

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP 227 No. 1056 of 2015**

1. Ramesh S/o Late Bhaskar, Aged About 37 Years Occupation Agriculturist And R/o Village Tetla, Tahsil Pussour, Civil And Revenue District Raigarh Chhattisgarh..... (Plaintiff)
2. Shakravati, W/o Late Bhaskar, Aged About 65 Years Occupation Agriculturist And R/o Village Tetla, Tahsil Pussour, Civil And Revenue District Raigarh Chhattisgarh (Plaintiff))
3. Roopa, D/o Late Bhaskar, Aged About 37 Years Occupation Agriculturist And R/o Village Tetla, Tahsil Pussour, Civil And Revenue District Raigarh Chhattisgarh (Plaintiff)

---- Petitioners

Versus

1. Shashibhushan S/o Lt. Chaitan, Aged About 50 Years R/o Village Tetla, Tahsil Pussour, Civil And Revenue District Raigarh Chhattisgarh (Defendent)
2. Ravishankar, S/o Lt. Chaitan, Aged About 50 Years R/o Village Tetla, Tahsil Pussour, Civil And Revenue District Raigarh Chhattisgarh (Defendent)
3. State Of Chhattisgarh, Through The Collector, Raigarh, District Raigarh Chhattisgarh (Defendent)

---- Respondents

For Petitioners	:	Shri Abhishek Saraf, Advocate
For Respondent No.1 & 2	:	Shri M.K. Sinha, Advocate
For Respondent No.3	:	Shri S.C.Khakharia, Dy. Advocate
		General

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

13/04/2016

1. Heard the matter finally at the motion stage itself.
2. Brief facts required for disposal of the instant Writ Petition (227) are that the petitioners/plaintiffs had filed Civil Suit No. 124-A/13 (Ramesh & Ors. Vs. Shashibhushan & Ors.) for declaration of title, partition and permanent

injunction and the same is pending before the 2nd Civil Judge, Class- I Raigarh (CG). The defendants/ respondents 1 and 2 had filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short the Code) for amendment in the written statement for incorporation of new a paragraph 17-A. The said application was opposed on behalf of the petitioners/ plaintiffs. The Court below vide order dated 29.10.2015 held that though the prayer for amendment is made at the stage of final arguments, but the defendants' witness- Nawadai in her evidence deposed herself to be the daughter of Chetan. The trial Court appreciated that all the Legal Representatives are the necessary party, hence, proposed amendment is substantive and required for the final adjudication of the matter and allowed the application filed on behalf of respondents 1 and 2/defendants and directed that the proposed amendment be incorporated within 3 days and fixed the matter for further proceeding. The petitioners had challenged the impugned order dated 29.10.2015 and prayed that the application for amendment in the written statement is filed at a very belated stage i.e. at the time of final arguments, this fact was well within the knowledge of the defendants and in spite of it they have not included the said fact in their written statement hence, the order dated 29.10.2015 be quashed.

3. Learned counsel for the petitioners duly supported the grounds taken in the instant Writ Petition and submits that as this fact was well within the knowledge of the defendants, they prayed for amendment in the written statement at a very belated stage, hence, the order for allowing the said interim application be quashed.

4. On behalf of respondents 1 and 2 the petition is opposed.

5. From perusal of the facts as involved goes to show that the plaintiffs P1 and P2 are the son and wife of Bhaskar and P3 is daughter of Bhaskar (since

deceased). Bhaskar was real brother of defendants D1 and D2. The plaintiffs had filed a suit for declaration of title, partition and permanent injunction. In the objection/ response filed on behalf of the plaintiffs for the amendment application, they have not specifically pleaded that the fact that Chetan had 3 sons and 2 daughters. After perusal of the impugned order dated 29.10.2015, it appears that a defendants' witness- Nawadai claimed herself as the daughter of Chetan. The plaintiffs had filed a family tree. If there was no any daughter of Chetan, then the response/objection for the amendment application would have been very specific goes to show that both the parties though knowing well regarding this fact that Chetan had 2 more daughters suppressed this fact. Initially, it was the duty of the plaintiffs to disclose all the legal heirs as per relevant Hindu Law of Succession. Reason, he was claiming for declaration of title, partition and permanent injunction. Though the said application is filed at a very belated stage, but the said pleadings are required under the law for proper adjudication of the matter.

6. With this, as a settled law, proviso of Order 6 Rule 17 of the Code is not mandatory rather directory. On an appropriate stage amendment may be allowed at a belated stage. Therefore, I do not see any illegality or impropriety committed by the trial Court while allowing the interim application filed under Order 6 Rule 17 of the Code. Consequently, the instant Writ Petition being devoid of substance is liable to be and is hereby dismissed at the motion stage itself. The parties are further directed to disclose the names of those 2 daughters of the deceased- Chetan before the trial Court and the trial Court is directed to issue appropriate directions to implead those daughters of the deceased – Chetan in the proposed and allowed amendment as new paragraph 17-A in the matter.

7. The petitioners may file any application for consequential amendment if they so wish and if any application is filed by the petitioners, the same may be disposed of after hearing the parties as per law.

8. The petition is dismissed. No order as to cost.

9. Registry is directed to send the copy of the order to the Court below through usual and fax mode immediately.

Sd/

(Chandra Bhushan Bajpai)
Judge