

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 109 of 2020

1. Devi Kumar, S/o Khobhiram Kashyap, Aged About 38 Years.
2. Sarojni, W/o Khobhiram Kashyap, Aged About 53 Years.

Both are R/o Village- Kamta, Tahsil Nawagarh, District- Janjgir-
Champa (C.G.)

--- Petitioners

Versus

1. Aasharam, S/o Late Chandrika Prasad, Aged About 53 Years.
2. Yashram, S/o Late Chandrika Prasad, Aged About 48 Years.
3. Premlal, S/o Late Chandrika Prasad, Aged About 45 Years.
4. Ghasnin Bai, D/o Sukharu, Aged About 63 Years.
5. Kala Bai, W/o Late Chandrika Prasad, Aged About 78 Years.

All R/o Village- Kamta, Tahsil Nawagarh, District- Janjgir-
Champa (C.G.)

6. Chouka Bai, D/o Late Sukhru, Aged About 55 Years, W/o
Samundram, R/o Village- Gangajal, Tahsil Nawagarh, District-
Janjgir-Champa (C.G.)
7. Sikh Bai, D/o Late Sukhru, Aged About 46 Years, W/o Kholbahra,
R/o Village- Sarwani, Post- Katgi, District- Baloda Bazar-
Bhatapara (C.G.)
8. State of Chhattisgarh, Through- Collector, Janjgir, District-
Janjgir-Champa (C.G.)

--- Respondents

For Petitioners	:	Mr. Ravindra Sharma, Advocate.
For Respondent No. 1 to 3	:	Mr. Anup Majumdar, Advocate with Mr. Saket Pandey, Advocate.
For State/ respondent No. 8	:	Mr. B.P. Banjare, Dy. Govt. Adv.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21/01/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, being aggrieved by the order dated 11.12.2019 passed by learned Civil Judge Class-II, Nawagarh, District- Janjgir-Champa (C.G.) in Civil Suit No. 12-A/2016, allowing the application of the defendants for amending the pleading and written statement.
2. The petitioners had filed a civil suit against the private respondents, in which, they have pleaded in paragraph 6 that Khobhiram, father of petitioner No. 1 and husband of petitioner No. 2, had transferred the suit property to the petitioners/ plaintiffs, since then, the petitioners/ plaintiffs are in possession of the suit property.
3. The private respondent had replied in their written statement, to paragraph No. 6 of the plaint, that Khobhiram had given partition to Chandrika Prasad, according to which, records were mutated. Therefore, Chandrika Prasad had no title and no possession on the suit land and he could not transfer the property to the plaintiffs. The application for amendment was brought to correct the subsequent statement in paragraph 6 of the written statement mentioning that Chandrika Prasad had no title and possession for transferring the same, praying that the name of Chandrika Prasad, has been erroneously mentioned in the

sentence, which should have been Khobhiram. The learned trial court has allowed the application.

4. It is submitted by learned counsel for the petitioners that this application has been brought after proceeding in the trial court were completed. The witnesses of both sides were examined, therefore, the petitioners had objection on the prayer made by the private respondents. It is submitted that such amendment application should not have been allowed at such delayed stage. Reliance has been placed on the judgment of Supreme Court in **Biraji & others Vs. Surya Pratap & others**, reported in **AIR (2020) SC 5483** & **Vidyabai & others Vs. Padmalatha & others**, reported in **AIR (2009) SC 1433**. It is prayed that the impugned order may be quashed.
5. Learned counsel for private respondents submits that there had been technical and clerical error in paragraph 6 of the written statement, therefore, the defendants had prayed to make correction of this clerical error. Reliance has been placed on the judgment of Supreme Court in **Usha Balashaheb Swami & others Vs. Kiran Appaso Swami & others**, reported in **AIR (2007) SC 1663**. It is prayed that this petition may be dismissed.
6. In reply, it is submitted by learned counsel for the petitioners that there is no doubt that the application for amendment was filed by the respondents/ defendants after substantial delay, but there is no explanation for the delay in filing the application for amendment, hence, on this ground alone, the application should have been rejected.

7. Learned counsel for State/ respondent No. 8 makes formal objection.
8. I have heard the learned counsel for the parties and perused the documents placed on record.
9. Considered on the submissions. The pleading in the plaint that Khobhiram had transferred the suit property to the petitioners/ plaintiffs has been challenged in the written statement on this ground that Khobhiram had given share to Chandrika Prasad in partition and on the basis of this partition, the claim of the respondents/ defendants on the suit property is being defended. The plaint does not mention about any claim of the plaintiffs from Chandrika Prasad. On the contrary, in the pleading in the plaint, the entry of the name of Chandrika Prasad in the revenue records have been assailed. Hence, it appears that in paragraph 6 of the written statement, mentioning of name of Chandrika Prasad, is a mistake, which can be regarded as clerical mistake. By allowing the amendment of this clerical mistake, nothing is going to change and no loss shall be suffered by the plaintiffs/ petitioners. The reliance of the petitioners in the matter of **Biraji (Supra) & Vidyabai (Supra)**, are not of any guidance. Hence, I am of this view that this petition is without any substance, which is liable to be dismissed.
10. Accordingly, this writ petition is dismissed and disposed of at motion stage itself.

Sd/-/-
(Rajendra Chandra Singh Samant)
Judge