

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 505 of 2016

Dharini, daughter of late Ambika Prasad Panigrahi, aged about 40 years, R/o. Village – Aasna, Tehsil – Jagdalpur, District-Bastar (Chhattisgarh).

---Petitioner

Versus

1. Shrimati Sita Tiwari, Widow of late Abhay Tiwari, aged about 50 years, R/o. Netaji Subhash Ward, Rajbada, Jagdalpur, District – Bastar (Chhattisgarh).
2. Shrimati Saraswati Tiwari, Widow of late Suresh Chand Tiwari, aged about 76 years, R/o. Netaji Subhash Ward, Rajbada, Jagdalpur, District – Bastar (Chhattisgarh).
3. Municipal Corporation, Jagdalpur, through its Commissioner.
4. General Public.

---Respondents

For Petitioner	:	Mr. Vishnu Koshta and Shobhit Koshta, Advocates.
For Respondent No.1	:	Mr. Vikash A. Shrivastava, Advocate.
For Respondent No.3	:	Ms Pushpa Dwivedi, Advocate.

Hon’ble Shri Justice Sanjay K. Agrawal
Judgment on Board

18/10/2016

1. Shri Abhay Tiwari while working as Assistant Sub-Inspector in Municipal Corporation, Jagdalpur died in harness on 28.07.2014. His wife Smt. Sita Tiwari respondent No.1 herein filed an application under Section 372 of the Indian Succession Act, 1925 for grant of

succession certificate impleading Dharini/petitioner herein as a party non-applicant in that application stating that she has claimed before the Collector to be the second wife of her husband Shri Tiwari.

2. In the said application and the petitioner herein filed her reply stating *inter alia* that deceased Shri Tiwari during his life-time with the consent of his wife/respondent No.1 and family members, on 10.07.2011 entered into second marriage with her and she was residing with Shri Tiwari since 10.07.2011 and claimed succession certificate in her favour.

3. During the pendency of application petitioner herein filed an application for amendment of her reply proposing to amend that the marriage of respondent No.1 was solemnized with Shri Tiwari in the year 1989 and since he had no issue with the respondent No.1 therefore, the respondent No.1 had deserted her husband Shri Tiwari and then only Shri Tiwari had married with the petitioner herein according to the Hindu rites and she was not aware at the time of her marriage that Shri Tiwari is already married, therefore, the amendment be allowed.

4. The trial court, by its impugned order, rejected the application for amendment finding no merit holding that new case cannot be allowed to be set up by the petitioner after filing of the reply. Questioning the aforesaid order, the writ petition has been filed under Article 227 of the Constitution of India.

5. Shri Vishnu Koshta, counsel appearing for the petitioner would

submit that the amendment proposed by the petitioner is essential for determining the real controversy between the parties which is necessary for proper adjudication of the case and it is not a withdrawal of an admission already made in the pleadings and to support his submission. Shri Koshta relied upon the decisions of **Usha Balashaheb Swami & others v. Kiran Appaso Swami & others**¹ and **Premchand Agrawal v. Narendra Kumar Verma**².

6. Mr. Vikash A. Shrivastava, learned counsel for the respondent No.1 would however submit that the trial court is absolutely justified in rejecting the application for amendment as the petitioner is not entitled to set up an entirely different and new case by way of amendment and placed reliance upon the decision of Supreme Court in the matter of **M/s. Modi Spinning & Weaving Mills Co. Ltd. and another v. M/s. Ladha Ram & Co.**³.

7. I have heard the learned counsel for the parties and considered their rival submission and gone through the records with utmost circumspection.

8. The petitioner herein by filing her reply to the application filed under Section 372 of Act of 1925, clearly pleaded that deceased Shri Tiwari with the consent of respondent No.1 herein and family members entered into second marriage with her on 10.07.2011 and by way of amendment proposed to amend that the respondent No.1 had deserted Shri Tiwari and only thereafter he had married with the

1 2007 AIR SCW 2545

2 2012(1) C.G.L.J. 339

3 (1976) 4 SCC 320

petitioner according to the Hindu rites and customs. In sum and substance the case set up by the petitioner herein before the trial court by way of reply was that she is second wife of Shri Tiwari, whereas by way of amendment she has proposed to amend and plead that she is the wife of Shri Tiwari as the respondent No.1 has already deserted her, and as such the petitioner has proposed entirely different and new case by way of amendment which cannot be allowed. In the matter of **A.K. Gupta & Sons Ltd. v. Damodar Vally Corporation**⁴ the Supreme Court has held that in the matter of allowing amendment of the pleading the general rule is that a party is not allowed by amendment set up a new case. Likewise, in **M/s. Modi Spinning & Weaving Mills Co. Ltd.** (supra) the Supreme Court has held that the party to the suit cannot be allowed to set up a entirely different new case substituting the original pleading. However, the decision cited by Mr. Koshta upon **Usha Balashaheb Swami** (supra) and **Premchand Agrawal** (supra) are clearly distinguishable to the fact of the present case and therefore, there is not applicable. In the result I do not find any jurisdiction error in the impugned order passed by the trial court rejecting application for amendment filed by the petitioner herein and, as such, writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

4 AIR 1967 SC 96

L/-