

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 467 of 2018**

1. Smt. Khatija Rahman Wd/o Late Shamim Rahman Aged About 63 Years
2. Shahista Rahman D/o Late Shamim Rahman Aged About 41 Years

Both R/o Kala Patha, Beside Icici Bank, Betul, District Betul Madhya Pradesh

---- Petitioners**Versus**

1. S.N. Rahman S/o Late S.M. Rahman Aged About 92 Years R/o Naya Para, Jagdalpur, District Bastar Chhattisgarh
2. Shagufta Rahman D/o Late Shamim Rahman Aged About 38 Years R/o Kala Patha, Beside Icici Bank, Betul, District Betul Madhya Pradesh

---- Respondents

For Petitioners : Shri Varun Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18/05/2018**

1. Heard.
2. The present petition is against the dismissal of an application filed under Order 6 Rule 17 CPC by the Fourth Civil Judge, Class-II, District Jagdalpur, Bastar (C.G.).
3. Learned counsel for the petitioners submits that the entire defence has been made at para 4 of the written statement for the property which is claimed by the petitioner, the defence has been raised that the said property was purchased by means of defendants/petitioners herein along with her husband, therefore, they are the exclusive owner, for which the amendment

has been sought for and the reason has been assigned in the amendment that though the facts were disclosed to the Advocate, but the advocate forgot to incorporate the same in the written statement, therefore, the same may be allowed.

4. Perused the plaint. The suit is filed by S.N.Rehman for declaration and permanent injunction in respect of the suit property comprised over plot No.35/102, which is mutated in the Nazul Sheet No.49. Perusal of para 4 of the written-statement shows that it is pleaded that the house was constructed over the plot No.35/102 in the year 2004. It is further pleaded that the house was constructed through their means and they are in possession on the first floor of the said house. The amendment which has been sought for shows that the petitioners/defendants are claiming their right through late Shamim. It is sought to be incorporated that late Shamim got the land allotted i.e. Nazul land bearing plot No.35/102 through his efforts though the executed lease was in the name of S.N. Rahman. It is stated that the entire premium and the lease rent were paid by Shamim. Thereafter, in the year 1990, the entire property was gifted in favour of late Shamim by way of Hiba by plaintiff. Consequently, his name was recorded in revenue records. Further facts have been stated that by their own means i.e. the defendant, the suit house was constructed. The reasons for non-incorporation of such amendment is stated that though the facts were disclosed to the advocate but he forgot to incorporate the same in the written-statement and by inadvertence those facts were left out. Perusal of amendment, as against para 4 of the written statement, it do not show that a different and new case is sought to be pleaded. In facts of the case it can be reasonably assumed that it is an elaboration of the earlier facts. The proposed amendment and nature appears to go to the route of the case,

which would be necessary for the adjudication of lis between the parties to arrive at a finding on the merits of the case.

5. Consequently, for the reasons stated and after considering the nature of the amendment, it is felt that if the amendment so proposed is not allowed to be incorporated, the defendants shall be deprived of their right to lead evidence and place crucial facts. In a result, considering the nature of the amendment proposed, the same is allowed. Accordingly, the order dated 18.04.2018 is set aside. It is stated that the defendants' evidence has not yet commenced. In such case the plaintiff shall be at liberty to lead any evidence in rebuttal of the averments made on the next date. Thereafter, the defendants shall adduce their evidence.
6. With such observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri

Judge

Ashu