

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 648 of 2018**

- Mukesh Das S/o Chovadas, Aged About 28 Years Caste - Panika, R/o Village - Tarri, Tahsil - Gurur, District Balod Chhattigarh

---- Petitioner**Versus**

1. Nira Bai Navrang W/o Late Keshavdas, Caste Panika, Aged About 50 Years R/o Village - Biretara, Tahsil - Gurur, District Balod, Chhattisgarh
2. Jhamit Bai D/o Madhav Das, Aged About 60 Years Caste - Panika, R/o Village - Biretara, Tahsil - Gundardehi, District Balod Chhattisgarh
3. Aniruddha S/o Madhav Das, Aged About 50 Years Caste - Panika, R/o Village - Tarri, Tahsil Gurur, District Balod Chhattisgarh
4. Santosh Bai, D/o Madhav Das, Aged About 47 Years R/o Village - Khapari, Tahsil And District Dhamtari Chhattisgarh
5. State of Chhattisgarh, Through District Collector, Balod, District Balod Chhattisgarh

---- Respondents

For Petitioner	:	Shri B.P. Gupta, Advocate
For Respondent/State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****31/07/2018**

1. Heard.
2. The present petition is against the order dated 08.05.2018, wherein the trial Court has allowed the application filed by the plaintiff under Order 6 Rule 17 read with Section 151 CPC. The order as would reflect that a civil suit was filed by the plaintiff for declaration, permanent injunction along with claiming declaration of the WILL dated 31.08.2012 as nullity. During the pendency of

this civil suit an application under Order 6 Rule 17 read with Section 151 CPC was moved after the evidence of the plaintiff, wherein the plaintiff claimed for possession of the land. The learned trial Court has allowed the same on the ground that allowing the amendment would not change the nature of the suit only the possession has been prayed for and further to avoid the multiplicity of the proceeding of the civil suit, the amendment was allowed.

3. Learned counsel for the petitioner submits that after closure of the evidence of the plaintiff, the said application has been filed without any explanation thereof, therefore, the same could not have been allowed.
4. Perusal of the order, record and the application would show that the amendment was sought for claiming the possession in respect of the land. It is not in dispute that the amendment has been sought for same suit property, therefore, if the amendment is allowed when the evidence of both the parties have not yet concluded, then in such case, it cannot be said that amendment has caused any prejudice to the petitioner/defendant as otherwise disallowing the application for amendment would amount to closure of right of plaintiff in future as he could not bring further suit for the same property for possession as it would be barred under Order 2 Rule 2 CPC. Considering the nature of the amendment it cannot be said that the trial Court has exceeded its jurisdiction vested in it.
5. In view of the above, I do not find any merit in this petition warranting interference by this Court in exercise of powers under Article 227 of the Constitution of India. Accordingly the petition is dismissed.

Sd/-
Goutam Bhaduri
Judge