

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.779 of 2015**

1. Virendra Kumar son of late Surendra Pratap Shukla, aged about 46 years
2. Bhupendra Kumar son of late Surendra Pratap, aged about 44 years,
3. Sneh Kumar son of late Surendra Pratap, aged about 37 years
4. Smt.Susheela Bai wife of late Surendra Pratap Shukla, aged about 70 years

All are resident of Village-Budeni, Tahsil-Magarlod, District-Dhamtari (CG)

---- Petitioners

Versus

1. Smt. Jyoti wife of Shri Sanjay Pandey, aged about 39 years, resident of Village-Manohara, Tahsil-Simga, District-Raipur (CG)
2. Deepak son of Ramavtar Pandey, aged about 36 years, resident of Village-Bodra Bandha, Post-Lohjhar, Tahsil-Chhura, District-Gariyaband (CG)
3. Smt.Meenakshi wife of Parmeshwar Sharma, aged about 30 years, resident of Gitti Khadan, Changorabhatha, Raipur, Tahsil and District-Raipur (CG)
4. Smt.Kiran wife of Shri Sanjay Dwivedi, aged about 28 years, resident of Lodhipara (Tarun Nagar), Raipur, District-Raipur (CG)
5. Ramavtar Pandey son of late Chhedi Lal Pandey, aged about 62 years, resident of Village-Bodrabandha, Post-Lohjhar, Tahsil-Chhura, District-Gariyanand (CG)
6. State of Chhattisgarh, through the Collector, Dhamtari (CG)

---- Respondents

For Petitioners	: Mr.D.N.Prajapati, Advocate
For Respondents No.1 to 4	: Mr.B.M.Rai, Advocate
For Respondent No.6	: Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

21/3/2017

Heard.

1. The writ petition is directed against the part of order dated 12.8.2015 passed by the Civil Judge Class-I, Kurud, District Dhamtari in Civil Suit No.23-A/2015 by which the trial Court has allowed the amendment application filed by the respondents/plaintiffs.
2. Learned counsel for the petitioners submits that the respondents have filed the suit seeking declaration of their title based on Will deed in respect of certain properties way back in the year 1983. Initially the suit was decreed. On appeal being preferred by the petitioners/defendants, the same was dismissed as barred by limitation. However, in the second appeal, the order of the Appellate Court, dismissing the appeal as barred by limitation was set aside and the matter was remanded back to the Appellate Court for decision on merits. The Appellate Court vide judgment dated 25.2.2015 allowed the first appeal and remanded back the matter to the trial Court. At this belated stage, the respondents/plaintiffs filed an application for amendment before the trial Court on 14.5.2015. It has been argued that in the said application, certain consequential amendments were made, simultaneously, they sought to introduce and bring some more properties within the ambit of dispute, which were not the subject-matter of the suit filed by the plaintiffs. The trial Court, in a mechanical manner, allowed the amendment application only on the ground that the defendants do not dispute regarding the properties being ancestral properties. He further submits that amendment sought

in paragraphs 7 and 8 are unnecessary and amendment sought in paragraph 9 is consequential to the amendment sought in paragraph 6 of the amendment application. As far as amendment sought in paragraphs 4 and 5 of the amendment application is concerned, learned counsel for the petitioners submits that he has no objection because they are consequential in nature and due to subsequent events.

3. On the other hand, learned counsel appearing for respondents No.1 to 4 submits that in order to make the pleadings more explicit for effective decision of the issue involved in the instant case, the respondents/plaintiffs sought to amend the plaint to include those lands also which have not been disputed to be ancestral properties.
4. I have heard learned counsel for the parties.
5. As far as the amendment as sought in paragraphs 4 and 5 of the amendment application is concerned, learned counsel for the petitioners does not to object the same. The same also appears to be consequential in nature because of subsequent events. However, I find that the trial Court has allowed the amendment sought in paragraph 6 by which, the plaintiffs after more than two decades sought to add, by way of amendment, another extent of land admeasuring 1.24 hectares situated in various khasra numbers, which were earlier not included in the subject-matter of the suit.
6. It has not been stated in the application as to why the plaintiffs could not include the aforesaid properties also in the

subject-matter of the suit. On this aspect, the application is blissfully vague and completely silent.

7. Learned counsel for respondents No.1 to 4 failed to establish that the suit filed by the respondents not only seeks declaration based on Will deed, but also partition, including the properties sought to be included by way of the amendment.
8. The amendments sought in paragraphs 7 and 8 are superfluous. Once, the plaintiffs have been allowed to implead defendant No.4 "Smt.Susheela Bai, Wife of Late Surendra Pratap Shukla", there is no need to repeat the name of husband of Smt.Susheela Bai on each and every part of the plaint. Pleadings of paragraph 9 of the amendment application are consequential to what has been proposed in paragraph 6 of the amendment application.
9. Learned trial Court completely ignored the legal position as adumbrated in the matter of **Salem Advocate Bar Association, Tamilnadu Vs. Union of India** reported in **AIR 2005 SC 3353** and has mechanically allowed the amendment application allowing the plaintiffs to include another set of properties in the subject-matter of the suit only on a plea of it being ancestral properties ignoring the fact that the suit filed by the plaintiffs was for declaration of title based on Will deed and not for relief of partition.
10. In view of the above, in my considered view, learned trial Court has committed serious jurisdictional flaw and patent illegality in allowing amendment as sought by the plaintiffs in paragraphs 6 and 9 of the amendment application in addition to allowing the

amendment, which are only superfluous and unnecessary as sought in paragraphs 7 and 8 of the amendment application.

11. Therefore, the order impugned to the extent of allowing the amendment as sought by the plaintiffs in paragraphs 6, 7, 8 and 9 of the amendment application is set aside, however, without interfering with the order of the trial Court to the extent of allowing the application as sought in paragraphs 4 and 5 of the amendment application.
12. The writ petition is allowed to the extent indicated hereinabove. Interim order dated 17.9.2015 is vacated. The trial Court is directed to expedite the trial and conclude the same as early as possible considering the fact that suit is of 1983.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Bablu