

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 479 of 2015

- Mahindro Yadav S/o Late Shri Lekhan Ram, Aged About 72 Years, R/o Village Puguraataangar, Tehsil Duldula, District Jashpur, Chhattisgarh

---- Petitioner

Versus

1. Shri Shri 109 Maa Dakshin Kaali Bhagwati through the Manager Being the Collector Raigarh (as recorded), District Raigarh Chhattisgarh
2. Ishwar Ram Yadav S/o Late Shri Uttam Ram Aged About 60 Years R/o Madhubantoli, Jashpuri, Tehsil Jashpur, District Jashpur Chhattisgarh
3. State Of Chhattisgarh Through the Collector Jashpur, District Jashpur Chhattisgarh

---- Respondent

For Petitioner	Shri Amrito Das, Advocate
For Respondent Nos.1 &3/State	Shri S. Majid Ali, PL
For Respondent No.2	Shri A. K. Prasad, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

28/06/2016

1. This petition under Article 227 of the Constitution of India has been preferred by the petitioner/plaintiff, whose application under Order 6 Rule 17 CPC has been rejected by the trial Court.

2. The plaintiff has instituted the present suit in the month of September, 2012 seeking declaration of title, confirmation of possession, permanent injunction and declaration of the Naib Tahsildar's order dated 09.02.2007 and the Collector, Jashpur's order dated 23.04.2004 as null and void.
3. In para 3 of the plaint, the plaintiff would plead that the sale deed dated 08.02.1961 executed by the mother and grandmother of the defendant No.2 in favour of Vrindavan Mahapatra and Balram Mishra would not inure to the benefit of defendant No.2 and is not relevant for the present suit. It is also pleaded that the said sale deed has not been declared illegal or void by any Court.
4. When the issues have already been struck and affidavits under Order 18 Rule 4 CPC have been exchanged and the trial was fixed for recording evidence of plaintiff's witnesses, the subject application under Order 6 Rule 17 CPC was moved in January, 2015 seeking permission to insert para 3A and relief No.3A in para 37 seeking to declare the sale deed dated 08.02.1961 as *void ab initio* and not binding on the plaintiff. It is this application, which has been rejected by the trial Court by the impugned order.
5. Placing reliance on judgment in the matters of **Vidyabai and Others Vs. Padmalatha and Another** {(2009) 2 SCC 409}, **South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik & Ors** {AIR 2009 SC 1177}, **Sushil Kumar Jain Vs. Manoj Kumar & Anr.** {2009 AIR SCW 4441}, it is contended by the

learned counsel for the petitioner that the Court should be liberal in allowing the amendment and the fact that the subject amendment pleads and raises a time barred claim is not to be seen at this stage, because for that the defendant would be at liberty to controvert by making amendment in the written statement. It is also argued that the evidence of the plaintiff having not yet been recorded, the trial has not yet begun.

6. Proviso to Order 6 Rule 17 CPC makes it obligatory on the party proposing amendment to state that despite due diligence the pleadings made in the proposed amendment could not have been raised while filing the original pleadings. This requirement creates a jurisdictional bar on the trial Court to consider the prayer for amendment as held in **Vidyabai** (supra). It is also held therein that the trial in a suit begins when the affidavits under Order 18 Rule 4 CPC are exchanged. The plaintiff having failed to aver the necessary pleadings as required under the proviso to Order 6 Rule 17 CPC, the trial Court has not committed any illegality in rejecting the amendment.
7. This is apart from the fact that in para 3 of the plaint, the plaintiff has already pleaded and seems to be aware of the existence of the sale deed dated 08.02.1961, yet he failed to seek any relief qua the sale deed when the plaint was filed. Moreover the plaintiff having made the pleadings that the defendant No.2 has lost his title on account of execution of sale deed by his mother and

grandmother, it was open for him to have pleaded in the same breathe that the sale deed is not binding on him, however, the subject pleading was not made, therefore, there is absolute lack of due diligence. It is also to be seen that the parties are in litigation since 1955, therefore, the delay or failure to raise the proposed pleading while filing the plaint dis-entitles the plaintiff to seek amendment, which would only protract the litigation.

8. In view of the scope of interference under Article 227 of the Constitution of India as held by the Supreme Court in **Surya Dev Rai Vs. Ram Chander Rai**¹, **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**² and **Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal**³, this Court does not find any ground for interference with the order passed by the trial Court. Accordingly, the writ petition being devoid of any substance, it deserves to be and is hereby dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374