

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.627 of 2015**

1. Chandrabhan Singh Kanwar S/o Late Manik Lal Kanwar Aged About 42 Years R/o Kota Tah. Kota District Bilaspur Chhattisgarh
2. Ramesh Singh Kanwar S/o Late Manik Lal Kanwar Aged About 47 Years R/o Kota Tah. Kota District Bilaspur Chhattisgarh

---- Appellants**Versus**

1. Leeladhar S/o Dulichand Agrawal Aged About 50 Years R/o Firangipara Naka Chook Tah. Kota Dist. Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through Collector Bilaspur Tah & Distt. Bilaspur Chhattisgarh
3. Ashok Kumar S/o Bihari Lal Aged About 52 Years Caste Agrawal R/o Kota Tahsil Kota Dist. Bilaspur Chhattisgarh
4. Smt. Shanti Bai W/o Bihari Lal Aged About 71 Years Caste Agrawal R/o Kota Tahsil Kota Dist. Bilaspur Chhattisgarh

---- Respondents

Shri Amit Kumar, counsel for the petitioners.
 Shri Ravindra Agrawal, counsel for respondents, 1, 3 & 4.
 Shri Aditya Sharma, Panel Lawyer for the State/respondent No.2.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14.12.2015**

By filing the petition, the petitioner has prayed that the Court may issue writ in the nature of certiorari for quashing the impugned order dated 13.7.15 passed in Civil Suit No.53A/07 (Chandrabhan & Ors. Vs. Leeladhar & Ors.) whereby the Court below has dismissed the prayer made in an interim application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') for the amendment in the pleadings as in the plaint.

2. By filing the instant petition, it is submitted that order passed by the trial court is illegal and contrary to the law and the trial court failed to

appreciate that the petitioners have shown sufficient cause for delay but the trial Court has not considered the cause shown by the petitioner. He further submits that evidence of the parties is not yet started and the facts mentioned in the application is necessary for the complete adjudication of the matter.

3. On behalf of respondents 1, 3 & 4 it is submitted that the suit is pending for examination of the plaintiff's witnesses and affidavit as required under Order 18 Rule 4 of the Code is already been filed by the plaintiffs. Prayer of the plaintiffs to seek amendment in the plaint is null and void as per provisions of Order 6 Rule 17 of the Code. The petitioners failed to demonstrate that in spite of due diligence they could not raise the matter before commencement of the trial. It is submitted that in case of allowing of the said amendment, the nature of the suit will change. The plaintiffs were aware of the sale deed dated 03.5.1985 but they have not pleaded the same in their pleading and the application was filed for causing delay in the trial as the matter is already fixed for evidence. Also it is submitted that the plaintiffs in consequence have not made any valuation regarding nullity of the sale deed. The suit is initially filed on the basis of inheritance and amendment would change the nature. The Court below justified in rejecting the prayer for amendment, hence it is submitted that the petition may be dismissed.

4. Heard counsel for the parties and perused the record.

5. Learned counsel for the petitioners prayed that the prayer for amendment is for proper adjudication of the matter and the Court is required to dispose of the same if any law is applicable even without the pleading in the matter. The evidence is not yet started only the affidavit has been filed and they prayed for amendment based on the question

of law though filed lately, but in the interest of justice the same may be allowed.

6. Learned counsel for respondents 1, 3 & 4 duly supported their reply and would submit that as the petitioner failed to demonstrate any reason as required under the proviso of Order 6 Rule 17 of the CPC, the petition may be dismissed.

7. To appreciate the arguments and reply, the application filed under Order 6 Order 17 of the CPC and the impugned order passed by the Court below are perused.

8. On close scrutiny, it appears that at the time of passing of the impugned order dated 13.7.2015 the plaintiffs witnesses were not examined. For the purpose of their cross examination only their affidavit under Order 18 Rule 4 were filed. Though it is orally submitted that on behalf of the respondents the plaintiffs' evidence has been completed, defendants were already filed their affidavit under Order 18 Rule 4 of the Code and their cross examination is yet to commence. But for this fact, nothing mentioned in the reply and also no any document has been filed on behalf of the respondents to demonstrate this fact. In absence of any documents, any pleadings in the reply, this Court for the moment cannot rely for the above submission for appreciation of the matter. On perusal of the amendment application and order passed by the Court below it appears that proposed amendment is based on some legal preposition. It is a settled law that the Court has to dispose of the matter within four corners of law if some legal position is apparent despite any pleadings by any of the parties it shall be bounden duty of the Court to also adjudicate the said question of law in the matter after the complete appreciation.

9. As per impugned order the plaintiff's witnesses were not adduced for their cross examination, proposed amendment is based on question of law where same law prohibits some Act. In the larger interest of the justice this Court is of the view that opportunity has to be given to the plaintiffs to raise questions of law in their pleadings as prayed. Consequently, instant petition is hereby allowed. Impugned order dated 13.7.15 is hereby set aside and the prayer of the plaintiffs/petitioners to amend their plaint is hereby allowed. The Court below is directed to allow the plaintiffs to incorporate the amendment in their pleadings and after affording opportunity to respondents/defendants for the consequent amendment in their written statement, matter be proceeded as per law.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE