

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 670 of 2019

1. Krishna Kumar Gupta, S/o Thakurdin Gupta, Aged About 65 Years, R/o Village Chhindand. Police Station and Post Office Baikunthpur, District-Korea Chhattisgarh.
2. Ritesh Kumar Gupta, S/o Krishna Kumar Gupta, Aged About 35 Years, R/o Schoolpara Ward, Baikunthpur, Police Station and Post Office Baikunthpur, District-Korea, Chhattisgarh.

---- Petitioners

Versus

1. Durga Prasad Gupta, S/o Thakurdin Gupta, Aged About 60 Years, R/o Schoolpara Ward, Baikunthpur, Police Station and Post Office Baikunthpur, District-Korea, Chhattisgarh (Plaintiff No. 1).
2. Hetram Gupta, S/o Thakurdin Gupta, Aged About 58 Years R/o Schoolpara Ward, Baikunthpur, Police Station and Post Office Baikunthpur, District-Korea, Chhattisgarh (Plaintiff No. 2).
3. State of Chhattisgarh Through Collector Korea, Baikunthpur, District Korea Chhattisgarh (Defendant No. 3).

---- Respondents

For petitioners	:	Ms. Priyanka Mehta, Advocate.
For respondent No. 2	:	Mr. J.K. Shastri, Advocate.
For respondent No.3/State	:	Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

11/02/2021

1. This petition under Article 227 of the Constitution of India has been brought seeking indulgence of this Court to quash the order dated 30.7.2019 passed by the Court of Additional District Judge, Baikunthpur, District-Koriya (CG) in Civil Suit No. 01A/2019.
2. Petitioners are defendants in the civil suit filed by the plaintiffs/respondents No.1 & 2 praying for relief of declaration and injunction with respect to the suit property. Defendants/petitioners herein have contested the suit by filing written statement. Thereafter, on 22.4.2019 the petitioners filed an application under Order 6 Rule 17 CPC praying

for amendment of pleadings on the ground of valuation and maintainability of the civil suit. This application was opposed by the plaintiffs-respondents No.1 & 2 herein. Impugned order has been passed holding that the petitioners/defendants had previous knowledge of the pleadings which they have proposed for amendment, the trial has commenced and rejected the application referring to the principle laid down by Hon'ble Supreme Court in case of **Vidyabai & Ors. v. Padmalatha & another, reported in (2009) 2 SCC 409.**

3. It is submitted by the learned counsel for petitioners that the impugned order is erroneous and against the provisions of law. In the case of **Baldev Singh & ors. v. Manohar Singh and another** reported in **(2006) 6 SCC 498**, the Hon'ble Supreme Court has held that the defendant can be permitted to raise inconsistent or alternative pleas in the written statement, although such pleas may not be permissible in the case of plaint, in view of proviso to Order 6 Rule 17 CPC which gives wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings. The learned trial Court failed to exercise the jurisdiction vested in it. It is submitted that similar view has been taken by Hon'ble Supreme Court in case of **Mohinder Kumar Mehra v. Roop Rani Mehra and Ors.** reported in **(2018) 2 SCC 132** wherein also the trial Court failed to exercise jurisdiction available to it. It is, therefore, prayed that this petition be allowed and relief, as claimed, be granted to the petitioners.
4. Learned counsel for the respondents opposes the arguments and submissions made in this respect. It is submitted that the learned trial Court has correctly passed the order rejecting amendment application of the petitioners/defendants. In the case Vidyabai (supra), the Apex Court has held that the proviso to Order 6 Rule 17 of CPC is a couched in a mandatory form, therefore, the jurisdiction to allow an application for amendment at a delayed stage i.e. after commencement of trial, is not available to the Court concerned. Hence, the impugned order passed by the Court below is sustainable and it does not call for any interference.
5. Considered on the submissions. The relief that has been claimed by the respondents in the plaint is for declaration of sale-deed dated

26.3.2012 executed by the petitioner No.1 in favor of respondent No.2 as void *ab-initio* and for that purpose, fixed Court fees of Rs.500/- has been paid. The amendment proposed is this, that the sale-deed was executed by the petitioner No.1 on behalf of the respondents/plaintiffs on the basis of power of attorney executed by them in his favor, therefore, it shall be deemed that the respondent/plaintiffs are executants of the said sale-deed. There is pleading of the respondent/plaintiffs in plaint that the power of attorney that was executed in favor of petitioner No.1 on 13.9.1985 has been revoked on 3.1.1989, thus, there is no admission about existence of any power of attorney. Hence, this pleading proposed was not fit to be permitted. The proposed amendment on the basis of valuation is also a consequence of proposed amendment mentioned herein before. Therefore, the proposed pleading on the point of valuation was not at all permissible even if the same is considered despite the restriction present according to the proviso to Order 6 Rule 17 of CPC.

6. Other proposed pleading is that in April, 2019 the petitioners have come to know that the plaint has not been signed by respondent/plaintiff No.1 i.e. of forged signature, is clearly an afterthought, imaginary and without any basis, hence, on merits this proposed amendment was also not permissible. Unless there appears to be some relevance or that the amendment sought to be incorporated is necessary for the purposes of proper adjudication of dispute between the parties, amendment application cannot be allowed automatically. Hence, I am of this view that the learned trial Court has not committed any error in rejecting the amendment application filed by the petitioners.
7. Accordingly, the petition stands dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge