

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WP227 No. 575 of 2018

Smt. Jaishri Meshram W/o Gyandas Meshram Through - Power of Attorney Holder Gyan Das Meshram S/o Late Shri S D Meshram , Aged About 67 Years , R/o F - 120/9, Shivaji Nagar Bhopal District Bhopal, Madhya Pradesh

--- **Petitioner**

Versus

1. Shankar Lal Jain S/o Late Shri Bhomraj Jain R/o Sadar Road, Ward No. 4, Balod , Tahsil And District Balod Chhattisgarh.
2. Smt. Lata Devio Jain Wife of Shri Shankar Lal Jain, R/o Sadar Road, Ward No. 4, Balod , Tahsil & District Balod Chhattisgarh.
3. Vikas Jain Shankar Lal Jain, R/o Sadar Road, Ward No. 4, Balod , Tahsil & District Balod Chhattisgarh.
4. Smt. Siddhi Jain W/o Shri Vikas Jaini Bai , R/o Sadar Road, Ward No. 4, Balod , Tahsil & District Balod Chhattisgarh.
5. State of Chhattisgarh through the Collector - Balod , District Balod Chhattisgarh.

--- **Respondent**

26.07.2018	Mrs. Hamida Siddiqui, counsel for the appellant. State by Mrs. S.RJ. Jaiswal, Panel Lawyer. The present petition is against the order dated 14.03.2018 passed by the Second Civil Judge, Class-II, Balod in Civil Suit No. 10-A/2013 whereby the application filed under Order 6 Rule 17 read with section 151 of CPC has been dismissed. It is contended that the suit was filed for permanent injunction and during the pendency of the civil suit the application under order 39 Rule 1 & 2 of CPC filed was initially dismissed. Subsequently taking advantage of such dismissal of the interim application, the defendants have further demolished certain portion of the wall and also demolished gate and encroached the same, therefore, after filing the suit in the year 2014 since the act of demolition was committed by the defendants during the pendency of the suit, another application for amendment was moved claiming mandatory injunction to restore the property damaged by the respondents herein. Learned counsel for the petitioner submits that the	

said amendment would not change the nature of suit and since the act of demolition was done during the pendency of the suit, as such, necessity has arisen to move such amendment application, otherwise the plaintiff would be deprived of claiming it separately.

Perused the plaint. The prayer also includes in the original plaint that apart from the permanent injunction, a mandatory injunction has also been sought that the defendants be directed to restore the wall of 5 ft., in height and 100 ft., long. It has been stated that after cause of action arose on 12.11.2014, the defendants further damaged the wall and the gate, therefore, they be directed to restore the wall and gate which were damaged by them.

On perusal of the amendment petition, in the opinion of this Court, the amendment as prayed do not change the nature of the suit, rather it will advance the cause of justice taking into the previous prayer existing on record.

Consequently the order 14.3.2018 passed by the Second Civil Judge, Class II, Balod passed in Civil Suit No.10-A/2013 is set aside. The application for amendment is allowed.

Let necessary amendment be carried out within a further period of two weeks before the trial Court from the date of receipt/production of copy of this order.

With such observation this petition stands disposed.

Sd/-
GOUTAM BHADURI
JUDGE

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