

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 350 of 2019**

Smt. Sevati Patel, Wife of Ashwani Patel, aged about 32 years, R/o C/o Tejram Patel, Durga Mandir, Ward No. 35, K.L.C. Khursipar, Zone-3, Bhilai, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Jeera Bai, Widow of Late Nandu (since dead) Through legal heir Smt. Duleshwari Bai, Wife of Sugreev Das, aged about 66 years, R/o J.P. Nagar, Sharda Para, Bhilai, Tahsil and District Durg, Chhattisgarh.
2. Suresh Patel, Son of Sugreev Das, Aged about 35 years, R/o J.P. Nagar, Near Sulabh, Camp Road, Camp-2, Bhilai, Tahsil and District Durg, Chhattisgarh.
3. Babli Pathak, aged about 45 years.
4. Sonu Pathak, aged about 20 years.

No. 4 & 5 are R/o Durga Mandir Ward No. 35, K.L.C. Khursipar, Zone-3, Bhilai, District Durg, Chhattisgarh.

5. Station House Officer, Khursipar, Police Station Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Praveen K. Dhurandhar, Advocate
For State	:	Mr. Apurv Goyal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/04/19**

1. By the impugned order dated 30/03/2019 passed in Civil Suit No. 129-

A/2014, plaintiff's/respondent No. 1's application under Order 6 Rule 17 of the C.P.C. for amendment in the plaint claiming relief of possession has been allowed by the trial Court against which this writ petition under Article 227 has been preferred by the petitioner/defendant No. 1.

2. Learned counsel for the defendant No. 1/petitioner submits that learned trial Court is absolutely unjustified in granting the amendment application and permitting the plaintiff/respondent No. 1 to amend the plaint inserting the relief of possession at the final stage of trial.
3. I have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.
4. In the matter of ***N.C. Bansal Vs. Uttar Pradesh Financial Corporation & Another***¹, their Lordships of Supreme Court have held as under :-

“It is for the reason that firstly, the suit is still at the initial stage i.e. the trial has not yet begun; Second, the proposed amendment sought in the plaint does not change the nature of suit; third, the applications could not be said to have been filed by the plaintiff belatedly because the suit had been dismissed by the trial court as not maintainable in its initial stages and for all these years it was sub judice in appeal. It is only after the appellate court remanded the case to the trial court for its trial, the appellant (plaintiff) filed the applications in the suit and sought permission to amend the plaint and file certain documents in support thereof; fourth, the Courts, in these circumstances, should have been liberal in allowing the proposed amendment. ”

5. Plaintiff/respondent No. 1 filed the suit for declaration of title and permanent injunction on 16/06/2014 and pursuant to the order of the SDM, the possession of the suit land had been handed over to the

¹ (2018) 2 SCC 347

defendant No. 1/petitioner in the month of May, 2017, therefore he sought the relief of possession from the defendant No. 1 also which has rightly been granted by the trial Court. As such, the trial Court has rightly permitted the plaintiff/respondent No. 1 to amend the plaint claiming relief of possession based on the subsequent event pursuant to the order passed by the SDM. Thus, I do not find any merit in this writ petition warranting interference under Article 227 of the Constitution of India.

6. This writ petition deserves to be and is accordingly dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge