

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 234 of 2020

Bhola Prasad Kori S/o Shri Ramsukh Kori Aged About 25 Years (Now Aged About 48 Years), Occupation Porter (Railway), Resident Of Near Railway Line, Adjacent To Gudakhu Factory, Shanker Nagar, Bilaspur Chhattisgarh.

---- Petitioner/ Defendant No.1

Versus

1. Mu. Urmila Wd/o Rama Yadav Aged About 60 Years Caste Yadav, Occupation Housewife, R/o Vasant Vihar Rajkishore, Devika Vihar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
2. Umesh Yadav (Now Dead) Through LRs.
 - (a) Santosh Yadav S/o Late Shri Umesh Kumar Yadav Aged About 35 Years
 - (b) Rameshwari Yadav D/o Late Shri Umesh Kumar Yadav Aged About 33Years
 - (c) Chandi Yadav D/o Umesh Kumar Yadav Aged About 28 Years
 - (d) Smt. Urmila Bai Wd/o Late Shri Umesh Kumar Yadav Aged About 60 Years
3. State Of Chhattisgarh Through The Collector, Bilaspur Chhattisgarh.

Note: Plaintiff No.2 Umesh Yadav has been died and his legal heirs have been brought on record in the original suit, but the same has not been mentioned in the cause title of the impugned order.

---- Respondents/ Plaintiff

AND

WP(227) No. 512 of 2020

Bhola Prasad Kori S/o Shri Ramsukh Kori, Aged About 47 Years Occupation Porter (Railway), R/o Near Railway Line, Adjacent To Gudakhu Factory, Shankar Nagar, Bilaspur, Chhattisgarh.

---- Petitioner/ Defendant No.1

Versus

1. Mu. Urmila Wd/o Rama Yadav, Aged About 80 Years R/o Shankar Nagar, Bilaspur (Chhattisgarh).
2. Santosh Yadav S/o Late Shri Umesh Kumar Yadav, Aged About 48 Years R/o Rajkishore Nagar, Devika Vihar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
3. Rameshwari Yadav D/o Umesh Kumar Yadav, Aged About 46 Years R/o Rajkishore Nagar, Devika Vihar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
4. Chandi Yadav D/o Umesh Kumar Yadav, Aged About 41 Years R/o Rajkishore Nagar, Devika Vihar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

5. Smt. Urmila Bai Wd/o Umesh Yadav, Aged About 73 Years R/o Rajkishore Nagar, Devika Vihar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh.
6. State Of Chhattisgarh Through The Collector, Bilaspur Chhattisgarh.

---- Respondents/ Plaintiff

For Petitioner : Mr. Goutam Khetrapal, Advocate
with Shri Q. Aziz, Advocate.

For Respondent No.2 in
W.P.(227) 234 of 2020 and for

Respondents No.1 to 5 in

W.P.(227) 512 of 2020 : Mr. Ali Asgar, Advocate.

For Respondent/ State : Mr. B.P. Banjare, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

08-02-2021

1. Heard.
2. These petitions have been brought being aggrieved by the orders dated 18.2.2020 and 26.11.2020 passed by the learned trial Court in Civil Suit No. 523-A of 1998.
3. Learned counsel appearing for the petitioner submits that the application under Order VI Rule 17 of the CPC was filed before the trial Court for amendment in the pleadings and the written statement, as the amendment was relevant and necessary and also it was proposed after obtaining the certified documents of the revenue records; therefore, learned trial Court should have allowed the amendment application for the purpose of proper defence of the petitioner. Reliance has been placed on the judgments of the Supreme Court in the case of **Raj Kumar Bhatia vs. Subhash Chander Bhatia**, reported in **(2018) 2 SCC 87**, **Sushil Kumar Jain vs. Manoj Kumar and Another**, reported in **(2009) 14 SCC 38**, **Usha Balashaheb Swami and Others vs. Kiran Appaso Swami and Others**, reported in **(2007) 5 SCC 602**, **Baldev**

Singh and Others vs. Manohar Singh and Another, reported in **(2006) 6 SCC 498** and **B.K. Narayana Pillai vs. Parameshwaran Pillai and Another**, reported in **(2000) 1 SCC 712**, it has been held by the Supreme Court that the defendant can raise inconsistent pleas in written statement although, the same may not be permissible in the case of plaintiff. The purpose and the object of Order VI Rule 17 of the CPC is that either party can alter or amend his pleadings in such manner and on such terms as may be just, therefore, the rejection of the application is erroneous. Hence, it is prayed that the impugned order be quashed and relief be granted to the petitioner in W.P.(227) No.234 of 2020. Learned counsel for the petitioner further submits that during the pendency of W.P.(227) No.234 of 2020 and the stay order passed, learned trial Court has initiated the proceedings again in the civil case by the order dated 26.11.2020 which is again an erroneous order and liable to be set aside. Hence, relief may be granted accordingly.

4. Learned counsel for respondent No.2 in W.P.(227) No. 234 of 2020 and for respondents No. 1 to 5 in W.P.(227) No. 512 of 2020 submits that the litigation is pending between the parties since the year 1997. The suit was decreed in favour of the respondents. The petitioner/ defendant preferred first appeal which was dismissed and the Second Appeal No.155 of 2006 preferred was however allowed by judgment dated 30.9.2019 with certain directions and also to conclude the trial within a time-frame of three months. It is further submitted that the petitioner/ defendant is finding pretext to prolong the litigation and by filing the application for amendment. An attempt has been made to bring a new case which cannot be permitted by the Court, therefore, learned trial Court has not committed any error in dismissing the application under Order VI Rule 17 of the CPC. Reliance has been placed on the

judgment of Supreme Court in the case of **Vidyabai and Ors. vs. Padmalatha and Anr.** reported in **AIR 2009 SC 1433**, in which the Supreme Court had held that the order of trial Court refusing amendment did not suffer from jurisdictional error or any error of law, therefore, such order cannot be interfered with. Hence, it is prayed that W.P.(227) No.234 of 2020 may be dismissed. It is also submitted that W.P.(227) No 512 of 2020 has been unnecessarily filed. The petitioner should have simply made a prayer of extension of the interim order in W.P.(227) No.234 of 2020. Hence, the writ petitions be dismissed.

5. Considered the submissions. The ground of refusal for amendment recorded by the trial Court in the impugned order is that the amendment proposed was already in the knowledge of the petitioner/ defendant and therefore, there is no reason to permit the amendment to be incorporated in the written statement. There is nothing mentioned in this order regarding relevance of the proposed amendment in written statement for a just decision of the case or as to whether the proposed amendment makes out a new case which may have been a ground for not permitting the amendment in the written statement.
6. On perusal of the copy of the application under Order VI Rule 17 of the CPC read with Section 151 of the CPC, I am of this view that the amendment proposed in paragraphs 2A and 2F of the application have relevance with the defence in the written statement of the petitioner's side, however, the amendments proposed in paragraphs 2B, 2C, 2D and 2E do not appear to be relevant and also appeared to be repetition of the statement in the pleadings already made. A Civil Court is obliged to give the contesting party full opportunity to present their case and it is on that basis it can be said that the requirement for delivering a just decision is fulfilled. Hence, finding relevance in the proposed

amendment in 2A and 2F mentions herein-above and also for the reason that the case before the trial Court is still pending at the stage of evidence, the trial Court should have taken a liberal view to allow the amendment of relevant pleading in the written statement of the petitioner. Hence, after due consideration, I feel inclined to allow W.P. (227) No. 234 of 2020 in part. The impugned order dismissing the application under Order VI Rule 17 of the CPC is set aside and it is ordered that the petitioner/ defendant be permitted to incorporate amendment of paragraphs 2A and 2F in his written statement. The respondents' side may also be given opportunity for making consequential amendment, if any, subsequent to which, the trial Court is directed to proceed and conclude the trial in accordance with law.

7. Accordingly, W.P.(227) No. 234 of 2020 alongwith W.P.(227) No. 512 of 2020 are disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi