

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 551 of 2018

M/s Bhilai Builders Private Limited B-2/11, Ravi Bhavan, G.E. Road, Raipur Through Managing Director Shri Gulab Jain, Son Of Lalchand Jain, Aged About 58 Years, Resident Of Choubey Colony, Raipur Chhattisgarh

---- Petitioner

Versus

Akhil Bharatiya Guru Ghasidas Mahasamiti Registered Under Society Registration Act 1973 Through President Dr. Lakshman Bharati, Son Of Late Chedilal Bharti, Office At Gurughasidas Plaza, Amapara, Raipur Chhattisgarh.

Reshamlal Jangde, Son Of Late Tikamram Jangde, Resident Of L.I.G. - 1, Indrawati Colony, Raipur, Tehsil And District Raipur Chhattisgarh. (Dead)

---- Respondent

For petitioner - Shri Ankur Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

03/07/2018

Heard.

1. Instant petition is against the order dated 19/04/2018 whereby amendment preferred by the petitioner/plaintiff was dismissed seeking amendment that agreement dated 12/09/2000 is binding on the defendant and they are bound to act accordingly.
2. Learned counsel for the petitioner submits that the respondent has not opposed such application despite the fact that the court without any application of mind and without any reason has dismissed the application and failed to appreciate the actual lis which was between the parties.
3. Perused the order and documents filed alongwith the petition. Perusal of the documents would show that the suit was filed by the petitioner/plaintiff for declaration and permanent injunction wherein declaration was sought for the reason that cancellation deed dated 3/07/2009 which was executed subsequently by the defendant is not binding on the plaintiff. Perusal of the

order shows that the defendant was not represented before the court and the application has been dismissed solely on the ground that suit is pending since 2009 and amendment if allowed will change the nature of the suit. Evidence of the parties as has been stated has not yet begun. Perused the plaint. In the pleading it is stated that on 7/07/1997 and 12/09/2000 an agreement was executed for the development of nazul land in between defendant and plaintiff. Perusal of the plaint would show that averment in respect of the agreement dated 12/09/2000 is already on record. As such when parties have not begun their evidence, at this stage if application is dismissed it will further lead to further multiplicity of the proceeding and when parties have not begun evidence no prejudice would be caused to either of the parties.

4. In the result, order dated 19/04/2018 whereby application for amendment was dismissed is set aside. Petition stands allowed. Proposed amendment sought for is allowed. Necessary amendment be carried out within a week before the court below. Thereafter, the court may proceed further.

Sd/-

(Goutam Bhaduri)

JUDGE