

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 841 of 2017**

1. Jain Shri Shwetambar Sangh, Nagri Through The President, Shri Uttam Chand Jain, Aged About 60 Years, Son Of Shri Sheshmal Golchha, Resident Of Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.
2. Uttam Chand Jain, S/o Shri Sheshmal Golchha, Aged About 60 Years R/o Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.

---- Petitioner**Versus**

1. Abdul Sattar Son Of Late Abdul Razzak, Aged About 75 Years, Resident Of Sankra Road, Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.
2. Jahiruddin (Haider Hussain), S/o Late Shamsuddin, Aged About 70 Years R/o Chiriyara Para, Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.
3. Mohammad Yusuf, S/o Late Shamsuddin, Aged About 67 Years R/o Varghese College, Jagdalpur, District Jagdalpur Chhattisgarh.
4. Kamruddin S/o Late Shri Shamsuddin, Aged About 65 Years R/o Near Bus - Stand, Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.
5. Mohammad Fazaluddin S/o Late Shri Shamsuddin, Aged About 62 Years R/o Balaji Ward, Jagdalpur, District Bastar Chhattisgarh.
6. Smt. Najiran Bai, D/o Late Shri Abdul Razzak And W/o Late Umardin, Aged About 77 Years R/o Budhadev Ward, Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh.
7. Smt. Khairun Bai, D/o Late Shamsuddin, W/o Nazruddin, Aged About 72 Years R/o Near Railway Station, Rajnandgaon, District Rajnandgaon Chhattisgarh.
8. State Of Chhattisgarh, Through The Collector, Collectorate, District Dhamtari Chhattisgarh.

---- Respondents

For Petitioners	:	Mr. Amrito Das, Advocate.
For Respondents/State	:	Mr. Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

15/11/17

1. Learned counsel appearing on behalf of the petitioners would submit that in the instant case the suit for declaration of title and permanent injunction was filed by the respondents / plaintiffs on 25.07.1989 and the trial has commenced since 13.12.2014 and the application for amendment preferred by the respondents / plaintiffs has been entertained by the trial Court as late as on 27.09.2017 holding the proviso to Order 6 Rule 17 of the C.P.C. as directly and partly mandatory. Being aggrieved against the impugned order dated 27.09.2017, this writ petition under Article 227 of the Constitution of India has been filed.
2. I have heard learned counsel for the petitioner and perused the impugned order with utmost circumspection.
3. It is correct to say that the suit was filed on 25.07.1989 and the plaintiffs have not complied with the proviso to Order 6 Rule 17 of the C.P.C. The trial Court has failed to notice the decision of the Supreme Court rendered in the matter of **Vidyabai and others v. Padmalatha and another**¹ in which Hon'ble Supreme Court has held as under :-

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 rule 17 of the Code, which 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.”

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. It must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”

The Supreme Court has clearly held that proviso to Order 6 rule 17 of the C.P.C. is mandatory. Since the plaintiffs by way of amendment have sought relief of possession that would avoid multiplicity of the suit, therefore, I am

¹ (2009) 2 SCC 409

not inclined to interfere with the impugned order. However, considering the fact that the suit is pending since 1989 and there is no substantial progress in the trial, the trial Court is directed to hear the suit on day to day basis and shall not grant adjournment unnecessarily and shall conclude it expeditiously preferably within a period of two months from the date of receipt of copy of this order and the compliance report be sent to the Registry of the Court.

4. Copy of this order be sent to the trial Court for compliance and needful.
5. The writ petition is accordingly dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge