

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 871 of 2015

Parmanand S/o Late Buddhu, Aged About 60 Years R/o Village Sahanpur, P.S. Post & Tahsil Sitapur, Civil & Revenue District Surguja, (Chhattisgarh).....(Plaintiff)

---- Petitioner

Versus

1. Harinandan S/o Badkha, Aged About 60 Years R/o Village Sahanpur, P.S., Post & Tahsil Sitapur, Civil & Revenue District Surguja, (Chhattisgarh)..... (Defendant)
2. State Of Chhattisgarh, Through Collector, Surguja, Ambikapur, P.S. & Post Ambikapur, Civil & Revenue District Surguja, (Chhattisgarh).....(Defendant)

---- Respondents

For Petitioner	:	Ms. Priyanka Mehta, Advocate
For Respondent/State	:	Shri Vinod Tekam, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/10/2015

Heard.

1. This petition under Article 227 of the Constitution of India is preferred against order dated 17.7.2015 by which petitioner's application under Order VI Rule 17 CPC for amendment of plaint has been rejected.
2. Learned counsel for the petitioner argues that the Court below has recorded perverse finding that by the amendment sought, the entire case of the plaintiff is altered. It is submitted that the plea now proposed cannot be said to be inconsistent with the pleading already made in the plaint. By the new pleading, the petitioner only sought to make the plea more specific with regard to the manner in which he acquired title in respect of the property in dispute.
3. The impugned order shows that suit was filed on 19.10.2011 and written statement

was filed on 20th September, 2012. Issues were framed on 5.1.2013 and, thereafter, the case was listed for plaintiff's evidence.

4. While rejecting the application for amendment, the Court below has taken into consideration that earlier in the plaint, Budhu was stated to be the son of Jhhabbu, but, by way of amendment, it is now sought to be pleaded that Jhhabbu was issue-less and Bhudu is son of Gangaram. The Court below has rightly appreciated as to why this plea could not be raised by the petitioner as he also belongs to the same family and, therefore, specifically within his knowledge. Clearly, the new pleading is inconsistent with earlier plea apart from being made belatedly in respect of a fact which was within the knowledge of the plaintiff at the time of filing of suit in the year 2011.
5. Learned Court below has also considered that though in the suit, as initially framed, decree was sought on the basis that the petitioner is the only heir of the deceased Jhhabbu, whereas now, the petitioner seeks to amend the plaint with altogether new plea that he succeeded to the property on the basis of Will-Deed dated 20th August, 1986. The Court below has committed no illegality or perversity while holding that this amendment completely alters the nature of suit and the very basis of the claim of the plaintiff, in addition to failure on the part of the plaintiff as to why this could not be pleaded earlier because the Will-Deed is said to have been executed way back in the year 1986.
6. The Court below has committed no illegality much less any perversity, warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India.
7. The petition is therefore *sans* merit and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge