o Village-Jurlakala, Tahsil-Khairagarh, District-Khairagarh-Chhuikhadan- Gandai (C.G.) -----(Defendant No.3)
- 4 - State of Chhattisgarh, Through District Collector, District- Khairagarh-Chhuikhadan-Gandai (C.G.) -----(Defendant No.4)

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Abhinav Tiwari, Advocate.
For Respondents 1 to 3	:	Shri Tarun Dansena, Advocate.
For State	:	Shri Rohan Shukla, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

07.07.2026

1. The present writ petition under Article 227 of the Constitution of India has been filed by the petitioner against the impugned order dated 15.04.2024 passed by Civil Judge Class-I Khairagarh, Civil District Rajnandgaon, in Civil Suit No.27-A/2018 whereby the application filed by the petitioner under Order 6 Rule 17 CPC has been dismissed.
2. Learned counsel for the petitioner would submit that the petitioner is the plaintiff before the trial court. He is prosecuting a suit for specific performance of the contract, possession and permanent injunction with respect to suit land total area 1.1825 Hect. of various khasra Numbers situated at village Jurlakala Tehsil Khairagarh District Rajnandgaon. It is pleaded in the plaint that an agreement was executed between Purshottam Sahu, father of defendants No.1 to 3 and the plaintiff on 19.06.2015 for the total consideration of Rs. 8,00,000/- and out of total sale consideration, Rs.4,00,000/- was paid to him as an advance amount and then agreement was executed. In absence of demarcation of the suit lands, the sale deed could not be executed and subsequently Purshottam died and the property was inherited by the present defendants No.1 to 3. In the year 2018, the plaintiff contacted with the defendants and requested for registration of sale deed, but they denied for the same. Thereafter, the suit has been filed valuing Rs.8,00,000/- as pecuniary as well as territorial jurisdiction of the suit.
3. He would further submit that the defendants, by their written statement, denied execution of sale agreement with their father Purshottam Sahu and also denied receiving of advance amount by him and contesting the suit. They also pleaded in their written statement that the said

agreement dated 19.06.2015 is forged and fabricated and defendants are not bound by the same to execute sale deed in favour of plaintiff. During pendency of suit, the plaintiff filed an application under Order 6 Rule 17 CPC for amendment in the plaint on 12.03.2024 by which he sought amendment of payment of Rs.4,00,000/- on 19.07.2015 and further that the entire amount of Rs.8,00,000/- was to Purshottam Sahu and then only the agreement was executed by him and now the plaintiff wants to bring the fact of payment of entire amount of Rs.8,00,000/- to Purshottam Sahu in his plaint. He would further submit that the trial court has erroneously rejected the application on the ground that the proposed amendment is contradictory with the earlier pleading which would change the very nature of suit whereas it is only a clarification of transaction between the parties. The proposed amendment is necessary to bring on plaint for just decision of the case. Earlier in absence of document the plaintiff could not plead the relevant facts in the plaint and when he got the document during partition proceeding between his family members, he filed the amendment application. There is no change of any nature of the suit and it is only the amendment with respect to payment of entire sale consideration. The defendants have every right to make consequential amendment in their plaint and to lead evidence to that effect. Therefore, the impugned order may be set aside and the amendment application of the petitioner/plaintiff may be allowed.

4. On the other hand, learned counsel for the respondents opposes the submissions made by the counsel for the petitioner and would submit that the plaintiff himself has pleaded in the plaint that he entered into

an agreement with the father of defendants namely Purshottam Sahu. He must have in knowledge of entire facts and must have pleaded on its initial time when the suit was filed. The knowledge of the plaintiff may not depend upon the documents, but it should be in his own knowledge that he has paid the entire amount to the father of defendants. There is not a single averment in the plaint on earlier occasion that the entire amount have been paid to the father of defendants. Rather it is only pleaded that half of the amount i.e. Rs. 4,00,000/- have been paid to the father of the defendants and now the plaintiff sought amendment that the entire amount was paid to the father of defendants which thus change the very nature of the suit. The suit has been filed in the year 2018 and after such a long time of six years the amendment application has been filed in the year, 2024 which is not bonafide and cannot be permitted to incorporate in the plaint. The trial court has rightly rejected the application filed by the petitioner and the writ petition also does not have any merit.

5. I have heard the counsel for the parties and perused the documents annexed with the plaint.
6. From perusal of the copy of plaint annexed with the petition Annexure P/2, it transpires that there is a pleading of the plaintiff that he entered into an agreement with Purshottam Sahu (since deceased) to purchase his land of 1.825 Hect. for total consideration of Rs.8,00,000/- and there is specific pleading that at the time of agreement an amount of Rs.4,00,000/-was paid to him as advance amount and the remaining amount was to be paid within eight months i.e. at the time of registration of the sale deed. A copy of agreement dated 19.06.2015

was also annexed as Annexure P/6, according to which, the payment of only Rs.4,00,000/-is described in the content of said agreement. There is not a single word in the said agreement or para-4 of the plaint that the entire amount have been paid to the father of defendants Purshottam Sahu. In paragraph 8 of the plaint also the plaintiff has specifically pleaded that half of the total amount of sale consideration was paid to the father of defendants Purshottam Sahu.

When the plaintiff was a party to the agreement and paid the advance amount to the father of defendants, he should be in knowledge about the entire transaction and payment of the advance amount. Even if in absence of any document, he is required to plead the correct facts at the time of filing of suit with respect to payment of advance amount to the seller. For non pleading of the same, he explained that some day before he came to know about the document in the partition proceeding between his family members and got the document and then he is required to amount his pleading that the entire amount has been paid to the defendants, however, the explanation submitted by the plaintiff appears to be afterthought. When the plaintiff's suit is based on the agreement, the copy of the agreement must have been filed by him along with plaint and now subsequently he cannot change the stand that when he got the document of agreement found during family partition, he came to know that entire amount of Rs.8,00,000/- has been paid to the seller. He claimed the proposed amendment on the basis of said agreement itself that in the back side of said agreement there is an acknowledgment of Purshottam with respect to receiving of Rs.4,00,000/-towards the sale

agreement. The trial court has considered that the proposed amendment made by the plaintiff is inconsistent with his earlier pleading of the plaint and the very nature of the suit would be changed from the proposed amendment. The trial court also observed that the suit is at the stage of plaintiff's evidence and amendment cannot be permitted to be incorporated.

7. The proviso to Order 6 Rule 17 CPC provides that amendment of pleading shall not be when the trial of the suit is already commenced. In the present case, the trial is already commenced and fixed for recording of plaintiff's evidence and at that stage the amendment application has been filed. In case of ***Vidyabai & Others Vs. Padmalatha & Another, 2009(2)SCC 409***, the Supreme Court has held in paragraph 14 & 19 as under:

“14. In *Kailash v. Nanhku* [(2005) 4 SCC 480], this Court held:

"13. At this point the question arises: when does the trial of an election petition commence or what is the meaning to be assigned to the word "trial" in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and up to the date of decision therein are included within the meaning of the word "trial".

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

8. When the plaintiff himself had entered into an alleged agreement with Purshottam Sahu, he (plaintiff) ought to have pleaded the relevant fact of payment of entire amount of Rs.8,00,000/-. His knowledge of payment of Rs.8,00,000/-cannot be based on the document, but document can be based on his knowledge. In the agreement dated 19.06.2015 there is no mention about the payment of entire amount of Rs.8,00,000/- to Purshottam Sahu, but it is an alleged endorsement made by Purshottam on 19.07.2015 that he received Rs.4,00,000/-. If the plaintiff actually paid the amount of Rs.4,00,000/-much prior to the institution of suit, he should have pleaded in the plaint at the very inception that the entire amount has been paid to the seller, but it is not the pleading of the plaintiff and it is made only after about six years of filing of suit which cannot be said to be bonafide and the trial court has rightly rejected the application filed by the plaintiff for amendment in the plaint.
9. After due appreciation of the material available on record and the pleadings of the parties and also the proposed amendment, I do not find any perversity or jurisdictional error in the order impugned passed by the trial court.
10. Accordingly, the writ petition fails and is hereby dismissed.

Sd/-
(Ravindra Kumar Agrawal)
Judge