

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 221 of 2016**

- Onkarnath Mishra S/o Late Kailashpati Mishra, Aged About 68 Years
Caste Bramhan, Occupation Agriculture, R/o Village And Post
Bakroud, P.S. Bodhgaya, District Gaya (Bihar), At Present Village
Jabar, P.S. And Tahsil And Post Balrampur, District Balrampur-
Ramanujganj (Chhattisgarh)

---- Petitioner**Versus**

1. Gopal Krishna Mishra S/o Late Ramapati Mishra, Aged About 53
Years Caste Bramhan, Occupation Agriculture, R/o Village Jabar, P.S.
And Tahsil And Post Balrampur, District Balrampur- Ramanujganj
(Chhattisgarh), At Present Village Balrampur, Ward No. 12, P.S. And
Post Balrampur, District Balrampur- Ramanujganj, (Chhattisgarh)
2. Radha Krishna Mishra, S/o Late Ramapati Mishra, Aged About 50
Years Caste Bramhan, Occupation Agriculture
3. Vivekanand Mishra, S/o Late Ramapati Mishra, Aged About 48 Years
Caste Bramhn, Occupation Agriculture,
R- 2 and 3 R/o Village Jabar, P.S. And Tahsil And Post Balrampur,
District Balrampur- Ramanujganj (Chhattisgarh) At Present R/o Village
And Post Bakroud, P.S. Bodhgaya, District Gaya (Bihar)
4. Aaditya Kumar Singh, S/o Anuj Sharan, Aged About 30 Years Caste
Mar, R/o Village Mangarhara, P.S. And Tahsil Balrampur, District
Balrampur Ramanujganj, (Chhattisgarh)
5. Prithvi Singh, S/o Dev Vansh Singh, Aged About 40 Years Caste Mar,
R/o Village Tangarmahri, (Ghasiyadohar), Post P.S. And Tahsil
Balrampur, District Balrampur- Ramanujganj, (Chhattisgarh)
6. Brajesh Sahu, S/o Heeralal Sahu, Aged About 45 Years Caste Teli,
R/o Village Nagar Ambikapur, (Darripara), Post And P.S. And Tahsil
Balrampur, District Balrampur (Chhattisgarh)
7. Smt. Sunita Gupta, W/o Shri Shambhu Gupta, Aged About 33 Years
Caste Teli, Occupation House Wife,
8. Shambhu Gupta, S/o Late Murli Gupta, Aged About 38 Years Caste
Teli, Occupation Service,
R-7 and 8 R/o Nagar Balrampur, Post And P.S. And Tahsil Balrampur,
District Balrampur- Ramanujganj, (Chhattisgarh)

---- Respondents

For Petitioners	:	Mr. Sunil Tripathi, Adv.
For Respondents	:	Not noticed.

Order On Board**31/03/2016**

1. At the outset, learned counsel for the petitioner submits that as the trial has not commenced, the matter is listed for filing of written statement therefore,

proviso of Order 6 Rule 17 of the Civil Procedure Code, 1908 (in brevity 'CPC') is not applicable and by praying for amendment in the plaint, the plaintiff/petitioner has merely prayed for correction in mentioning of annexures and also for amendment in question, opportunity of the defendant to file written statement along with reply on proposed amendment is still available. They can very well include also additional pleading along with other pleading in their written statement and as the trial has not commenced, opportunity is available to the defendant and no harm is going to be caused to the defendant. Hence instant writ petition may be disposed of at motion stage itself finally without even noticing to the respondent/defendants.

2. On due consideration and after perusal of the impugned order sheet dated 22-8-2015, it is obvious that the trial has not commenced. Therefore, as per settled law, proviso of Order 6 Rule 17 of the CPC is not attracted and the provision of law for amending the plaint under Order 6 Rule 17, CPC only without application of proviso is applicable. Written statement is yet to be filed and also as the trial has not commenced, opportunity to plead also about the proposed amendment is still open to the defendants. Their rights are not going to be affected in any way. Also upon consideration of the proposed amendment, it goes to show that they want to clarify the correct annexures and relevant facts. Upon due consideration, the instant writ petition is hereby allowed. The impugned order dated 22-8-2015 is hereby quashed. The application under Order 6 Rule 17 of the CPC is hereby allowed. The trial Court is directed to allow the petitioner/plaintiff to amend the plaint on the basis of the said amendment application and thereafter an opportunity be given to the defendants to file their written statement along with proposed and allowed amendment as per law.

3. The petitioner may file copy of this order before the trial Court compliance.

4. Registrar Judicial is also directed to send a copy of this order to the trial Court through usual and fax mode immediately for compliance.

Sd/-

(Chandra Bhushan Bajpai

Judge