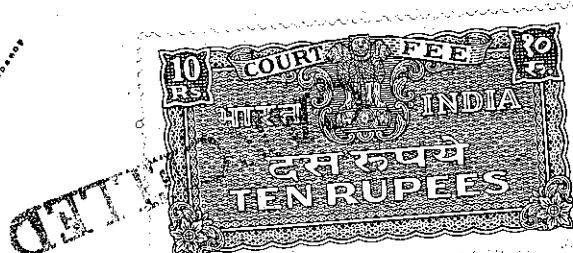


1443/2010
Rishi Sahu
29/3/2010
Petitioner
Respondent
District



C-8-102
① ④
SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR, (C.G.)

W.P. 227 NO. 1364 /2010

PETITIONER:

DEFENDANT No 1:

✓ Santosh Kumar Gupta, S/o Dr. Motilal Gupta, aged about 35 years, R/o Kota, Tah. Kota, Dist. Bilaspur (C.G.)

VERSUS

RESPONDANTS:

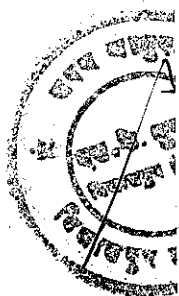
PLAINTIFFS:

✓ 1. Arun Kumar Mukharjee, S/o late Mahendra Kumar Mukharjee, aged about 56 years, R/o Vill. Kota, Tah. Kota, Dist. Bilaspur (C.G.)

DEFENDANT No. 3:

✓ 2. State of C.G., Through District Magistrate, Tah. & Dist. Bilaspur (C.G.)

PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA



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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (227) NO.1364/2010

PETITIONER:
DEFENDANT No.1:

Santosh Kumar Gupta

Versus

RESPONDENTS:

Arun Kumar Mukharjee and one another

Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.

Present: - Shri B.P.Gupta, counsel for the petitioner.
Shri Vinod Tekam, Panel lawyer for the State/respondents.

ORAL ORDER

(Passed on 31 March, 2010)

This petition under Article 227 of the Constitution of India has been filed against order dated 12/01/2010 (Annexure P-1). By the aforesaid order, plaintiff's application for amendment under Order 6 Rule 17 of Civil Procedure Code, 1908 has been allowed. By the same order, petitioner's application under Order 14 Rule 5 CPC has been disposed of by holding that the proposed issue will be considered after consequential amendment.

2. Assailing legality and validity of the impugned order, learned counsel for the petitioner argues that the application was not bonafide in as much as earlier, plaintiff's application for grant of temporary injunction was rejected on 6/09/07 holding that the plaintiff is not in possession of the suit land. The appeal preferred by the plaintiff was also dismissed by holding that he is not in possession. The application for amendment was made to overcome the objection with regard to the very maintainability of the suit. It has also been argued that the proposed amendment changes the nature of the case. Further submission of the learned counsel for the petitioner is that delay in filing amendment application has not been explained and without considering this aspect, application for amendment has been allowed. It is also submitted that the Trial Court acted malafidely



in postponing consideration of petitioner's application for framing irrational issue. Since, the petition had raised an objection with regard to maintainability of the suit, the same ought to have been decided at the earliest.

3. A perusal of application for amendment (Annexure P-11) shows that plaintiff sought amendment in the plaint on subsequent development on the averments that after rejection of injunction application, defendant No.1 and 2 have constructed boundary wall on the land in dispute and have dispossessed the plaintiff. On this alleged subsequent development, the amendment was prayed for. The suit as originally filed contained averments that the plaintiffs are in possession of the suit land and a decree for declaration of title and permanent injunction was sought. Under these circumstances, I am unable to accept the contention of the learned counsel for the petitioner that the application for amendment was not bonafide or that it changes the nature of the suit. It will always be open for the petitioner to submit consequential amendment in the written statement to deny the contents of proposed amendment. At this stage, it cannot be decided as to whether on the date of filing of the suit, plaintiff was in possession of the suit land. Findings recorded while deciding an injunction application are only prima facie consideration and not conclusive in nature. I am, therefore, of the considered opinion that no jurisdictional error or perversity has been committed by the learned Trial Court by allowing plaintiff's application for amendment of the plaint.

4. In so far as petitioner's grievance with regard to disposal of his application for framing additional issue is concerned, learned Trial Court has rightly recorded that in view of amendment of the plaint, it would be appropriate to differ consideration of the application for framing additional issue after consequential amendments. The application has not been rejected but the consideration has been differed after consequential amendments, if any. This approach of the learned Trial Court cannot be



said to be perverse or in any manner illegal. The allegation of malafide against Trial Court has been levelled without any material basis and therefore deserves rejection at the threshold.

5. Consequently, I do not find any ground warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. The petition is summarily dismissed without notice.

Sd/-
Manindra Mohan Shrivastava
Judge