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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.11 of 2016**

1. Ramprasad S/o Bedi Prasad Sahu, Aged About 42 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
2. Rajkumari Bai, W/o Ramprasad Sahu, Aged About 42 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
3. Ramnath, S/o Bedi Prasad Sahu, Aged About 59 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
4. Ramswaroop, S/o Bedi Prasad Sahu, Aged About 37 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
5. Shanti Bai, W/o Ramswaroop Sahu, Aged About 37 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
6. Gendram, S/o Gariba Sahu, Aged About 64 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
7. Jaleshwar, S/o Gendram Sahu, Aged About 30 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
8. Lallu, S/o Gendram Sahu, Aged About 28 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
9. Sumitra Bai, W/o Ramnath Sahu, Aged About 42 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
10. Sanjay, S/o Ramnath Sahu, Aged About 34 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant
11. Chanda Bai, W/o Gendram Sahu, Aged About 37 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Appellant

---- Petitioner

Versus

1. Tijauram Sahu S/o Nakchhed Sahu, Aged About 62 Years R/o Village Jonki, Police Station & Tahsil Takhatpur, District Bilaspur (Chhattisgarh), Civil & Revenue District Bilaspur (Chhattisgarh).....Plaintiff
2. State Of Chhattisgarh Through Collector, Bilaspur Police Station Civil Line, Tahsil & District Bilaspur (Chhattisgarh), Civil And Revenue District Bilaspur (Chhattisgarh).....Plaintiff

---- Respondent

Shri Ratnesh Kumar Agrawal, counsel for the petitioners.
Smt. M. Asha, Panel Lawyer for the State/respondent No.2

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

25.02.2016.

Heard.

2. It is submitted on behalf of the petitioners that looking to the short question involved based on the documents and also as the proviso of Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') are attracted, the matter may be disposed of at the motion stage itself.

3. On perusal of the pleadings in question, the petition and the documents annexed, the matter is heard finally at the motion stage itself.

4. Facts in brief required for the appreciation of the instant petition is that for the suit land plaintiff/respondent had filed Civil Suit No.25A/13 before Civil Judge Class-II Takhatpur vide judgment and decree dated 13.7.2015 it is held that the suit land

i.e. survey No.881/01 and 961 area 0.101 hectare and 0.049 hectare belongs to plaintiff. The plaintiff is the title holder of the said land and he is also entitled for the vacant possession of the suit land after demolition of the construction made by the defendants. Against which, the defendants, present petitioners preferred First Appeal which is pending before 7th Additional District Judge, Bilaspur as Civil Appeal No.92A/15. During hearing of the First Appeal the appellants/defendants/petitioners had filed an application under Order 6 Rule 17 read with 151 of the Code for amendment to be incorporated in their written statement after para 4 as para 4a and para 4b. After hearing both the parties, the appellate Court held that prima facie it is not shown that respondent No.1/plaintiff had committed any interpolation with the revenue records and in case of allowing the proposed amendment in the written statement the plaint and the written statement will be changed all together. Also regarding to prove the area in land it is up to the parties who has pleaded for the facts and with appreciation regarding the evidence adduced by the parties before the trial Court the same may be considered at the time of the final hearing of the appeal. Hence, the First Appellate Court held that the proposed amendment is without any substance and futile, hence dismissed the said application. Against the said order, the petitioners have filed the instant petition wherein it is prayed that it is only after the judgment passed by the trial Court i.e. 04.9.2015 the appellant obtained P/4

khasra misal belongs to 1928-29 then only he came to know that area of the survey No.881 was 0.03 acre wherein as per the plaintiff's case the suit land belongs to survey No.881/1 was of 0.101 hectare i.e. 0.30 acre. If the said land and the said survey number was only 3 decimal in the year 1928-29 how it can be 30 decimal before filing of the suit. It is further taken the ground that if the survey No.881 is of 3 decimal only in the year 1928-29 then at the time of filing of the such suit in which the suit land mentioned the survey No.881/1 can be 10 times bigger in size whereas the division of such survey number may decrease the area and as the such facts came to the knowledge of the petitioners, they immediately filed the application for amendment. The Court below while rejecting the amendment application committed mistake of law and facts as the same facts was not within the knowledge of the petitioner prior to the 04/Sep/2015 i.e. at the time of the pendency of the appeal, hence, the matter covered under the proviso of Order 6 Rule 17 of the Code thereby the appellate Court ought to have allowed the proposed amendment and no prejudice is caused to the plaintiffs because with this the plaintiffs may get an opportunity to pray for consequential amendment and as the same facts are based on documents known only on 04.9.15 it is submitted on behalf of the petitioners, the petition may be allowed and the proposed amendment based on the above documents and connected facts may be allowed in the written statement.

5. There is no any written/oral objection for the instant petition.

6. Heard the parties.

7. Learned counsel for the petitioners supported the entire grounds and the facts mentioned in the instant petition and submitted that looking to the entire facts the petitioners may be given opportunity to amend their written statement accordingly.

8. For the appreciation of the above submission, the instant petition and the documents annexed are perused.

9. On perusal of the copy of the P/4 Khasra misal 1928-29 it appears that in survey No.881, the area was only 3 decimal. The said copy was obtained by the petitioner on 04.9.15 after judgment passed by the trial Court. The said document and the pleadings of the respondent No.1 in the plaint raises a questionable issue and as the same fact was not within the knowledge of the petitioners thereby their prayer is well covered under the proviso of order 6 Rule 17 of the Code. Also by allowing said amendment, respondent No.1 may get appropriate opportunity to amend the plaint accordingly and as the proposed amendment is based on the documents, came into knowledge of the petitioner after the date of the judgment.

10. In the considered view of this Court, the petitioners have made out the case to the extend that their prayer for amendment be allowed. Consequently, the instant petition is hereby allowed. Order dated 11.12.15 passed by the First Appellate Court is

hereby quashed and the petitioners are directed to amend their written statement accordingly on the basis of the amendment application filed before the First appellate Court. The First appellate court thereafter to grant opportunity to the respondent No.1 for any consequential amendment if he wish so. Thereafter the matter pending before the First Appellate Court be disposed of accordingly as per the provisions of law.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE