

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.732 of 2018**

1. Smt. Asha Bai Jain, Wd/o. Late Tarachand Jain, aged about 60 years, R/o. Pulgaon Naka, Ganjpara, Durg, Tahsil and District Durg, Chhattisgarh
 2. Ajay Jain S/o. Late Tarachand Jain (Kummar)
 3. Abhay Jain, S/o. Late Tarachand Jain (Kummar)
- Both are R/o. 104, Maruti Enclave near AIIMS Hospital, Tatiband, Raipur, Tahsil and District Raipur, Chhattisgarh
4. Shantilal S/o. Heeralal Jain, R/o. Navkar Parisar, Pulgaon Chowk Road, Ganjpara, Durg, Tahsil and District Durg, Chhattisgarh
 5. Ramesh Kumar S/o. Heeralal Jain, R/o. C/o. R.K. Transport Company, Navkar Parisar, Pulgaon Chowk Road, Ganjpara, Durg, Tahsil and District Durg, Chhattisgarh
 6. Subhash Chand Jain, S/o. Heeralal Jain, R/o. Shop No.1, Navkar Parisar, Pulgaon Chowk Road, Ganjpara, Durg, Tahsil and District Durg, Chhattisgarh

----Petitioners**Versus**

1. Jasvir Singh S/o. Late Sardar Kesar Singh, aged about 65 years
 2. Anup Singh S/o. Late Sardar Kesar Singh, aged about 62 years,
- Both are R/o. Gurunanak Nagar, Raipur, Tahsil & District Raipur, Chhattisgarh

---- Respondents

For Petitioners : Mr.Manoj Paranjape, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****24/08/2018**

1. The trial Court has granted the plaintiffs' application for amendment permitting them to insert relief of possession in the plaint, against which, this writ petition has been filed by the petitioners herein.

2. Learned counsel for the petitioners would submit that such an amendment was hopelessly barred by limitation, therefore, it ought not to have been allowed by the trial Court.
3. I have heard learned counsel for the petitioners and perused the impugned order.
4. It is well settled law that a bare suit for declaration of title is not maintainable by virtue of proviso to Section 34 of the Specific Relief Act, if the plaintiff is not in possession of the suit land.
5. Their Lordships of the Supreme Court in the matter of **Mst. Rukmabai v. Lala Laxminarayan and others**¹ have observed that an objection to the maintainability of the suit based on the proviso above-said should be taken at the earliest point of time because in that event, the plaintiff could ask for necessary amendment to comply with the proviso. Their Lordships further observed as under:-

“30.A plea that the plaintiff asked for a bare declaration though he was in a position to ask for further relief within the meaning of S. 42 and hence the suit should have been dismissed in limine should be raised at the earliest point of time, in which event the plaintiff could ask for necessary amendment to comply with the provisions of S. 42. It is a well-settled rule of practice not to dismiss suits automatically but to allow the plaintiff to make necessary amendment if he seeks to do so. (The plea was not allowed to be raised in the Supreme Court.).”

¹ AIR 1960 SC 335

6. In the matter of **Kalyan Singh v. Vakilsingh and others**²,

the Madhya Pradesh High Court has held that a bare suit for declaration of title is not barred and proviso to Section 34 of the Specific Relief Act would not entail dismissal of the suit and the plaintiff must be afforded an opportunity of amending the plaint if so desired. It was held as under:-

“20. The legal position that flows from the above said authorities is as under:-

(i) Further relief than a mere declaration referred to in the proviso to S. 34 of Specific Relief Act, 1963 contemplates the entitlement of the plaintiff as obtaining on the date of the suit;

(ii) Entitlement of the plaintiff enabling seeking further relief based on an event occurring during the pendency of the suit would not render the suit not maintainable;

(iii) It is the choice of the plaintiff to rest content by a mere decree for declaration in that suit and then to sue for further relief by bringing an independent suit subject to law of Limitation or to pray for further relief by making an amendment in the plaint in that suit itself;

(iv) Bar enacted by the proviso does not automatically entail dismissal of the suit but the plaintiff must be afforded an opportunity of amending the plaint if so desired;

(v) Further relief cannot be granted to the plaintiff without the same having been specifically asked for.”

7. It is trite law that a cause of action for a lis must precede the lis. But once a lis is so instituted on a pre-litem cause of action, the Court cannot shut its eyes to, but must take note

2 AIR 1990 MP 295

of, all such post-litem developments which are likely to affect the question to be determined in the lis (See **Bibhas Chandra Bose Vs. Sm. Dolly Bose nee Dutt**³).

8. The Supreme Court in the matter of **Pratap Singh Vs. Shri Krishna Gupta and others**⁴ has succinctly held that technicalities should be deprecated so that the substance may count and take precedence over form and it would be putting too much premium on technicalities of the rules of pleading and allowing them to become rather the mistress instead of being as they should be handmaid to the cause of administration of justice, if the Court folds its hand and doesn't take note of all subsequent event or developments which might affect the relief claimed in the law and derive the parties to obtain relief on the basis of changed or subsequent developments as it is well settled that Court is to take note of such subsequent event and to shorten litigation and to prevent multiplicity of proceeding (See **M/s. M. Laxmi & Co. Vs. Dr. Anant R. Deshpande & another**⁵ and **Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha**⁶).
9. If the facts of the present case are examined in the light of principle of law laid-down by the Supreme Court and the Madhya Pradesh High Court in the above-stated judgments, it is quite vivid that the plaintiffs initially filed a suit for declaration of title and damages, but during pendency of

3 AIR 1989 Calcutta 190

4 AIR 1956 SC 140

5 AIR 1973 SC 171

6 AIR 1974 SC 1178

the suit they have been said to be dispossessed from the suit premises, therefore, they have moved an application seeking leave to amend the plaint to insert the relief of possession.

10. The Supreme Court in the matter of **Rukhmabai** (supra) has clearly held that in a suit for declaration of title if the plaintiff is not in possession, opportunity should be given to amend the plaint and to claim the relief of possession and plaint should not be dismissed and bare enacted by proviso to Section 34 of the Specific Relief Act doesn't automatically entail dismissal of the suit and subsequent event should be taken cognizance off.
11. In view of above, the trial Court is absolutely justified in permitting the plaintiffs to insert the relief of possession. I do not find any merit in this writ petition.
12. Accordingly, the writ petition is dismissed. However, the petitioners/defendants are at liberty to make consequential amendment to question the said relief taking the plea of limitation, if any. If such an application is made, the petitioners/defendants will be allowed to make necessary amendment taking specific plea in this regard. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-