Digitally signed by MOHAMMED AADIL KHAN
Date: 2026.11.03 19:19:47 +0530

CGHC010427172026 2026:CGHC:46327

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1387 of 2026

1 - Mohan Lal Sahu S/o Late Anandram Sahu, Aged About 34 Years, R/o Vill - Pisaud, P.S. and Tahsil- Janjgir, Dist.- Janjgir-Champa (C.G.)

2 - Maheshwar Sahu S/o Late Anandram Sahu, Aged About 32 Years, R/o Vill- Pisaud, P.S. and Tahsil- Janjgir, Dist.- Janjgir- Champa (C.G.)

... Petitioners

versus

1 - Jagdish Prasad Sahu S/o Late Anandram Sahu, Aged About 48 Years R/o Vill- Bhainsda, Tahsil- Janjgir, Dist.- Janjgir- Champa (C.G.)

2 - Smt. Santoshi Bai Sahu W/o Bhagwat Prasad Sahu Aged About 45 Years R/o Vill- Bhainsda, Tahsil- Janjgir, Dist.- Janjgir- Champa (C.G.)

3 - Jagbai Sahu D/o Late Anandram Sahu, Aged About 32 Years, R/o Vill.- Pisaud, P.S and Tahsil- Janjgir, Dist. - Janjgir-Champa (C.G.)

... Respondents

(Cause-title taken from Case Information System)

For Petitioner : Mr. Jai Prakash Shukla, Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J
Order on Board

02-11-2026

1. Heard.

2. The present is a writ petition filed by the petitioners under Article 227 of the Constitution of India against the orders dated 19-08-2025 and 02-07-2026 passed by the learned First Civil Judge, Junior Division, Janjgir, District Janjgir-Champa in Civil Suit No.A Class/39/2022 whereby the application

under Order 23 Rule 1 of the CPC and the applications under Order 6 Rule 17 of the CPC dated 04-09-2025 and 07-11-2025 have been rejected.

3. Learned counsel for the petitioners confined his submission with respect of the order dated 02-07-2026 and would submit that the petitioners are plaintiffs before the learned trial Court who were prosecuting a suit for declaration of title, confirmation of the possession over the suit property shown in Schedule A annexed with the plaint. The plaintiffs are claiming their title over the suit property with the pleadings that late Anandram Sahu has purchased the suit property form his own income in the name of defendant No.1. The suit property was purchased in the year 1992 and at that time the defendant No.1 was not having his independent source of income and he was a student. Since the property was purchased by late Anandram who was father of the plaintiffs, all the plaintiffs have right and title over the suit property purchased by late Anandram. The defendant No.1 cannot claim alone the title over the suit property. Subsequently, the defendant No.1 has sold the suit property to defendant No.2 through a registered sale deed dated 29-03-2022 which gives cause of action to file the present suit. During pendency of the suit the plaintiffs have filed two applications under Order 6 Rule 17 of the CPC dated 04-09-2025 and 11-09-2025 for amendment in the pleadings of the plaint which have been rejected by the learned trial Court. He would further submit that the proposed amendment is very relevant for just decision of the suit and without their being any proper pleading no effective adjudication would be possible in the dispute between the parties. No prejudice would be caused to the defendants as they may amend their written statement consequently and cross-examine the witnesses, therefore, the proposed amendment may be allowed to be incorporated in the plaint and the learned trial Court may be directed to proceed in the suit accordingly.

4. I have heard learned counsel for the petitioners and perused the documents annexed with the petition.

5. In the sequence of the events it is not disputed that the plaintiffs/petitioners filed the suit for declaration of joint title over the suit property along with defendant No.1, confirmation of their possession over their 1/5th share to each of the plaintiffs and the defendant No.1 and also for permanent injunction regarding mutation of the name of defendant No.2 over the suit property which has been filed on 13-05-2022. The issue have been framed by the learned trial Court on 29-06-2024 and proceeded for recording plaintiffs' evidence. It transpires from the impugned order dated 02-07-2026 that the plaintiffs have been examined and examination of their other witnesses are pending. After examination of the plaintiffs, they filed the application for amendment in their plaint under Order 6 Rule 17 of the CPC on 04-09-2025 and 07-11-2025. The petitioners could not dispute that the plaintiffs have been examined before the learned trial Court and their other witnesses are to be examined for which the case has been fixed.

6. The provisions of Order 6 Rule 17of the CPC provides as under:-

> "**17. Amendment of Pleadings.—**The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

7. In the case of **Vidyabai and others v. Padmalatha and another**, 2008 SCC OnLine SC 1865 the Hon'ble Supreme Court has held that once trial is commenced the plaintiff cannot be permitted to amend their pleadings and it has been held in para 10, 11 and 19 that:-

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under:

> "Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

11. From the order passed by the learned trial Judge, it is evident that the respondents had not been able to fulfil the said precondition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination-in-chief of the witness, in our opinion, would amount to "commencement of proceeding".

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to

be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

8. From perusal of the proposed amendment applications dated 04-09-2025 and 07-11-2025 it transpires that the plaintiffs sought amendment in the plaint with respect to the facts which was available to him on the date of filing of the suit itself. It is not the case where any subsequent events the plaintiffs wanted to bring into the pleadings, but the factual averments is related to prior to filing of the suit. Since the plaintiffs themselves have been examined and thereafter, they sought amendment in their plaint with respect to factual averments relating to the facts which were available to them before filing of the suit, the learned trial Court has rejected the applications considering the view taken by the Hon'ble Supreme Court in the case of **Vidyabai** (supra).

9. Having gone through the entire material produced by the petitioners in the present writ petition this Court is of the considered opinion that the learned trial Court has not committed any error in rejecting the applications and there is no jurisdictional error in the impugned order. Accordingly, the present writ petition fails and is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Aadil