

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 653 of 2016

1. Madhoram & Sons, registered partnership firm, through Santosh Kumar Gupta, S/o. Late Madhoram Gupta, aged about 67 years, R/o. Sewakunj Road, Subhash Chowk, Raigarh, District Raigarh (C.G.) (DEFENDANT)

----Petitioner

Versus

1. Murlidhar Gupta, S/o. Bhagirath Gupta, aged about 57 years, R/o. Chhatamuda, Raigarh, District – Raigarh (C.G.) (PLAINTIFF)

---- Respondent

For Petitioner	: Mr. Vineet Kumar Pandey, Advocate
For Respondent/State	: Mr. S.N. Nande, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02/01/2017

1. Challenge in this petition is to the order dated 03.09.2016, passed in Civil Suit No.280-A/2004, by the learned Second Civil Judge, Class-I, Raigarh, District – Raigarh, whereby an application filed under Order 6 Rule 17 of C.P.C. by the petitioner has been rejected.
2. Learned counsel for the petitioner would submit that the proposed amendment is in furtherance of the pleading already made so as to elaborate the fact that the plaintiff/respondent is not the owner of the land as the title is not vested with him for which the eviction suit has been filed. It is further submitted that the application has been proposed on the basis of certain documents filed which goes to prove the fact that the plaintiff is not the owner of the land. He further placed his reliance in the case law reported in (2004) 13

SCC 432 and would submit that even if the trial has commenced, proviso to Order 6 Rule 17 would not put a bar to make any amendment if it is necessary.

3. Per contra, Mr. S.N. Nande, learned counsel for the respondent vehemently opposes the same and would submit that proposed amendment is only to linger the eviction suit and the suit is pending since 2004 and on some pretext or other, the applications are filed and the instant application is filed after closure of the evidence of the plaintiff. Therefore, the counsel submits that the petition deserves to be dismissed.
4. I have heard learned counsel for the parties and perused the documents filed along with the petition.
5. This fact is not in dispute that suit for eviction is pending since 2004. The proposed amendment petition as also the written statement, which is filed are also perused. Perusal of the written statement at Para-3 would show that the petitioner/defendant has raised the ground that ownership do not vest in the plaintiff. Application under Order 6 Rule 17 has been further made, wherein the said facts are further being elaborated. The Court can not loose sight of the fact that in proposed amendment, no reasons have been assigned as to why delay has caused. Further the pleading and issue to that effect already exists. Undoubtedly, the Court in its discretion can allow the amendment petition, but reading of para-3 and the proposed amendment, prima-facie it appears that proposed amendment is only filed to the fact and pleading already existing and appears to have been filed to protract the trial. The pleading of denial of title

has already been made, therefore, after closure of the evidence of the plaintiff, the defendant can very well adduce his evidence on the averments of the written statement, which is already on record, which contained the fact of denial of title of the plaintiff/respondent.

6. Taking into the fact and further after going through the order, in my considered opinion as appears no jurisdictional error has been committed or it can be stated that it is a case where the Court has exceeded the jurisdiction vested in it by law. Consequently I am of the opinion that this is not a case where the power under Article 227 of the Constitution of India is to be invoked.
7. Accordingly, the petition is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge