

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 947 of 2017

Hazi Md. Hanif, S/o. Md. Ismaeel, At Present Aged About 88 Years, R/o. Ward No.18, Sakti, Police Station & Post Office Sakti, District Janjgir Champa (C.G.) Through Power Of Attorney Holder Namely Md. Sajjad, S/o. Hazi Md. Hanif, Aged About 58 Years, R/o. Ward No.18, Sakti, Police Station & Post Office Sakti, District Janjgir Champa, Chhattisgarh.

---- Petitioner

Versus

1. Md. Ajim, S/o. Md. Vasi, At Present Aged About 66 Years, R/o. Renjerpara, Sarangarh, Post Office & Police Station Sarangarh, District Sarangarh, Chhattisgarh.
2. Ram Kumar Chaudhari, S/o. Shree Ishwar Prasad Chaudhari, Aged About 66 Years, R/o. Jailpara, Sarangarh, Post Office & Police Station Sarangarh, District Sarangarh, Chhattisgarh.
3. State Of Chhattisgarh, Through Collector Raigarh, District Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	:	Ms. Priyanka Mehta, Advocate
For State	:	Mr. S.R.J.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

02.01.2018

Heard

1. Learned counsel for the plaintiff/petitioner would submit that the instant petition is against the rejection of an application under Order 6 Rule 17 of C.P.C. whereby the learned Court below has dismissed the petition only on the ground that the proposed amendment are in the nature of evidence. She further submits that unless and until the pleading exists, the plaintiff would not be able to adduce evidence and submits that the plaintiff has not yet been cross-examined and only examination-in-chief has been effected, therefore, no prejudice would be caused and accordingly the application for amendment may be allowed.

2. Perused the order dated 21.11.2017 wherein the learned Court below has dismissed the application for amendment on the ground that the proposed amendment is in the nature of evidence. The application under Order 6 Rule 17 of C.P.C. is perused and the proposed amendment is also perused. Considering the same and taking into the fact that the plaintiff's evidence is still to be adduced and he has not been cross-examined, in the opinion of this Court, after going through the pleading, it appears that no prejudice would be caused to the defendant if the proposed amendment is allowed as it would be always open to the defendant to make consequential amendment. The part of evidence i.e. any statement if is not covered within the pleading then in such case, such evidence can always be ignored for want of pleading and vise-versa.
3. In view of the above, the petition is allowed. The order dated 21.11.2017 whereby the proposed amendment was dismissed is set aside. The plaintiff is directed to incorporate the pleading during the next date fixed before the trial Court and the trial Court thereafter shall conduct the trial as early as possible within a period of six months.

Sd/-
(Goutam Bhaduri)
Judge