

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 533 of 2017**

1. Santosh S/o Late Budga Ram, Aged About 45 Years By Caste Satnami, R/o Village Bhaistara, Tehsil Akaltara, District Janjgir- Champa Chhattisgarh.
2. Sant Kumar, S/o Late Budga Ram, Aged About 40 Years By Caste Satnami, R/o Village Bhaistara, Tehsil Akaltara, District Janjgir- Champa Chhattisgarh.
3. Pratap Kumar, S/o Late Budga Ram, Aged About 30 Years By Caste Satnami, R/o Village Bhaistara, Tehsil Akaltara, District Janjgir- Champa Chhattisgarh.
4. Kanti Bai D/o Late Budga Ram, Aged About 30 Years Wrongly Mentioned As Kranti Bai, By Caste Satnami, R/o Village Bhaistara, Tehsil Akaltara, District Janjgir- Champa Chhattisgarh.
5. Resham Bai W/o Late Budga Ram, Aged About 62 Years By Caste Satnami, R/o Village Bhaistara, Tehsil Akaltara, District Janjgir- Champa Chhattisgarh. --- **Petitioners**

Versus

1. Smt. Shanti Bai D/o Late Budga Ram, Aged About 49 Years (Wrongly Mentioned As S/o Budga Ram) Caste Satnami, R/o Village Bhaistara, Tehsil Akaltara, District Janjgir- Champa Chhattisgarh.
2. State of Chhattisgarh, through Collector Janjgir- Champa, District Janjgir- Champa Chhattisgarh. --- **Respondents**

For the petitioner	:	Mr. Surfaraj Khan, Advocate
For the State	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****15.03.2018**

1. Heard.
2. This petition is against the order dated 27.06.2017 passed by the learned Civil Judge Class-I, Akaltara, District- Janjgir- Champa (C.G.) in Civil Suit No. 05-A/2013 whereby the application for amendment preferred by the plaintiff was

allowed.

3. Learned counsel for the petitioner submits that a suit for declaration and mandatory injunction was filed in the year 2013 wherein the written statement was filed by the defendants/ petitioners on 06.12.2013. He further submits that the issues were framed on 26.12.2014 and subsequently, the evidence of the plaintiff was closed on 08.04.2015 and thereafter on 16.06.2016 an application under order 6 Rule 17 of CPC was filed wherein an amendment was sought to the effect that the gift deed executed on 06.01.1972 is void. It is stated that the said application having been allowed, the present petition has been preferred. He submits that once the defendant came to know about the existence of the gift deed, when the written statement was filed on 06.12.2013 article 59 of the Limitation Act would bar the defendants from claiming such relief within three years and it was only for the plaintiffs to file a separate suit to challenge the same.
4. Perused the impugned order. The order reflects that the defendants (petitioners herein) vehemently opposed the amendment which was sought with respect to the gift deed dated 06.01.1972 contending that it is void and ineffective. The Court below in its order while adjudicating the application has observed that the property comprised in the gift deed also forms part of the land which has been claimed in the civil suit. Therefore, in order to advance the cause of justice, the actual lis and nucleus of the dispute, the Court observed that the amendment would be necessary as otherwise the right of the parties cannot be decided. A

perusal of the application for amendment and the order would show that the land in respect of which the declaration and injunction was prayed was included in the gift deed which favours the plaintiff i.e., declaration by way of an amendment which was sought for.

5. Prima facie it appears that in order to decide the actual controversy between the parties, amendment so allowed would be necessary and no prejudice would be caused to the defendants if the amendment is allowed. In any case, if the plaintiff is refused to bring the facts by way of amendment, his right would be affected and barred under Order 2 Rule 2 of CPC to file a separate suit in respect of the same land. Consequently, considering the nature of the amendment, I do not find any illegality or perversity so as to exercise the power under article 227 of the Constitution of India and to hold that it was without jurisdiction and the Court has acted beyond the jurisdiction.
6. Accordingly, the petition has no merit and it is dismissed. The trial court, however, is requested to expedite the trial.

**Sd/-
GOUTAM BHADURI
JUDGE**