

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.297 of 2016

1. Mohammad Kaleem, S/o Mohammad Yusuf, aged about 36 years, Occupation Agriculture, R/o Bachedi, Post Daihaandeeh, Tehsil Loharaa, District Kabirdhaam (C.G.)
 2. Mohammad Wahid, S/o Mohammad Yusuf, aged about 40 years, Occupation Agriculture, R/o Bachedi, Post Daihaandeeh, Tehsil Loharaa, District Kabirdhaam (C.G.)
 3. Jallu, S/o Mohammad Khalil, aged about 36 years, Occupation Mechanic, R/o Ekta Chowk, Kawardha, District Kabirdhaam (C.G.)
 4. Hanif, S/o Safi Mohammad, aged about 32 years, Occupation R.T.O. Agent, R/o Maruti Ward, Kawardha, District Kabirdhaam (C.G.)
- (Defendants)
---- Petitioners

Versus

1. Rizwana Ahmad, W/o Khwaja Khijra Ahmad, Caste Muslim, aged about 50 years, Occupation Housework, R/o Behind Jaama Masjid, Pendra, District Bilaspur (C.G.)
 2. Khwaja Khijra Ahmad, S/o Mohammad Hussain, Caste Muslim, aged about 55 years, Occupation Service, R/o Behind Jaama Masjid, Pendra, District Bilaspur (C.G.)
- (Plaintiffs)
---- Respondents

For Petitioners:	Mr. Amrito Das, Advocate.
For Respondents:	Mr. Dharmesh Srivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2016

1. The plaintiffs / respondents herein instituted a suit for declaration of title and permanent injunction on 8-3-2013 in which the defendants / present petitioners have filed written statement on 5-3-2014 and issues were framed thereafter. The plaintiffs filed affidavit under Order 18 Rule 4 of the CPC on 26-6-2015 and thereafter, on 17-8-

2015, an application for amendment was filed questioning the order of the Nazul Officer dated 12-7-2012 and for declaring it as null and void and also proposed to add five new defendants. The trial Court by the impugned order allowed the application for amendment against which this writ petition under Article 227 of the Constitution of India has been filed.

2. Mr. Amrito Das, learned counsel appearing for the petitioners / defendants, would submit that trial has already been commenced, as on 26-6-2015, affidavit under Order 18 Rule 4 of the CPC has been filed by the plaintiffs. He would rely upon a decision of the Supreme Court in the matter of **Vidyabai and others v. Padmalatha and another**¹ to buttress his submission.
3. On the other hand, Mr. Dharmesh Srivastava, learned counsel appearing for the respondents / plaintiffs, would support the impugned order.
4. I have heard learned counsel for the parties, perused the order impugned and gone through the other documents carefully and also considered the rival submissions made on behalf of the parties.
5. It is not in dispute that affidavit under Order 18 Rule 4 of the CPC has been filed by the plaintiffs on 26-6-2015 and trial had commenced thereby. The Supreme Court in **Vidyabai** (supra) had already held that the proviso to Order 6 Rule 17 of the CPC is mandatory and unless the courts record a finding and come to a conclusion that in spite of due diligence parties could not have raised the matter before commencement of trial, the application for amendment cannot be allowed after the trial has commenced.

1 (2009) 2 SCC 409

6. If the facts of the present case are examined, though the application for amendment was filed after commencement of trial on 17-8-2015, but the trial Court has not recorded any reason in this regard and the respondents / plaintiffs have pleaded that in spite of due diligence they could not raise the matter before the commencement of trial. Even the trial Court has also not recorded any finding so far as the provisions of Order 6 Rule 17 of the CPC are concerned while granting the amendment application.
7. By the proposed amendment, the plaintiffs seek to challenge the order dated 12-7-2012 which is prior to the date of institution of suit i.e. 8-3-2013 and also seek to add five new defendants as such, there is no apparent reason as to why the plaintiffs could not have filed amendment application before the commencement of trial.
8. Consequently, the order impugned so far as granting application for amendment after commencement of trial without recording compliance to Order 6 Rule 17 of the CPC is set aside. The trial Court is directed to expedite the trial and conclude the same within six months from the date of receipt of a copy of this order, as the suit was filed on 8-3-2013.
9. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge