

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 928 of 2015**

1. Dayaram S/o Prabhuram Gond, aged about 36 years, R/o Village Neur, Police Station Kukdur, Tahshil Pandaria, District Kabirdham (Chhattisgarh)
2. Dhan Singh S/o Prabhuram Gond, aged about 30 years, R/o Village Neur, Police Station Kukdur, Tahshil Pandaria, District Kabirdham (Chhattisgarh)
3. Dhanau S/o Prabhuram Gond, aged about 28 years, R/o Village Neur, Police Station Kukdur, Tahshil Pandaria, District Kabirdham (Chhattisgarh)

---- Petitioners**Versus**

1. Zerobai D/o Sukhiram Gond, aged about 60 years, Village Neur, Police Station Kukdur, Tahshil Pandaria, District Kabirdham (Chhattisgarh)
2. State of Chhattisgarh, through Collector, Distt. Kabirdham (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Yogeshwar Sharma, Advocate
For Respondent/State	:	Shri Vinod Deshmukh, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06.11.2015**

Through the present writ petition the petitioners have challenged the order dated 10.08.2015 passed by the Civil Judge Class-II, Pandari whereby the application under Order 6 Rule 17 CPC filed by the respondent no.1/plaintiff has been allowed.

2. The fact, in nutshell, is that the respondent no.1/plaintiff had filed a suit for injunction before the Court along with an application under Order 39 Rule 1 & 2 CPC. The Court below rejected the application under Order 39 Rule 1 & 2 CPC. Thereafter, the respondent No.1/plaintiff moved an application under Order 6 Rule 17 CPC seeking a relief for amendment in the suit to the extent of claiming declaration and possession over the suit property.

3. According to the plaintiff, after injunction application was rejected by the Court below, the defendants i.e. the present petitioners have tried to barricade

the suit property by creating hindrance which has necessitated the plaintiff to amend the suit seeking for declaration as well as possession.

4. The Court below duly appreciated and considered the facts of the case and also observed that to avoid the multiplicity of litigation, the application under Order 6 Rule 17 CPC deserves to be allowed and accordingly, allowed said application.

5. Counsel for the petitioners submits that the impugned order dated 10.08.2015 is not proper on account of the fact that by permitting the amendment, the nature of the suit itself gets changed which is otherwise not permissible under the law and therefore the present writ petition deserves to be allowed.

6. Considering the submissions made by the counsel for the petitioner and also on perusal of the impugned order it is reflected that the dispute pertains to the same property and initially the suit was filed for grant of injunction. However, subsequently when there was an interference on the possession of the suit property by the petitioner/defendants, the respondent no.1/plaintiff had to move an application for amendment seeking for relief of declaration and possession. A perusal of the record would further reveal that the Court below also found that the nature of the suit would not substantially change as the dispute pertains to the same property and it would only add a relief of declaration and possession. Hence, to avoid the multiplicity of litigation, the Court below allowed the application for amendment.

7. This Court under Section 227 of the Constitution of India has got very limited powers to the extent of looking into the jurisdictional errors of the Court below and to see whether any perversity has been occurred while passing of the order. However, on consideration of the entire records, this Court does not find any such error or perversity in the order passed by the Court below.

8. Accordingly, the present Writ Petition being devoid of merit, the same is dismissed.

**Sd/-
P. Sam Koshy
Judge**