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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.5081 of 2009**

Ram Pal Shukla, aged about 70 years, son of Late Ram Snehi Shukla, caste-Brahmin, Occupation-Retd. Bank Employee, resident of Sanichari Bazar Road, Bilha, Tahsil Bilha, District Bilaspur (CG)

----Petitioner**Versus**

1. Anandi Bai alias Anand Kumari aged about 66 years, daughter of Dwarika Prasad, resident of Jabada Para, Sarkanda, Bilaspur, Tahsil and Distt.Bilaspur
2. Shital Das aged about 66 years, son of Bishahu Das,
3. Mist. Bahura Bai, aged about 62 years, widow of Shital Das, Both respondent No.2 and 3 resident of Muhalla Chhatidih, Bilaspur Tahsil and Distt.Bilaspur
4. Kartik Das son of Kripal Das, caste Manikpuri, resident of Purana Sarkanda, Bilaspur, Tahsil and Distt.Bilaspur
5. Babu Rao aged about 69 years, son of Madhao Rao, caste-Maratha, resident of Sarkanda, Bilaspur, Tahsil and Distt.Bilaspur
6. Chote Lal Tiwari, aged about 65 years, son of Nirmal Ram Tiwari, resident of Tikarapara, Bilaspur, Tahsil and Distt.Bilaspur
7. B.L. Dewangan, aged about 68 years, son of Asharfi Lal Dewangan, resident of Jabada Para, Sarkanda, Mukti Dham ke Pass, Bilaspur, Tahsil and Distt.Bilaspur
8. State of Chhattisgarh through Collector, Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Mr.Ram Kumar Tiwari, Advocate
For Respondent No.7	:	Dr.N.K.Shukla, Sr. Advocate with Mr.Shiv Shankar Tiwari, Advocate
For Respondent No.8	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**09/11/2016**

1. Plaintiff filed a suit for declaration of sale deeds dated 20.3.74, 8.5.78, 29.8.80, 26.12.81 and 4.9.81 are null and void and the defendants be restrained from interfering with their peaceful possession. An application for temporary injunction was also filed against the defendants. That application was rejected by the trial Court on 13.3.2008. Against which, appeal was preferred, which was also rejected. Thereafter, the petitioner/plaintiff filed an application under Order 6 Rule 17 of the CPC for amendment that during the pendency of the suit the defendants have constructed boundary wall on the suit land, therefore, he be permitted to claim the relief for removal of boundary wall and relief of possession.
2. The trial Court by impugned order, rejected the application for amendment holding that by proposed amendment, nature of suit will change. Against which, this writ petition under Article 227 of the Constitution of India has been filed.
3. Mr. Ram Kumar Tiwari, learned counsel appearing for the petitioner, would submit that amendment is based on subsequent events and only relief of possession and removal of construction made during the pendency of the

suit is sought to be made and as such, the amendment is necessary to avoid the multiplicity of the litigation and only claimed the relief which is essential for just and proper disposal of the suit.

4. Dr.N.K.Shukla, Senior Advocate with Mr.Shiv Shankar Tiwari, learned counsel appearing for respondent No.7, would support the impugned order and oppose the writ petition.
5. I have heard learned counsel appearing for the parties and perused the order impugned and documents appended with the writ petition.
6. The petitioner/plaintiff initially brought a suit for declaration of his title that registered sale deeds are null and void and the defendants be restrained from interfering with his possession. The application for interim injunction filed by the petitioner/plaintiff was rejected by the trial Court on 13.03.2008 and said order was confirmed in appeal by order dated 26.08.2008, thereafter on 15.12.2008 the petitioner/plaintiff filed an application seeking leave to amend the plaint stating inter-alia that defendant No.7 has erected the boundary wall over the suit land and thereby taken over the possession of suit land and on account of that event, the petitioner/plaintiff be permitted to seek relief of possession by removing the

boundary wall so constructed which is based on the subsequent event (month of September, 2008). The trial Court has rejected the application on the ground that proposed amendment will change the nature of the suit and as such it cannot be granted.

7. The question for consideration is whether such an amendment is permissible or not?
8. It is well settled law that a bare suit for declaration of title is not maintainable by virtue of proviso to Section 34 of the Specific Relief Act, if the plaintiff is not in possession of the suit land.
9. Their Lordships of the Supreme Court in the matter of **Mst. Rukmabai v. Lala Laxminarayan and others**¹ have observed that an objection to the maintainability of the suit based on the proviso above-said should be taken at the earliest point of time because in that event, the plaintiff could ask for necessary amendment to comply with the proviso. Their Lordships further observed as under:-

“30.A plea that the plaintiff asked for a bare declaration though he was in a position to ask for further relief within the meaning of S. 42 and hence the suit should have been dismissed in limine should be raised at the earliest point of time, in which event the

1 AIR 1960 SC 335

plaintiff could ask for necessary amendment to comply with the provisions of S. 42. It is a well-settled rule of practice not to dismiss suits automatically but to allow the plaintiff to make necessary amendment if he seeks to do so. (The plea was not allowed to be raised in the Supreme Court.).”

10. In the matter of **Kalyan Singh v. Vakilsingh and others**², the Madhya Pradesh High Court has held that a bare suit for declaration of title is not barred and proviso to Section 34 of the Specific Relief Act would not entail dismissal of the suit and the plaintiff must be afforded an opportunity of amending the plaint if so desired. It was held as under:-

“20. The legal position that flows from the above said authorities is as under:-

- (i) Further relief than a mere declaration referred to in the proviso to S. 34 of Specific Relief Act, 1963 contemplates the entitlement of the plaintiff as obtaining on the date of the suit;
- (ii) Entitlement of the plaintiff enabling seeking further relief based on an event occurring during the pendency of the suit would not render the suit not maintainable;
- (iii) It is the choice of the plaintiff to rest content by a mere decree for declaration in that suit and then to sue for further relief by bringing an independent suit subject to law of Limitation or to pray for further relief by

² AIR 1990 MP 295

making an amendment in the plaint in that suit itself;

(iv) Bar enacted by the proviso does not automatically entail dismissal of the suit but the plaintiff must be afforded an opportunity of amending the plaint if so desired;

(v) Further relief cannot be granted to the plaintiff without the same having been specifically asked for.”

11. It is trite law that a cause of action for a lis must precede the lis. But once a lis is so instituted on a pre-litem cause of action, the Court cannot shut its eyes to, but must take note of, all such post-litem developments which are likely to affect the question to be determined in the lis (See **Bibhas Chandra Bose Vs. Sm. Dolly Bose nee Dutt**³).

12. The Supreme Court in the matter of **Pratap Singh Vs. Shri Krishna Gupta and others**⁴ has succinctly held that technicalities should be deprecated so that the substance may count and take precedence over form and it would be putting too much premium on technicalities of the rules of pleading and allowing them to become rather the mistress instead of being as they should be handmaid to the cause of administration of justice, if the Court folds its hand and doesn't take note of all subsequent event or

³ AIR 1989 Calcutta 190

⁴ AIR 1956 SC 140

developments which might affect the relief claimed in the law and derive the parties to obtain relief on the basis of changed or subsequent developments as it is well settled that Court is to take note of such subsequent event and to shorten litigation and to prevent multiplicity of proceeding (See **M/s. M. Laxmi & Co. Vs. Dr. Anant R. Deshpande & another**⁵ and **Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha**⁶).

13. If the facts of the present case are examined in the light of principle of law rendered by the Supreme Court and the Madhya Pradesh High Court in the above-stated judgments, it is quite vivid that the plaintiff initially filed a suit for declaration of title and permanent injunction and it is further case that during the pendency of suit and after the rejection of his application for interim injunction he was dispossessed by defendant No.7 by making construction of boundary wall over the suit land, therefore, the petitioner/plaintiff has moved an application seeking leave to amend the plaint to insert the relief of possession, otherwise his suit would not be maintainable and hit by proviso to Section 34 of the Specific Relief Act.

14. The Supreme Court in the matter of **Rukhmabai**

5 AIR 1973 SC 171

6 AIR 1974 SC 1178

(supra) has clearly held that in a suit for declaration of title if the plaintiff is not in possession, opportunity should be given to amend the plaint and to claim the relief of possession and plaint should not be dismissed and bare enacted by proviso to Section 34 of the Specific Relief Act doesn't automatically entail dismissal of the suit and subsequent event should be taken cognizance off.

15. Accordingly, the writ petition is allowed and order impugned is hereby set aside. Parties will appear before the trial Court on 16.12.2016 and the petitioner will incorporate the amendment within 15 days thereafter. The trial Court will proceed in the suit and conclude the trial as early as possible preferably within a period of six months. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-