

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.1007 of 2019

- Mallu Died, Through His legal Representatives
- 1. Rajkumar Kevat S/o Late Mallu Aged About 55 Years
- 2. Radha Bai W/o Late Dilsantosh Aged About 40 Years
- 3. Bahuri Bai W/o Late Mallu Aged About 75 Years
- 4. Tikeshvari @ Tiny D/o Late Dilsantosh aged about 17 years
- 5. Tukesvari @ Rinky D/o Late Dilsantosh Aged About 25 Years
- 6. Chetan Kumar S/o Late Dilsantosh Aged About 19 Years
- 7. Krishna Bai D/o Late Mallu Aged About 50 Years

All are R/o Village Malhar Tahsil Masturi, District Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Vikram Singh S/o Ramnath Singh Aged About 35 Years R/o Village 27, Kholi Bilaspur Tahsil And District Bilaspur, Chhattisgarh
2. Vikrant Singh S/o Shiv Singh Aged About 36 Years R/o Village Nevari, Tahsil Masturi, District Bilaspur, Chhattisgarh
3. State Of Chhattisgarh Through Collcetor Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	: Mr. Suresh Kumar Pandey, Advocate.
For State/respondent No.3	: Mr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

03-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 16.8.2019 passed by the learned trial Court by dismissing the application filed by the petitioners under Order 6 Rule 17 of C.P.C.
2. Learned counsel for the petitioner submits that Mallu was the original plaintiff who had filed the suit claiming title and possession of the suit

property, on this ground that the sale deed was made to be executed by him, by respondents No. 1 and 2 forcibly and by putting him under threat and he had prayed to declare the sale deed void ab-initio. Plaintiff Mallu expired on 02.06.2014. Subsequent to which, the legal representatives of Mallu who are present petitioners were brought on record. The petitioners then filed application under Order 6 Rule 17 of C.P.C. praying for amendment in the plaint to incorporate this pleading that the suit property was ancestral, therefore, the Mallu had entitlement to sale out only his share in the same property. On this basis, the execution of sale deed is void and inoperative. It is also submitted that the learned trial Court has dismissed the application only on ground of delay which is arbitrary and erroneous, therefore, it is prayed that petition be allowed and relief be granted to the petitioners.

3. There is no representation from respondent No.1 and 2, therefore, there is no opposition from their side.
4. Learned State counsel appearing for respondent No.3 has made a formal objection.
5. Heard counsel for both the parties and perused the documents present on record.
6. On perusing the impugned order and also application filed under Order 6 Rule 17 of C.P.C. by the petitioners along with other documents that are present on record, I am of this view that the amendment proposed was suitable to the nature of pleadings which were already present in the plaint and the only reason for dismissing the application for amendment was the ground of delay. Under Order 6 Rule 17 of C.P.C. there is no stage prescribed on which an application can be filed. Therefore, when the additional pleading which is to be incorporated as amendment seems to be helpful in coming to correct conclusion of case, then that should be regarded as sufficient reason for entertaining an

application for amendment in pleadings, even if there is delay in filing the same. Therefore, I am of this view that the impugned order is not sustainable which needs to be interfered with. Hence, the petition is disposed off at motion stage. The impugned order is set aside and it is ordered that the application filed by the petitioners under Order 6 Rule 17 of C.P.C. is allowed. Permission is granted to the petitioners to carry out amendment in the plaint accordingly. The respondent side may also be granted liberty to file application for consequential amendment if they are so advised by their learned counsel.

7. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika