

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 67 of 2018

Krishna Sakha Grih Nirman Sahakari Samiti Maryadit Raipur, Regd. No. C.R. / R.P.R. - 91, 82, 83, Through President Arun Kumar Verma, S/o. Late Shri Vishnu Dutt Verma, Aged About 60 Years, Danganiya, Raipur, District Raipur, Chhattisgarh. (Defendant No.2/Respondent No.2)

---- Petitioner

Versus

1. Dhurandhar Builders & Developers Through Partner Shri Keshav Dhurandhar, R/o. Sundar Nagar Raipur, Tahsil & District Raipur Chhattisgarh. (Plaintiff / Appellant)
2. Shri Animesh Mishra, S/o. Shri T.R. Mishra, R/o. Land No. 47, Krishna Sakha Sahkari Grih Nirman Samiti Maryadit, Daganiya, Raipur, Tahsil & District Raipur, Chhattisgarh. (Defendant No.1 / Respondent No. 1)

---- Respondents

For Petitioner : Mr. H.B.Agrawal, Sr. Advocate with Smt. Itu Rani Mukharjee, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28.02.2018

Heard

1. The instant petition is against the rejection of the amendment application dated 15.11.2017, which is proposed by the defendant in the suit, who is plaintiff herein.
2. Learned counsel for the petitioner would submit that the amendment which is proposed would be relevant to show the possession of the petitioner and the evidence has not started, therefore, no prejudice would be caused to the plaintiff and in absence of these facts, the defendant would be deprived to lead his evidence. Therefore, in the interest of justice, to advance the cause on merit, the proposed amendment may be allowed.
3. Perused the order dated 15.11.2017 as also the amendment application. The amendment application primarily stated that in

two Khasra No.173/1 & 173/3, the defendant Cooperative Society came into possession with the agreement with original seller and the land were included while passing the lay out. It is further stated that the proposed amendment at Para 4(A) & 4(B) speaks about the same. Another proposed amendment is made at Para 4(B) which is vague which says that one appeal is pending before the High Court Bilaspur as no particulars have been made. The amendment proposed at Para 8(A) and in the additional statement, it has been stated that the lay out was got sanctioned from the Town & Country Planning and in the additional pleading, it has been stated that fraud has been played by the plaintiff.

4. The plaint is seen. The suit is for the declaration and possession in respect of the land bearing Khasra No.173/1 & 173/3 and the possession has been claimed in respect of the suit property, which is comprised in Khasra No.173/3 admeasuring 3000 sq.ft. and cancellation of sale deed dated 31.03.1995/18.04.1995 has been prayed for.
5. Perusal of the plaint would show that the suit for declaration and possession has been made in respect of the land comprised in Khasra No.173/1 & 173/3 admeasuring 3000 sq.ft. and it is alleged that the said land has been shown to be the part of another Khasra No.161/2 by the Cooperative Society, who is defendant/petitioner herein. It is contended that the land which is shown as 47 in Khasra No.161/2 was actually comprised in Khasra No.173/1 & 173/3 whereby it would show that the plot which has been sold by the Cooperative Society to Animesh Mishra was actually of that of the plaintiff. The amendment proposed in written statement speaks about acquisition of same land by co-operative society from its owner. The devolution and chain of title of the property

has been sought to be pleaded. This will necessarily have an effect to decide the ownership on suit land. Necessarily therefore the nature of amendment which is shown appears to be relevant except Para 4(B)(B) wherein proposed amendment has been made at Para 7 which is too vague. Consequently, on due consideration, considering the nature of amendment at Para 4(A), 4(B), 8(A) and additional pleading, which has been prayed for by way of the amendment is allowed. Necessary amendment be carried out by the defendant within a period of two weeks from the date of production of a copy of this order. The plaintiff shall be entitled to amend the plaint by way of a consequential amendment.

6. With such observation, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge