

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 636 of 2018**

- Khowalal Sinha S/o Late Chandulal Sinha Aged About 57 Years R/o Kumhar Para Gariyaband, District Gariyaband, Chhattisgarh.Defendant No. 1,

---- Petitioner**Versus**

1. Dayaram Sinha S/o Late Chandulal Sinha Aged About 55 Years R/o Gram Gariyabandh, District Gariyabandh Chhattisgarh.
 2. Shatrughan Sinha S/o Late Chandulal Sinha, Aged About 50 Years R/o Gram Gariyabandh District Gariyabandh, Chhattisgarh
 3. Dhuruwa Bai D/o Late Chandulal Sinha Aged About 53 Years
 4. Satrupa Bai D/o Late Chandulal Sinha Aged About 46 Years
- All R/o Kumhar Para, Gariyabandh, Tehsil And District Gariyabandh, Chhattisgarh
5. Rukmani Bai, D/o Late Chandulal Sinha Aged About 48 Years R/o Forest Colony, Gariyabandh, Chhattisgarh
 6. Smt. Kunwariya Bai Sinha W/o Late Chandulal Sinha, Aged About 62 Years R/o Nagri, District Dhamtari, Chhattisgarh
 7. State of Chhattisgarh, Through The Collector Gariyabandh, District Gariyabandh, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Anjinesh Shukla, Advocate
For Respondents/State	:	Ms. Astha Shukla, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****10/08/2018**

1. The present petition is against the order dated 18.05.2018 whereby the amendment proposed by the defendant/petitioner has been dismissed on the ground that the same was filed at the belated stage and the cost was also imposed on the ground that the case was already at the stage of evidence.
2. Learned counsel for the petitioner submits that the suit is in between the family members. The defendant No.1/petitioner is one of the family members from whom the plaintiff is claiming his right through his mother. It is contended that the mother during her lifetime had settled the property in favour of the defendant No.1 and they will live with the defendant No.1, to establish the same that part is also necessary to bring on record and it will have a necessary bearing considering the real controversy in between the parties. It is further contended that the defendant/petitioner is in the possession of the subject land, therefore, when the claim has been made by the plaintiff for the same subject land, the right of the defendant would be seriously jeopardized, if in case the amendment is not allowed. He further submits that the plaintiff's evidence has not yet begun, therefore, no prejudice would be caused. He placed his reliance in the case of ***Usha Balashaheb Swami and others Versus Kiran Appaso Swami and others*** {(2007) 5 SCC 602}.
3. Perused the documents and the plaint. The instant petition for amendment was filed on behalf of the defendant No.1. Perusal of the amendment petition would show that the claim has been made that their mother namely Dehrin Bai and one Heera Lal during their lifetime have settled the property in favour of the defendant. The suit appears to be in between the family members, therefore,

taking into the nature of the suit and the proposed amendment and the submission is made at the bar, the evidence has not yet begun, considering the nature of the amendment sought for, it cannot be stated that it has no nexus with the issue involved, therefore, the order dated 18.05.2018 is set aside and the petitioner is allowed to make amendment to advance the cause of justice on merits subject to payment of cost of Rs.2000/- to the plaintiff.

4. Accordingly, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu