

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (227) No.891 of 2018

1. Smt. Shakila Bano W/o Shri F.R. Khan, aged about 50 years,
2. Smt. Jarina Bano, W/o Shri Mohd. Afzal, aged about 47 years,
Both are R/o Baijnathpara, Near Mazar, Raipur, Tahsil & District Raipur (CG)

---- Petitioners

Versus

1. Jaitun Bi (died)
2. Abdul Nazim S/o Late Sheikh Tazir, aged about 55 years,
3. Sheikh Abdul Jamil S/o Sheikh Abdul Nazin, aged about 36 years,
4. Abdul Karim S/o Sheikh Abdul Nazin, aged about 31 years.

All are R/o Moudhapara, in front of Kabristan, Raipur, Tahsil & District Raipur (CG)

---- Respondents

For Petitioners:-	Mr.Sourabh Sharma, Advocate
For Respondents:-	Mr.Khitij Sharma, Advocate

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board**06/05/2019**

1. By the impugned order, the plaintiffs' application for seeking leave to amend the plaint has been rejected by the trial Court, against which, this writ petition has been filed.
2. Mr.Sourabh Sharma, learned counsel for the petitioners/plaintiffs would submit that rejection of the application is untenable as trial has not yet commenced and proposed amendment is necessitated consequent to death of defendant No.1 after filing of written statement, as such, it is necessary to avoid multiplicity of the suit.

3. Mr.Khitij Sharma, learned counsel for the respondents, would submit that the application has been filed at belated state, therefore, it has rightly been rejected by the trial Court.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. Taking into consideration the fact that trial has not yet commenced though affidavit under Order 18 Rule 4 of the CPC has been filed and proposed amendment is moved after death of defendant No.1 which necessitated the amendment of the pleading as it has been filed after death of defendant No.1, which could have been allowed by the trial Court as trial has not commenced as yet, the impugned order is set-aside subject to payment of cost of Rs.3000/- to defendants No.2 to 4. However, defendants No.2 to 4 will be at liberty to file an application for consequential amendment, which will be considered by the trial Court in accordance with law.
6. The writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to the concerned trial Court by fax/E-mail. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-