

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 70 of 2018**

- Rajesh Kumar S/o Shri Rajkumar Aged About 44 Years Caste, Gupta, R/o Village Baloda, Tahsil Janjgir, District Janjgir- Champa, Chhattisgarh.

---- Petitioner**Versus**

1. Nandkishore S/o Tularam Aged About 39 Years Caste Bhardwaj, R/o Village Baloda, Tahsil Janjgir, District Janjgir- Champa, Chhattisgarh
2. Smt. Ram Bai W/o Jamuna Prasad Aged About 58 Years Caste Kewat, R/o Village Hardibazar, Tahsil And District Korba, Chhattisgarh
3. Smt. Jagbai W/o W/o Mohitram Aged About 54 Years Caste Kewat, R/o Village Dhatura (Korbi), Tahsil And District Korba, Chhattisgarh
4. Stete of Chhattisgarh. Through Collector, Janjgir, District Janjgir- Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Shri H.B. Agrawal, Sr. Adv. with Ms. Itu Rani Mukherjee, Advocate
For Respondents-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****05/02/2018**

1. Heard.
2. The present petition is against the order dated 17.12.2017 passed by the Civil Judge, Class-I, Akaltara, District Janjgir-Champa in Civil Suit No.73-A/2015, whereby the application for amendment of the plaint has been rejected on the ground that the application of the plaintiff is so vague and the plaintiff himself is not able to substantiate the fact whether he is in possession or not. Consequently, since the claim has been made after 12 years, therefore, the application to claim the possession is dismissed.

3. Perusal of the order in entirety would show that the order itself appears to be contradictory as on the one part the Court has observed that it is the submission of the plaintiff that he is in possession, therefore, no possession decree is necessary, however, in the other part the relief projected is that alternative possession has been claimed. In any case taking the stage of trial, as it appears that the evidence has not yet started and if the proposed amendment is disallowed then in such case, the plaintiff would be barred to claim any relief under Order 2 Rule 2 CPC, which may have a disastrous effect without giving any chance to place the case by way of pleading & evidence to the plaintiff. Allowing the amendment *ipso facto* do not lead to acceptance of the case of the plaintiff and it would be on the plaintiff to lead evidence to prove the facts and if the relief is not permissible under the law, the same can always be denied.
4. The application wherein the plaintiff has claimed the amendment seeking possession it can only be considered at the stage of final hearing after evidence & facts are on record. The proposed amendment cannot be thrown at the threshold as it may lead to multiplicity of the proceeding and suppressing the right to plead the case. In view of the same, order dated 07.12.2017 is set aside. The relief claimed by the application to amend the plaint is allowed. The necessary amendment be carried out within two weeks and court fees accordingly may be paid claiming possession. Defendants are also allowed to make consequential amendments to their written statement.
5. Accordingly, the writ petition stands allowed.

Sd/-
Goutam Bhaduri
Judge