

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.286 of 2018

Samund Bai, Daughter of Late Shri Ujitram, aged about 65 years, By Caste Yadav, R/o Pouch, P.S. and Tahsil Balouda, District Janjgir-Champa (C.G.)

(Defendant No.1)
---- Petitioner

Versus

1. Chamraram, S/o Late Shri Ajit Ram, aged about 52 years, By Caste Yadav, R/o Pouch, P.S. and Tahsil Balouda, District Janjgir-Champa (C.G.)

(Plaintiff)

2. State of Chhattisgarh, through the Collector, Janjgir, District Janjgir-Champa (C.G.)

---- Respondents

For Petitioner:	Mr. Vivek Tripathi, Advocate.
For Respondent No.1:	None present, though served.
For Respondent No.2 / State: -	Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/11/2018

1. By the impugned order, the trial Court has allowed the plaintiff's application under Order 6 Rule 17 of the CPC against which this writ petition has been preferred.
2. Learned counsel appearing for the petitioner / defendant No.1 submits that trial had already commenced way back and the application for amendment did not assign any reason why the amendment could not be filed before the commencement of trial as required under the proviso to Order 6 Rule 2 of the CPC.
3. I have heard learned counsel for the petitioner / defendant No.1.
4. None present for the plaintiff / respondent No.1, though served.

5. It appears from the record that trial had already commenced and the plaintiff's opportunity to lead evidence was closed which was granted by this Court in W.P. (Art. 227) No.812/2012 on 8-11-2017 and the application under Order 6 Rule 17 of the CPC did not assign any reason as to why the application for amendment could not be filed prior to commencement of trial particularly when civil suit is pending since 24-11-2009 and issues have already been framed on 3-8-2012.
6. In the matter of Vidyabai and others v. Padmalatha and another¹, proviso to Order 6 Rule 17 of the CPC has been held to be mandatory.
7. In view of the above, the trial Court is absolutely unjustified in granting the amendment by the impugned order dated 28-2-2018 which is hereby set aside. The trial Court is directed to proceed with the suit and conclude within three months from the date of receipt of a copy of this order.
8. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).
9. A copy of this order be sent to the trial Court directly and to the District Judge.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

¹ (2009) 2 SCC 409