

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.415 of 2016

1. Malti Devi, W/o Madan Chand Keshari, at present aged about 67 years,
2. Kamlesh Keshari, S/o Madan Chand Keshari, at present aged about 48 years.
3. Dinesh Keshari, S/o Madan Chand Keshari, at present aged about 44 years,
4. Annpurna Devi, D/o Madan Chand Keshari, at present aged about 51 years,

All R/o Deviganj Road, Ambikapur, P.S. & Post Ambikapur, Civil & Revenue District Surguja (C.G.)

(Plaintiffs)
---- Petitioners

Versus

1. Madan Chand Keshari, S/o late Ramdayal Sao, at present aged about 72 years, R/o Deviganj Road, Ambikapur, at present Basdevapara, Near State Bank, Branch Collectorate, Kedarpur, Ambikapur, P.S. & P.O. Ambikapur, Civil & Revenue District Surguja (C.G.)
2. Vishnu Sahu, S/o unknown, at present aged about 54 years,
3. Kumari Kiran, D/o unknown, at present aged about 22 years (at the time of filing the suit, Kumari Kiran was minor therefore represented through her mother and natural guardian mother Parwati Devi in civil suit)

No.2 & 3 R/o Basdevapara, Near State Bank, Branch Collectorate, Kedarpur, Ambikapur, P.S & P.O. Ambikapur, Civil & Revenue District Surguja (C.G.)

---- Respondents

For Petitioners: Ms. Priyanka Mehta, Advocate.
For Respondents No.1 and 3: Mr. Sunil Tripathi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2016

1. The petitioners / plaintiffs filed a suit for declaration of adoption deed dated 6-7-2000 as null and void in which defendant No.1 filed his written statement on 4-1-2003, issues were framed on 16-6-2003, affidavit of the plaintiffs was filed on 21-6-2004 and first application for addition of party was filed on 28-10-2006 which was rejected by the trial Court on 19-12-2006 finding no merit. Second application was again filed on 28-7-2015 for amendment of written statement by defendant No.1 and by the impugned order, the trial Court has allowed that application for amendment against which this writ petition under Article 227 of the Constitution of India has been filed.
2. Ms. Priyanka Mehta, learned counsel appearing for the petitioners / plaintiffs, would submit that after commencement of trial, the application for amendment could not have been allowed unless the trial Court reaches to the conclusion that despite due diligence the amendment could not have been brought earlier. She would further submit that similar application has already been rejected on 19-12-2006 on merit and therefore such an order rejecting the application would operate as res judicata and on same facts, second application would not be maintainable.
3. On the other hand, Mr. Sunil Tripathi, learned counsel appearing for respondents No.1 and 3, would submit that proviso to Order 6 Rule 17 of the CPC has been inserted in the Code of Civil Procedure, 1908 on 1-7-2002, whereas the suit was filed on 10-5-2002 and therefore the amendment made to the proviso to Order 6 Rule 17 of the CPC would not be applicable to the present suit. He would further submit that the amendment is necessary for just and proper disposal of the

suit and therefore the trial Court has rightly allowed the application for amendment and the writ petition deserves to be dismissed.

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. Proviso to Order 6 Rule 17 of the CPC was inserted with effect from 1-7-2002. Therefore, the question would be whether in a suit filed prior to 1-7-2002, proviso to Order 6 Rule 17 of the CPC would be applicable.
6. Order 6 Rule 17 of the CPC reads thus,

"17. Amendment of pleadings.--The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

The proviso appended thereto was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 1-7-2002. It reads as under: -

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

Section 16(2) of the amending Act of 2002 reads as under: -

"16. (2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act,

1897,--

(a) *** *** ***

(b) the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;"

7. Thus, by virtue of Section 16(2)(b) of the Code of Civil Procedure (Amendment) Act, 2002, the amendment incorporated in Order 6 Rule 17 adding proviso to said provision shall only apply in respect of the suit(s), which has been filed after 1-7-2002. (See **State Bank of Hyderabad v. Town Municipal Council**¹ and **Sumesh Singh v. Phoolan Devi and others**².)
8. Therefore, the first objection of learned counsel appearing for respondents No.1 and 3 is sustained and the application for amendment even after the commencement of trial is held to be maintainable *dehors* the reasons for not filing such an application earlier.
9. This brings me to the next question as to whether the amendment has rightly been granted by the trial Court.
10. A careful perusal of the order dated 19-12-2006 would reveal that defendant No.1's application for addition of party under Order 6 Rule 17 of the CPC was rejected and the trial Court has refused to grant amendment permitting the defendant to raise the plea that parents of

1 (2007) 1 SCC 765

2 (2009) 12 SCC 689

Kum. Kiran are necessary party. The second application has been preferred by defendant No.1 on 28-7-2015 after closer of his own evidence. The suit was filed as back as on 10-5-2002. Taking into consideration the fact that the first application for amendment has already been rejected on 19-12-2006 and second application has been filed belatedly and also considering the fact that the order rejecting first application for amendment has already attained finality as there is no challenge to the earlier order dated 19-12-2006, I am of the opinion that the trial Court is absolutely unjustified in granting amendment at such a belated stage. Therefore, the order dated 15-3-2016 is set aside and the trial Court is directed to conclude trial of the suit within a period of two months from the date of receipt of a copy of this order. Disposal of the suit be informed to the Registry of this Court.

11. With the aforesaid observation, the writ petition is allowed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge