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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 964 of 2015**

Govind Prasad Pandey S/o Late Ayodhya Prasad Pandey, Aged About 88 Years R/o House No. 294, Sunder Nagar, Raipur (Chhattisgarh) Through His Power Of Attorney Holder Shri A. K. Pandey, S/o Shri Govind Prasad Pandey, Aged About 62 Years, R/o House No. 173, Near Trimurti Chowk, Sunder Nagar, Raipur, (Chhattisgarh), Civil & Revenue District Raipur.....(Defendant No.1)

---- Petitioner**Versus**

1. Sandeep Tiwari S/o Late Parmanand Tiwari, Aged About 39 Years R/o Village Darba, Tahsil Aarang, District Raipur (Chhattisgarh)..... (Legal Heir Of Deceased Plaintiff No.1: Parmanand Tiwari) (Plaintiff)
2. Sumit Tiwari, S/o Late Parmanand Tiwari, Aged About 29 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh)..... (Legal Heir Of Deceased Plaintiff No.1: Parmanand Tiwari)(Plaintiff)
3. Smt. Madhuri Tiwari, Wd/o Late Parmanand Tiwari, Aged About 60 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Legal Heir Of Deceased Plaintiff No.1: Parmanand Tiwari)(Plaintiff)
4. Samim Sharma, D/o Late Parmanand Tiwari, Aged About 37 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Legal Heir Of Deceased Plaintiff No.1: Parmanand Tiwari)(Plaintiff)
5. Sarika Sharma (Wrongly Mentioned As Tarika In The Cause Title Of Court Below) D/o Late Parmanand Tiwari, Aged About 36 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh)..... (Legal Heir Of Deceased Plaintiff No.1: Parmanand Tiwari)(Plaintiff)
6. Smt. Kunti Devi, Wd/o Late Nathmal Tiwari, Aged About 74 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh)..... (Legal Heir Of Deceased Plaintiff No. 2: Nathmal Tiwari)(Plaintiff)
7. Srikant Tiwari, S/o Late Nathmal Tiwari, Aged About 52 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh)..... (Legal Heir Of Deceased Plaintiff No. 2: Nathmal Tiwari)(Plaintiff)
8. Baldau Prasad Tiwari, S/o Late Sharda Prasad Tiwari, Aged About 69 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh) (Plaintiff)
9. Prasann Kumar Sharma (Tiwari) S/o Late Gajanand Sharma, Aged About 64 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh)(Plaintiff)
10. Sushil Kumar Sharma, S/o Late Khomlal Sharma, Aged About 40 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Defendant)

11. Smt. Shanti Sharma, Wd/o Late Khomlal Sharma, Aged About 72 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Defendant)
12. Smt. Sunita Sharma, Wd/o Late Sharad Sharma, Aged About 38 Years R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Defendant)
13. Aditi Sharma, D/o Late Sharad Sharma, Aged About 8 Years Minor Through Her Natural Guardian Mother Smt. Sunita Sharma, Wd/o Late Sharad Sharma. R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Defendant)
14. Anisha Sharma, D/o Late Sharad Sharma, Aged About 6 Years Minor Throuth Her Natural Guardian Mother Smt. Sunita Sharma, Wd/o Late Sharad Sharma. R/o Village Darba, Tahsil Aarang, District Raipur, (Chhattisgarh).....(Defendant)
15. State Of Chhattisgarh, Through The Collector, Raipur, (Chhattisgarh).....(Defendant)

---- Respondents

For the Petitioner	:	Shri Sameer Uraon, Advocate on behalf of Shri B.P. Sharma, Advocate.
For Respondents No.2, 7 to 9 :		Shri Goutam Khetrapal, Advocate.
For Respondents No.10 to 14:		Shri Rajesh Kumar Tiwari, Advocate.
For Respondent No.15/ State :		Shri S.C. Khakhariya, Deputy Advocate General.
For Respondents No.1, 3 to 6 :		Unserved.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

26/02/2016

1. It is submitted on behalf of the Respondents that they are opposing the writ petition orally.
2. With the consent of both the parties, the matter is heard finally at the motion stage itself.
3. Facts in brief required for disposal of the instant writ petition are that the Respondents No.1 to 9/ Plaintiffs have filed Civil Suit No. 1A of 2012 (Sandeep Tiwari and Ors. vs. Govind Prasad Pandey and Ors.) before the Fifth Additional District Judge, Raipur, Chhattisgarh for declaration of title

and also to declare the impugned sale-deed and mutation order as illegal and void. During the pendency of the said suit, on behalf of the Petitioner/ Defendant No.1, an application has been filed under Order VI Rule 17 of the Civil Procedure Code (for short 'the Code'). After hearing the matter *bi parte*, the Court below vide order dated 28.9.2015 held that the facts mentioned in the amendment application for incorporation in the pleadings already exist and pleaded summarily in the written statement and there is no necessity to allow proposed amendment for proper adjudication of the matter. Hence, the Court below rejected the said amendment application.

4. Against the aforesaid order, the Petitioner/Defendant No.1 has preferred the instant writ petition *inter alia* pleading that the order passed by the Court below is illegal and requires interference by this Court and also praying that by the proposed amendment the Petitioner/ Defendant wishes to clarify the pleadings already exist as well as they are required for purpose of adjudication the matter. It is also prayed that if the said amendment application is allowed, there would be no prejudice to either party as the Plaintiffs and the other Defendants may also get an opportunity to amend their pleadings. The matter is at the evidence stage and no new case is being set out by the proposed amendment. The Court must be lenient to allow such amendment application. Hence, it is prayed that the application may be allowed and the proposed amendments may be permitted to be incorporated in the written statement of the Petitioner/ Defendant No.1.

5. The petition is opposed orally by the Respondents.

6. Heard Learned counsel for the parties and perused the material available on record.

7. Learned counsel for the Petitioner duly supported the grounds taken in

the instant W.P.(227) and prays that by the proposed amendment the Defendant/ Petitioner intended to elaborate the pleadings already exist and no new case would constitute after the said amendment is allowed. The said amendments are required for proper adjudication of the civil suit and the questions of law framed therein. Hence, it is submitted that the instant petition may be allowed and the Petitioner may be permitted to incorporate the proposed amendments in the written statement. Learned counsel for the Petitioner placed reliance for (2009) 14 SCC 38 (Sushil Kumar Jain vs. Manoj Kumar and Another) wherein the Hon'ble Apex Court held that as the amendment sought to elaborate and clarify the earlier inadvertent confusion, prayer for amendment should be allowed. In the cited case law, the Hon'ble Apex Court reiterated the principles of law laid down in 2007(5) SCC 602 (Usha Balashaheb Swami v. Kiran Appaso Swami) wherein the Hon'ble Apex Court held in paragraph 14 which is as under:

“14. Relying on the decision in Heeralal vs. Kalyan Mal (1998) 1 SCC 278 as relied on by the High Court in the impugned order, Mr. Lalit contended that the admission made in para 8 of the written statement cannot be washed out by an amendment of the written statement. Accordingly, Mr. Lalit invited us to hold that the High Court was fully justified in rejecting the application for amendment of written statement of the appellant in the exercise of its power under Article 227 of the Constitution.”

8. Learned counsel for the Petitioner/ Defendant would submit that if the proposed amendments are allowed, no prejudice would be caused to the evidence of the Plaintiffs. The evidence of the Plaintiffs is going on. Two witnesses are already examined and few are yet to be examined. If the

proposed amendments are allowed, still there is an opportunity to the Plaintiffs and other defendants regarding consequential amendments and the Plaintiffs would be at liberty to adduce the evidence for the same and since the evidence is at the initial stage and looking to the appreciation made by the Court below that those facts already exist in the written statement, the petition may be allowed and the Petitioner may be permitted to amend his written statement as prayed.

9. On the other hand, Learned counsel appearing on behalf of Respondents No.2, 7, 8 and 9 submitted that delay is not explained and no reason is mentioned as to why the said amendment is proposed at a belated stage. By allowing the said amendment, a new case would be made out hence, as the trial Court has not committed any illegality, impropriety to reject the prayer, the petition may be dismissed.

10. For the purposes of appreciation of the entire arguments advanced, the impugned order, the amendment application and the documents annexed to the instant petition are perused.

11. The trial Court has appreciated that the facts for which the Petitioner prays for the amendment in his written statement already exist similarly in the written statement. From perusal of the amendment application, it shows that few amendments relate to the question of law and the other amendments relating to the facts already exist in the written statement but the same is proposed to avoid confusion and elaborate the facts mentioned in the written statement. The prayer made in this behalf is made at such stage which would not cause any prejudice to the Plaintiffs or the other Defendants.

12. On due consideration, in the larger interest of justice, it would be appropriate to permit the Petitioner to incorporate the amendments as prayed in the application.

13. Consequently, the instant petition filed by the Petitioner is hereby allowed. The impugned order dated 28.9.2015 by the Court below is hereby quashed. The prayer for amending the written statement by filing the interim application for amendment is hereby allowed. The Petitioner is permitted to amend his written statement as per amendment application Annexure-P/4. The Court below is directed to afford an opportunity to other parties to pray for any amendment of consequential nature, if any, prayer is made in this behalf. After hearing the matter bi parte and completion of the pleadings, the matter may be disposed of in accordance with law. The Court below is further directed to proceed with the trial of the matter, as per law.

14. Consequently, the instant petition is allowed.

15. No order as to costs.

16. Certified copy as per rules.

17. Parties may produce a copy of this order before the concerned Court below.

18. Registrar (Judicial) is also directed to send a copy of this order to the Court below for compliance.

Sd/-

Chandra Bhushan Bajpai
Judge