

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 783 of 2019

- Mitha Lal Gaadiya S/o Late Anraj Gaadiya Aged About 72 Years R/o House No. 128, Swami Vivekanand Ward No. 57, Halwai Line, Raipur, Tahsil Raipur, District Raipur Chhattisgarh

---- Petitioner

Versus

1. Fulchand Aasra S/o Late Vallabh Das Aasra Aged About 68 Years R/o Gujrati Bada, Halwai Line, Raipur, Tahsil And District Raipur Chhattisgarh
2. Nagar Palik Nigam Raipur, Through Commissioner, Nagar Palik Nigam, Head Office - Gandhi Chowk, Raipur, Tahsil And District Raipur Chhattisgarh
3. Zone Commissioner Zone Number No. 7, Nagar Palik Nigam, Raipur, Office - In Front Of Main Post Office, Malviya Road, Raipur, Tahsil And District Raipur Chhattisgarh

---- Respondents

For Petitioner	: Mr. Rishikant Mahobia, Advocate.
For Respondent	: Mr. H.B. Agrawal, Senior Advocate with Ms. Preeti Yadav, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

07-11-2019

Heard.

1. This petition has been brought being aggrieved by the order of the trial Court in Civil Suit No.140A/2016 passed on 30.08.2019 by which the application for amendment filed by the petitioner/defendant No.3 has been rejected.
2. Learned counsel for the petitioner submitted that by the application filed under Order 6 Rule 17 of C.P.C., the petitioner/defendant No.3 had prayed for amendment to explain the pleadings already made by him in W.S. which has been erroneously denied by the trial Court. Therefore,

permission may be granted to amend the W.S.

3. Learned counsel appearing for respondent No.2 and 3 opposes the petition and submits that amendment proposed by the petitioner in W.S. is totally uncalled for as it amounts to evidence which cannot be pleaded.
4. Heard learned counsel for both the parties and perused all the documents.
5. On perusal of the copy of the application for amendment filed by the petitioner along with the petition, it is found that he intends to elaborate the pleadings already made by him. According to the pleadings in plaint, it is found that this petitioner/defendant No.3 has encroached upon the public drainage and relief has been prayed accordingly. Petitioner/defendant No.3 has in his W.S. denied the pleadings made by the plaintiff/respondent No.1, therefore, the pleading in plaint which has been already denied in such a case the defendant has opportunity to bring all the elaboration and explanation in evidence before the trial Court. Therefore, the amendment proposed is not all necessary. Hence, I do not find any error in the order passed by the trial Court, hence, the petition is disposed off at motion stage. However, it is made clear that the petitioner/defendant No.3 can elaborate and explain the circumstances in evidence which he had intended to incorporate by amendment.
6. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge