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CHOT

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

**WRIT PETITION NO. 2874 /2003**

**PETITIONER**

Laxmishankar Dubey, S/o Shri  
Satyanarayan Dubey, aged 55 years, R/o  
60-A, Civil Line, (Behind Roadways Bus  
Stand), R/o Village-Baijalpur, P.O.  
Biharganj, District Pratapgarh (U.P.)  
through power of attorney holder Yogesh  
Kumar Dubey, S/o Shri Laxmishankar  
Dubey, aged 28 years, Occupation-  
Business, R/o Agrasen Chowk, Station  
Road, Durg (C.G.)

P. R. No. 2216/03  
Presented by Shri Shri K. K. Dubey  
dated 10.09.03

**-VERSUS-**

**RESPONDENT**

Dayashankar Dubey, S/o Shri  
Satyanarayan Dubey, aged 49 years, R/o  
Village-Sirsa-Khurd, Patwari Halka No.  
8, Tahsil & District Durg (C.G.)

**WRIT UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA  
FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.**



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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION NO. 2874 OF 2003**

**PETITIONER** : Laxmishankar Dubey

**Versus**

**RESPONDENT** : Dayashankar Dubey

**WRIT PETITION UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA**

**(Single Bench: Hon'ble Shri N.K. Agarwal, J.)**

**Present** : Shri Malay Shrivastava, counsel for the petitioner.  
Shri Pramod Kumar Verma, Senior Advocate with  
Shri Ashok Patil, counsel for the respondent.

**ORAL ORDER**

**(Passed on 28<sup>th</sup> day of February, 2011)**

Vide order dated 06-09-2003, the trial Court dismissed the amendment application preferred by the petitioner. Hence this petition.

2. Brief facts of the case are as under:

The petitioner/plaintiff instituted a suit claiming relief of declaration and permanent injunction. The respondent in his written statement has pleaded that he is in possession of the suit property. Therefore, the amendment was sought to incorporate in the plaint prayer for recovery of possession. The Trial Court dismissed the above prayer holding it will change the nature of the suit.

3. I have heard the learned counsel for the parties, perused the copy of plaint, amendment application and the written statement filed along with the petition.

4. Relief of recovery of possession claimed in a suit for declaration and injunction will in no way change the basic nature and character of the suit and I am unable to accept the above contention raised by Shri P.K. Verma, learned Senior Advocate.



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5. In the considered opinion of this Court, learned Trial Court was not justified in passing the impugned order and in dismissing the prayer of amendment made by the petitioner.

6. The order being not sustainable in law deserves to be and is hereby set aside. However, in the opinion of this Court, para 10(a) of the amendment application is unnecessary. The same is disallowed. Remaining amendment proposed by the above application is allowed. Learned Trial Court is directed to allow the petitioner/plaintiff to incorporate the above amendment in the plaint and shall also allow the defendant/respondent for consequential amendment.

7. The petition is allowed. No order as to costs.

Sd/-  
N.K. Agrawal  
Judge

Kvr