

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 24 of 2017

- Dhurandhar Builders and Developers through the Partner Keshav Dhurandhar, S/o Late Mahendra Dhurandhar, S/o Late Mahendra Dhurandhar, aged about 65 years, R/o Sunder Nagar, Raipur, District Raipur (CG)

---- Petitioner/Plaintiff

Versus

1. Smt. Kusum Tai Baraskar, W/o Sahab Rao Baraskar, R/o Behind Durga Sailun, Infront of Purna Construction, House of Vinod Dubey, Raipura Chowk, Raipur, Tahsil & District Raipur. Presently R/o Krishna Sakha Society, Plot No.29, Rohnipuram, Raipur, Distt. Raipur (CG)
2. State Of Chhattisgarh, Through Collector, Raipur, Distt. Raipur (CG)

---- Respondents/defendants

For Petitioner	:	Shri Awadh Tripathi, Advocate
For Respondent No.2	:	Shri Vivek Sharma, Government Advocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

16/01/2017

1. Heard on admission.
2. Challenge in this petition filed under Article 227 of the Constitution of India is to the order dated 14.12.2016 (Annexure P-1) passed by the 12th Civil Judge Class-II, Raipur rejecting the applications as filed by the petitioner under Order 6 Rule 17 & Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC').
3. Facts of the case, in brief, are that the petitioner filed a civil suit before the Court below seeking decree of permanent mandatory injunction to the effect that the defendant No.1/respondent No.1, its agent, servants and employees be restrained from interfering with the construction work of

house over the land bearing Khasra No.173/1 & 173/3 area 0.303 & 0.385 hectare respective situated at village Daganiya, P.H. No.104/25, Raipur. During the pendnecy of civil suit, the petitioner filed application under Order 6 Rule 17 CPC seeking certain amendments in the plaint. The petitioner has also filed an application under Order 1 Rule 10A CPC for impleadment of 'Krishna Sakha Greh Nirman Shahkari Samiti Maryadit, Daganiya, Raipur' as part to the suit on the ground that the defendant No.1 is claiming that disputed land has been purchased by him from said Samiti.

4. The trial Court after hearing the parties in the matter rejected both the applications vide impugned order inter alia holding that not only the prayer for amendment in the plaint made by the plaintiff/appellant is a belated one, but also that the prayer, if allowed, shall change the nature of the suit. It has been further held that the issue relating to misjoinder or non-joinder of party framed as preliminary issue is yet to be decided and therefore any application for impleadment of a party cannot be allowed. The trial Court has further held that since the preliminary issue regarding non-joinder or misjoinder of parties is yet to be decided, the application for impleadment of the said Samiti as co-defendant cannot be allowed.
5. Counsel for the petitioner submits that by virtue of the amendment, the petitioner wanted the certain facts and a relief to be added and also wanted to join a party as co-defendant. He further submits that such amendment would not change the nature of suit and would also not cause any prejudice to the defendant.
6. On the other hand, supporting the impugned order it has been argued by counsel for the respondent No.2-State that the order impugned is in accordance with law.
7. I have heard learned counsel for the parties and perused the impugned

order.

8. It is settled position that if the nature of the suit is going to be changed and it has not been proved on the basis of pleadings that the plaintiff was not aware regarding the fact or development which was to be amended by amendment application, the amendment is not permissible. In the instant case, from the plaint averments it is apparent that the defendant No.1 is claiming ownership over the disputed land and that the petitioner was aware about the fact that defendant No.1 had purchased the land from said Krishna Sakha Greh Nirman Shahkari Samiti Maryadit, Daganiya, Raipur since the year 2010, despite which the amendment was sought in the year 2016. This being the position, the trial Court has not committed any illegality or infirmity in passing the impugned order warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, which can only be exercised when the inferior courts act arbitrarily or act in excess of jurisdiction vested in them or fail to exercise jurisdiction vested in them or act in violation of the principles of natural justice, which is not the position in the case in hand.
9. In the result, the petition being devoid of merit is liable to be dismissed and is hereby dismissed at the admission stage itself.

Sd/-

(Pritinker Diwaker)
Judge

roshan