

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 61 of 2020

Jagdev Yadav S/o Gorakh Yadav Aged About 60 Years Cast- Ahir, R/o Village Chandoura, Tahsil Balrampur, District Balrampur-Ramanujganj, Chhattisgarh.

---- Petitioner

Versus

1. Dinu S/o Baijnath Aged About 45 Years Cast- Bhuiyan R/o Village Chandoura, Police Station Chalgali, District Balrampur-Ramanujganj, Chhattisgarh.
2. Nanhu S/o Devsharan Aged About 46 Years R/o Village Beliya, Police Station Chalgali, District Balrampur-Ramanujganj, Chhattisgarh.
Subedar S/o Dilvar (died)
Sundar Baisa Wd/o Dilver (died)
3. State Of Chhattisgarh Through The Collector Balrampur, District Surguja, Chhattisgarh.

---- Respondents

For Petitioner	: Shri A.N. Pandey, Advocate.
For Respondents No.1 and 2	: Ms. Priyanka Mehta, Advocate.
For Respondent No.3/ State	: Shri C.B. Kesharwani, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16-03-2020

1. Heard.
2. This petition has been brought being aggrieved by the order dated 4.1.2020 passed by the Court of Civil Judge, Class-II, Balrampur in Civil Suit No.4-A of 2015, allowing the application filed by respondents No.1 and 2/ plaintiffs under Order VI Rule 17 of the C.P.C.
3. Learned counsel appearing for the petitioner submits that the order impugned is erroneous and against the provision of law. Proviso (ii) of Order VI Rule 17 of the CPC has not been followed. Apart from that, the amendment brought was not at all essential for resolution of the dispute between the parties. The relief of possession that has been

added by the amendment is belated as the respondents were already having knowledge regarding their dispossession, therefore, the amendment application should not be allowed. Relying on the judgment of Supreme Court in the case of **Pandit Malhari Mahale vs. Monika Pandit Mahale and Others** in Civil Appeal No. 189 of 2020 dated 10.1.2020, it is submitted that the Supreme Court has held, that it is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of the CPC restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint., therefore, there had been no reason present for allowing the amendment application. Hence, the order impugned is liable to be set aside.

4. Learned counsel for respondents No.1 and 2 submits that the amendment that has been proposed by the respondents/ plaintiffs' side was essential and also consequential in nature. The written statement in this case was filed by the petitioner/ defendant on 23.2.2016. Subsequent to filing of the written statement, the plaintiffs have been dispossessed from the suit property by the petitioner who is the purchaser of the suit property. Therefore, it became necessary and prayer for additional relief became essential for which prayer was made for amending the pleadings regarding the dispossession of the respondents. Hence, the learned trial Court has not committed any error in passing the impugned order and this petition is without any

substance.

5. Learned State counsel appearing for respondent No.3 makes a formal objection.
6. On perusal of the copy of plaint, the written statement and the application filed for amendment by the respondents' side, it appears that the respondents/ plaintiffs have already elaborated the pleadings regarding the law, by which the respondents/ plaintiffs and defendant No.1 are governed. It had been their stand that the property was a joint property and there had been no partition between the members of the joint family. The relief claimed regarding declaration of the sale deed executed by defendant No.1 in favour of the petitioners to be void *ab initio* is present from the very beginning and this has also been pleaded that the respondents now claim for partition and separate possession. Therefore, it appears that the amendment proposed includes the subsequent development that has taken place and the prayer has been made by the respondents accordingly for additional reliefs. Proviso to Order VI Rule 17 of the CPC shall not be applicable in this particular case because of the circumstances appear in the civil suit between the parties.
7. The petitioner and defendant No.1 have the opportunity to rebut the amendment by bringing consequential amendment, therefore, no error is found in the impugned order.
8. Accordingly, the petition is disposed off. The petitioner and defendant No.1 are at liberty to file an application for consequential amendment.

Sd/-
(Rajendra Chandra Singh Samant)
Judge