

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 98 of 2015**

Ajay Kumar Agrawal S/o Shri Shyam Sundar Agrawal Aged About 40 Years R/o Near Shri Ram Mandir, Pst Office- Sakti, Police Station-Sakti, Tahsil-Sakti, District- Janjgir-Champa, Civil And Revenue District-Janjgir-Champa, C.G.

---- Petitioner**Versus**

1. Rajendra @ Gappu Agrawal S/o Late Satyanarayan Agrawal Aged About 51 Years R/o Infront Of Shri Ram Mandir, Post Office-Sakti, Police Station- Sakti, Tahsil- Sakti, District- Janjgir-Champa, C.G.
2. Natwar Agrawal S/o Late Satyanarayan Agrawal Aged About 17 Years R/o Infront Of Shri Ram Mandir, Post Office-Sakti, Police Station-Sakti, Tahsil- Sakti, District- Janjgir-Champa, C.G.
3. Prakash Agrawal S/o Late Bhagwandas Agrawal Aged About 49 Years R/o Infront Of Shri Ram Mandir, Post Office-Sakti, Police Station-Sakti, Tahsil- Sakti, District- Janjgir-Champa, C.G.
4. Shyam Sundar Agrawal S/o Late Shri Ganpatlal Agrawal Aged About 66 Years R/o Near Shri Ram Mandir, Post Office-Sakti, Police Station-Sakti, Tahsil-Sakti, District- Janjgir-Champa, C.G.
5. Sanjay Kumar Agrawal S/o Shri Shyam Ssundar Agrawal Aged About 43 Years R/o Near Shri Ram Mandir, Post Office-Sakti, Police Station-Sakti, Tahsil-Sakti, District- Janjgir-Champa, C.G.
6. Mohan Kumar Agrawal S/o Shri Shyam Sundar Agrawal R/o Near Shri Ram Mandir, Post Office-Sakti, Police Station- Sakti, Tahsil-Sakti, District- Janjgir-Champa, C.G.
7. Hari Om Agrawal S/o Late Shri Shankar Lal Agrawal Aged About 50 Years R/o Station Road, (Hariom Colony), Post Office-Sakti, Police Station-Sakti, Tahsil-Sakti, District-Janjgir-Champa (C.G.)
8. Smt. Sajan Devi Agrawal W/o Shubhash Chand Agrawal Aged About 49 Years R/o Shri Ram Mandir, Post Office-Sakti, Police Station-Sakti, Tahsil- Sakti, District- Janjgir-Champa, C.G., Presently R/o Rukmani Vihar Colony, (Kotra Road), House/ Plot No. 33, Behind Police Station-Kotra Road, Post Office-Raigarh, Tahsil & District-Raigarh, C.G.
9. State Of Chhattisgarh Through Collector, Janjgir-Champa, C.G.

---- Respondents

For the Petitioner	:	Shri Rajeev Shrivastava, Advocate.
For Respondents No.1 & 2	:	deemed served.
For Respondent No.3	:	None present though served.
For Respondents No.4 to 7	:	Shri Deepak Kumar Singh, Advocate.
For Respondent No.8	:	Shri Ishwar Jaiswal, Advocate.

For Respondent No.9/State : Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

31/03/2016

1. With the consent of both the parties, the matter is heard finally at the motion stage itself.
2. Facts in brief required for adjudication of the instant W.P. (227) are that Civil Suit No. 2-A of 2013 (Ajay Kumar Agrawal versus Rajendra @ Gappu Agrawal and 9 Others) is pending before the First Additional District Judge, Sakti, District Janjgir- Champa, Chhattisgarh wherein the trial is not yet commenced and the Plaintiff/ Petitioner had filed two applications under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code') dated 30.8.2013 and 18.9.2014. After hearing arguments on both the amendment applications, the trial Court vide order dated 19.1.2015 allowed the amendment application dated 30.8.2013 in part with respect to paragraph 9(a) and 9(b) of the plaint, however denied the prayer made in the amendment application regarding amendment in the plaint by incorporating paragraph 7A and dismissed the other application dated 18.9.2014 filed under Order VI Rule 17 of the Code (for short 'the Code'). After the said order, the Petitioner has filed the instant WP (227) challenging the rejection of the prayer for amendment in plaint for incorporating paragraph 7A as prayed in the application dated 30.8.2013. The Petitioner has not challenged the order of the trial Court so far as it relates to the application dated 18.9.2014. The relief sought by the Petitioner before this Court is only for addition of paragraph 7A by way of amendment in the plaint for proper adjudication of the matter, as mentioned in the application dated 30.8.2013, on the ground that the trial has not yet commenced and proviso to Order VI

Rule 17 of the Code is not applicable to the instant matter. It is also prayed that if the amendment sought is allowed, no prejudice would cause to the defendants and the defendants may amend their written statement and both the parties may adduce evidence accordingly, if they so wish.

3. Heard learned counsel for the parties and perused the material available on record.

4. Learned counsel for the Petitioner submits that as the trial is not yet commenced, the proposed amendment is required for proper adjudication of the dispute and the defendants, if Respondents so wish, may pray for the consequential amendment and may adduce their evidence regarding the proposed amendment also. Hence, no prejudice would be caused to any of the parties and as per the settled law especially when the proviso of Order VI Rule 17 of the Code is not applicable the prayer for amendment may be allowed and the parties may be permitted to amend their plaint/ written statement as the case may be to put all the relevant pleadings in the matter. Hence, the instant W.P. (227) may be allowed and the Petitioner may be permitted to amend his plaint by adding the new paragraph 7A.

5. The present petition and the arguments advanced on behalf of the Petitioner are opposed on behalf of the Respondents.

6. On due consideration and minute examination of the material available on record, it goes to show that the trial is not commenced. With this, proviso to Order VI Rule 17 of the Code is not attracted and the Defendants may pray for consequential amendment and may adduce evidence for the said pleadings including other pleadings as required.

7. No prejudice is going to be caused to the Defendants, if the proposed amendment is held to be proper for adjudication of the matter.

8. Consequently, the instant W.P.(227) is hereby allowed. The part of order of the trial Court dated 19.1.2015 for denial regarding the prayer of the Plaintiff/ Petitioner for incorporation of new paragraph 7A in the plaint, is quashed and the prayer of the Petitioner to amend the plaint by adding new paragraph 7A as mentioned in the amendment application is hereby allowed. The trial Court is directed to allow the Petitioner/ Plaintiff to incorporate the said proposed amendment regarding paragraph 7A in the plaint. The Defendants may file an application for consequential amendment if they so wish and if any such application is filed by the Defendants, after affording opportunity to both the parties and after hearing both the parties, the Court below is directed to dispose of such application of the consequential nature in accordance with law and thereafter to proceed further with the trial of the matter as per provisions of law.
9. The WP (227) is allowed.
10. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge