

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.63 of 2015**

1. Smt. Razia Khan W/o Late Dost Mohammed Khan Aged About 69 years
2. Smt. Shaihl Khan D/o Late Dost Mohammed Khan Aged About 43 Years
3. Mohd. Sharik Khan S/o Late Dost Mohammed Khan Aged About 41 Years
4. Mohd. Saif Khan S/o Late Dost Mohammed Khan Aged About 39 Years

All above R/o Sonpuri Road, Ward No. 1, Baloda Bazar, Police Station An Post Baloda Bazar- Bhatapara, C.G.

---- **Petitioner****Versus**

1. Smt. Sayyiada Khan Wd/o. Gaous Mohammed Khan Aged About 67 Years
Rajnandgaon, Police Station And Post Rajnandgaon, Civil And Revenue District
Rajnandgaon, C.G.
2. Sabab Khan @ Sadab Khan S/o Gaous Mohammed Khan Aged About 37
Years R/o. America.

At Present R/o. Rajnandgaon, Police Station And Post Rajnandgaon, Civil And
Revenue District Rajnandgaon, C.G.

3. Ajma Khan S/o Gaous Mohammed Khan Aged About 33 Years R/o. Dwarkia,
Delhi, Presently At Abudhabi, U.A.E. At Present R/o. Rajnandgaon, Police
Station And Post Rajnandgaon, Civil And Revenue District Rajnandgaon, C.G.

Respondents No.1 to 3 through: Its Power Of Attorney Holder Namely
Rukhasana Khan, Aged About 30 Years, S/o Gaous Mohammed Khan, R/o.
Rajnandgaon, Police Station And Post Rajnandgaon, Civil And Revenue District
Rajnandgaon, C.G.

4. Rukhasana Khan S/o Gaous Mahammed Khan Aged About 30 Years R/o.
Rajnandgaon, Police Station And Post Rajnandgaon, Civil And Revenue District
Rajnandgaon, C.G.

(Power of attorney holder of respondent No.1 to 3)

5. State Of Chhattisgarh Through: Collector, Baloda Bazar, District Baloda Bazar-
Bhatapara, C.G.

---- **Respondent**

For Petitioners	:	Shri Manoj Paranjpe, Advocate
For Respondent N0.1 to 4	:	Shri B. P. Sharma, Advocate
For Respondent No.5	:	Shri Vinod Tekam, Panel Lawyer

Order On Board**12/08/2015**

Learned counsel for the parties submit that this matter can be disposed off finally.

2. Accordingly, the matter is heard finally.
3. A short issue arising for consideration in this case is as to whether the Court

below could have decided the application for amendment at the initial stage of hearing of the appeal or it could be done only at the time of final hearing of the appeal.

4. The issue is no longer res integra, in view of what has been held in the case of ***Khemchand Mulchand v. Government of Madhya Pradesh, Bhopal and others***¹, wherein law has been laid down in following terms:-

“What has been said in relation to an application under Order 41 rule 27(1) applies equally to the disposal of an application for amendment of pleadings made at the appellate stage. The question whether a party should or should not be allowed to amend its pleadings at the appellate stage cannot in its very nature be decided unless the appeal is first heard on merits. The order of the Additional District Judge, Chhindwara, permitting the non-applicants Nos.4 and 5 to produce additional evidence and to amend their written statement must, therefore, be set aside and the Additional District Judge must be directed to consider the said non-applicants' application under Order 41 rule 27 and the application for amendment of the written statement after hearing the appeal on merits.”

5. In view of above, the impugned order cannot be sustained in law, and therefore, set aside. The Court below shall decide the application for amendment at the time of hearing of the appeal. It is made clear that this Court has not expressed any opinion on the merit of the amendment application.

Sd/-
Manindra Mohan Shrivastava
Judge

Tumane

1 1972 MPLJ 524