

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 117 of 2020

1. Asim Majumdar S/o Late Adhir Majumdar, Aged About 46 Years, R/o P.V. 34 Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker Chhattisgarh, At Present R/o Village and Post Koushailiya Nagar Tahsil Rangot Madhya Andaman
2. Anant Majumdar S/o Late Adhir Majumdar, Aged About 43 Years, R/o P.V. 34 Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker Chhattisgarh, At Present R/o Village and Post Koushailiya Nagar Tahsil Rangot Madhya Andaman
3. Smt. Sumati Karamkar W/o Nirranjan Karamkar, Aged About 49 Years, R/o P.V. 34 Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker Chhattisgarh At Present R/o Village and Post Koushailiya Nagar Tahsil Rangot Madhya Andaman
4. Mahmaya Majumdar S/o Late Ashok Majumdar, Aged About 50 Years, R/o Mahnath, District Hugali, West Bangal, District : Hooghly, West Bengal

---- Petitioners/Plaintiffs

Versus

1. Ranjit Majumdar S/o Late Sudhir Majumdar, Aged About 34 Years, R/o Village P.V. 34 Premnagar, Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker, Chhattisgarh, District : Kanker, Chhattisgarh
2. Narrottam Majumdar S/o Sudhir Majumdar R/o Village P.V. 34 Premnagar, Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker, Chhattisgarh, District : Kanker, Chhattisgarh
3. The State of Chhattisgarh, Through Collector, Kanker District Uttar Bastar Kanker, Chhattisgarh, District : Kanker, Chhattisgarh
4. Smt Gayatri Mistri W/o Shri Asit Mistri, Aged About 48 Years P.V. 34, Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker, District : Kanker, Chhattisgarh
5. Smt Anjali Mistri W/o Jitendranath Mistri, Aged About 44 Years, R/o P.V. 34 Premnagar Thana and Tahsil Pakhanjore, District Uttar Bastar Kanker, Chhattisgarh, District : Kanker, Chhattisgarh

--- Respondent/Defendants

For Petitioners – Shri Parag Kotecha, Advocate.

For Respondent No.3 – Shri Sanjay Pathak, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 05-12-2019 by which the application filed by the petitioners praying for amendment in the plaint was rejected by the trial Court.

2. It is submitted by learned counsel for the petitioners that the plaintiffs have brought Civil Suit No.39A/2015 praying for declaration, possession and permanent injunction with respect to the suit property. As it has been pleaded that the suit property was in possession of the private respondents/defendants, therefore, the petitioners did not have knowledge of the actual status of the possession and at the stage of defence evidence when respondent No.2/defendant Narrotam Majumdar made a statement in his cross-examination that the property claimed by the petitioners has been sold out to one Anjali Mistri and Asim Mistri, the petitioners came to know about the facts situation. The petitioners then filed application for arraying as party the purchasers of the suit land which was allowed by the trial Court. When the application was filed for amendment in the plaint with respect to the fact discussed in the cross-examination of the defence witness, which is a subsequent event and it was not in the knowledge of the petitioners, that has been arbitrarily dismissed by the trial Court. Therefore, it is prayed that this petition be allowed and relief be granted to the petitioners.

3. Learned counsel for the private respondents are not represented at this stage.

4. Respondent No.3/State is represented by the State counsel who has made formal objection.

5. After considering on the submission made by learned counsel of the petitioners and perusing all the documents which are present in the record of this petition, I am of this view that the learned trial Court has committed an error in passing the impugned order. For complete and effective determination of the dispute between the parties and also the dispute with the subsequent stake holders who are now the purchaser of the suit property, the said purchasers are essential parties who have already been made party in that case and contesting against this party, the petitioners cannot contest without

pleadings against them in the plaint which was to be made by the petitioners side. Therefore, after arraying the said purchasers of the disputed property as defendant in the case, the refusal to entertain the application for amendment by the trial Court was improper. Hence, this petition is allowed at the motion stage. The impugned order dismissing the application for amendment filed by the petitioners is set aside and the application for amendment is restored. The trial Court is directed to reconsider the application filed by the petitioners for amendment in the plaint in the light of the observation that have been made in this order.

6. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge