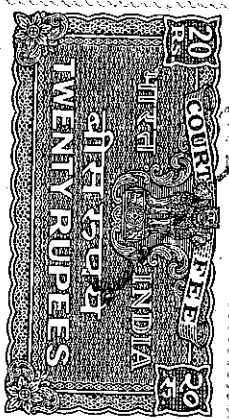


IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH

WRIT PETITION No. 12103 OF 2002

PETITIONERS Deleted as per
Hon'ble Court's
order dt. 24/7/09



27/7/09
Sumesh Bajaj Adv.

1. Smt. Rukmani Ben, aged about
74 years, Wife of Shri Deoram
Bhai Parmar

2. Vijay Parmar, aged about 53
years, S/o Shri Deoram Bhai
Parmar

3. Vinay Kumar Parmar, aged
about 45 years, S/o Shri
Deoram Bhai Parmar

All residents of R. M. E. Works
Compound, Opposite Telephone
Exchange, House Number
09/343,344, Fafadih Station Road,
Raipur (Chhattisgarh)

Versus

RESPONDENTS Deleted as
per Hon'ble
Court's order
dt. 24/7/09



1. Smt. Amba Ben Pithalia, aged
about 68 years, Wife of Late Shri
Narayan Bhai Pithalia

2. Kishor Chand Pithalia, aged about
58 years, S/o Late Shri Narayan
Bhai Pithalia

3. Kailash Chandra Pithalia, aged
about 52 years, S/o Late Shri
Narayan Bhai Pithalia

All residents of R. M. E. Works
Compound, Opposite Telephone
Exchange, Fafadih Station Ward,
Raipur (Chhattisgarh)

**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA**

HIGH COURT OF CHHATTISGARH: BILASPUR

S.B.: HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA, J.

WRIT PETITION NO.121 of 2003

PETITIONERS

Vijay Parmar and another

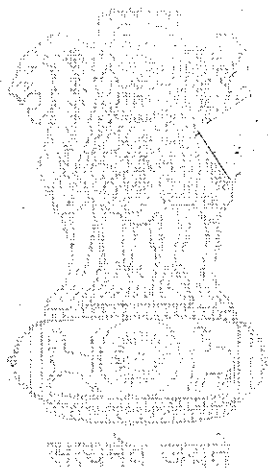
Versus

RESPONDENTS

Kishore Chand Pithalia and
another

FOR PRONOUNCEMENT OF ORDER ON 22nd JANUARY, 2015

Sd/-
Manindra Mohan Shrivastava
Judge



HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO.121 of 2003

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PETITIONERS

Vijay Parmar and another

Versus

RESPONDENTS

Kishore Chand Pithalia and
another

Writ Petition under Article 226/227 of the Constitution of India

(Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.)

Present:- Shri Sumesh Bajaj, counsel for the petitioners.
Shri Vivek Chopda, counsel for respondents.

ORDER

(Pronounced on this 22nd day of January, 2015)

This petition is directed against order dated 26-8-2002 passed by the trial Court, by which, the Court below has allowed the amendment application filed by the respondent-plaintiff in Civil Suit No.138-A/2002.

2. The respondents filed a suit for permanent injunction against the petitioners-defendants on the pleadings inter alia that the petitioners-defendants are the tenants of the house and while continuing as such, without permission in writing or oral, the petitioners-defendants have started demolition, alteration and renovation of the tenanted premises and they be restrained from carrying out any such activity of demolition/alteration/renovation.

The petitioners-defendants filed a written statement and denied that they are tenants of the premises. It was pleaded inter alia that the property was owned by one Damji Bhai son of Shivaji Bhai and after his death, it devolved upon the successors in

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interest of the property which also included one Devram Bhai and after his death, the petitioners-defendants are in occupation of the property as widow and sons of Late Devram.

3. While the matter stood thus, the respondents-plaintiffs filed an application for amendment seeking a decree of eviction and arrears of rent on the grounds enumerated in Section 12(1) and also claimed arrears of rent. By amendment, decree of eviction on the ground of denial of title and on the grounds enumerated under Section 12(1) (m) was also sought. The amendment application was opposed on the ground that by amendment entirely new grounds and different cause of action with the relief has been sought which cannot be allowed in the present suit. The trial Court, however, allowed the application, against which, this petition has been filed.

4. Learned counsel for the petitioners argued that by amendment sought in the plaint, entirely new cause of action seeking a decree of eviction including arrears of rent has been sought which is not permissible by way of amendment and if at all, the respondents-plaintiffs seek any such relief, the only course available to them under the law is filing of a separate suit. Reliance has been placed on the decision in the case of **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others**¹ and also on **Radha Kishan vs. Anoop Chand & Others**².

¹ (2009) 10 SCC 84

² 1973 JLJ 627



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5. On the other hand, learned counsel for the respondents submitted that the suit was initially filed seeking decree of permanent injunction on the ground that the petitioners-defendants were involved in making alteration and changes without seeking permission in writing by the landlord, therefore, to that extent, restraining the defendants-tenants from carrying out renovation/alteration was sought. Amendment was sought because rent has also not been paid and the act of the tenants of altering the condition of tenanted premises without permission as also denying title, entitled the landlords to eviction under Section 12(1)(a) as also under Section 12(1)(i) of the M.P./C.G. Accommodation Control Act, 1961. Learned counsel for the respondents lastly submitted that the trial Court rightly allowed the amendment application because it will avoid multiplicity of litigation. In support of his submission, the respondents have relied upon the case of **Ragu Thilak D John vs. S. Rayappan³, Abdul Rehman & Another vs. Mohd. Ruldu & others⁴ and Ramnarayan vs. Puransingh and others⁵.**

6. The suit as it was originally filed by the plaintiff prayed for decree of permanent injunction on the pleadings inter alia that the plaintiffs are the landlords of the tenanted premises. The defendants are the tenants and they have started making alteration in the tenanted premises without any permission in writing or oral

³ 2001 LawSuit (SC) 129

⁴ (2012) 11 SCC 341

⁵ 1967 LawSuit (MP) 111

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by the landlord, therefore, they be restrained from making any such alteration.

By way of amendment, the plaintiffs, claiming to be landlord came out with entirely new case whereby not only the relief sought earlier was proposed to be deleted by way of amendment but in its place, now a decree for arrears of rent as also for eviction was also sought. The plaintiffs also came out with a new case claiming decree of eviction. It is not a case where the pleadings as stated in the plaint were only elaborated by way of amendment for seeking relief already prayed for nor present is a case of seeking relief which are consequential by way of amendment. The plaintiffs have sought relief which are neither consequential to the relief already claimed nor the relief which could be claimed on the basis of cause of action already pleaded in the suit as originally filed.

7. In the case of **Revajeetu Builders and Developers** (supra), the basic test, which must govern grant or refusal of amendment, was laid down by the Supreme Court, as below:-

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to

injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

8. The Supreme Court emphasized that the aforesaid test were some of the important factors which are to be kept in mind while dealing with applications filed under Order 6 Rule 17 CPC yet these are only illustrative and not exhaustive. One of the foremost considerations is that the amendment sought is imperative for proper and effective adjudication of the case. The other test is whether the proposed amendment constitutionally, fundamentally changes the nature and character of the case.

9. In the present case, entirely different cause of action based on entirely different relief which cannot be said to be consequential to the relief sought earlier, were made. It is only when these two tests are satisfied, other considerations like delay, prejudice to other parties would arise for consideration. The caution and fundamental issue for determination while considering application for amendment, was considered by the Supreme Court in the case of **A. K. Gupta and Sons Limited vs. Damodar Valley**

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Corporation⁶, the following observations of Their Lordships in para 7 of that case are pertinent, as under:-

7. "It is not in dispute that at the date of the application for amendment, a suit for money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: *Weldon v. Neale*, (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: see *Charan Das v. Amir Khan*, AIR 1921 PC 50 and *L.J. Leach & Company Ltd. v. Jardine Skinner and Co.*, AIR 1957 SC 357."

The aforesaid decision was relied upon by the Division Bench of the High Court of Madhya Pradesh in the case of **Radha Kishan** (supra), wherein, relying upon the aforesaid decision in the case of **A. K. Gupta** (supra) and other cases, it was held that the amendment can be allowed at any stage of suit provided it does not alter the nature of suit. Moreover, the expression 'cause of action' is explained by holding that it does not mean every fact which is material to be proved to entitle the plaintiff to succeed. In this context, it merely means a new claim made on new basis constituted by new facts. In the case of **Abdul Rehman & Another**

⁶ AIR 1967 SC 96



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(supra) relied upon by the respondents, the Supreme Court held as under:-

15. "We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit."

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10. It is thus clear that as long as the amendment proposed does not change the nature of the suit, it could be allowed however, where the purpose of amendment is to introduce altogether new cause of action and new relief, it is liable to be rejected.

11. The present is not a case where the nature of suit remains unchanged but only reliefs have been sought on the basis of same cause of action and pleadings. The present is a case where entirely new case has been introduced based on new cause of action and pleadings and relief which cannot be said to be consequential to the relief already prayed.

12. In the result, it is held that the Court below has exceeded its jurisdiction by allowing the amendment application. Therefore, the impugned order cannot be sustained and the same is hereby set aside, leaving the plaintiffs to seek relief by separately constituted suit.

13. Accordingly, the petition is allowed. No orders as to cost.

Sd/-
Manindra Mohan Shrivastava
Judge