



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.7167 of 2010

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PETITIONER/:
(Plaintiff)

Laxman Ade, son of Late Madhav Rao Ade, aged about 70 years, then resident of Block No.4A, Street No.39, Sector-5, Bhilai, presently resident of Block No.44-B/3, Nehru Nagar (W), Bhilai Tehsil and District Durg (CG)

Versus

RESPONDENTS/:
(Defendants)

1. Chaitu, son of Parasram, aged about 52 years.
2. Punaram, son of Parasram, aged about 55 years.
3. Chiraunji Ram, son of Parasram, aged about 40 years.

All legal heirs of Champa Bai (original defendant) and residents of Baanstal, Gole Bazar Ward, Raipur (CG)

{Writ petition under Article 227 of the Constitution of India}

Present:

Mr. B.P. Sharma with Mr. Ajay Singh, counsel for the petitioner.

None present for the respondents, though served.

Single Bench: Hon'ble Mr. T.P. Sharma, J

ORDER
(31-1-2012)

1. By this writ petition under Article 227 of the Constitution of India, the petitioner has challenged legality and propriety of the order dated 22-9-2010 passed by the 4th Civil Judge Class-II, Raipur in Civil Suit No.178A/91, whereby the 4th Civil Judge Class-II has dismissed the application filed under Order 6 Rule 17 of the CPC.
2. I have heard learned counsel for the parties, perused the order impugned and copies of other documents.
3. Learned counsel for the petitioner submits that vide judgment dated 4-5-2010 passed by this Court in S.A.No.219/96, this Court has remanded the suit for providing opportunity of hearing to the parties after adducing the documents and amending the plaint. In the light of aforesaid judgment, the petitioner herein has filed elaborate application for amendment, though he has filed application for amendment of the plaint before this Court in which he has prayed for following amendment: -



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(a) After para 7 the following lines be added: -

“अतः वैकल्पिक रूप में यह निवेदन किया जाता है कि वादी को वाद संपत्ति का स्वामी घोषित कर वादी को वाद संपत्ति का कब्जा प्रतिवादी से दिलवाया जाये।”

(b) After para 11 (अ) add the following para: -

“(अ-1) वैकल्पिक रूप में वादी को वाद संपत्ति का स्वामी घोषित करते हुए वाद संपत्ति का कब्जा प्रतिवादी से दिलवाया जाये।”

Learned counsel further submits that in the light of para 14 of the judgment dated 4-5-2010, the petitioner herein has filed elaborate and detailed amendment application not inconsistent with the amendment application filed before this Court. Therefore, by dismissing the application, the Court below has committed illegality.

4. Vide judgment dated 4-5-2010 passed by this Court in S.A.No.219/96, the case was remanded to the trial Court. Para 14 of the said judgment reads as follows: -

“The claim of the title in summary suit are ancillary in nature. Considering the document filed on behalf of the appellant/plaintiff it would be necessary to afford the opportunity of hearing to both the parties to adjudicate their claim before the Trial Court. Consequently, instead of deciding the substantial question of law substantially on the basis of documentary evidence filed at this stage it would proper to remand the case for providing opportunity to the parties to adduce documents and also to provide opportunity to amend their plaint if they so wishes. Consequently, the judgment and decree of both the Courts below are hereby set aside. Case is remanded back to the 4th Civil Judge, Class-II, Raipur for providing an opportunity of adducing documentary and oral evidence in the light of document filed on behalf of the appellant/plaintiff to the parties and to provide opportunity for amending their plaint, decide the case afresh.”

5. In the light of para 14 of the said judgment, the petitioner has filed amendment application, although he has filed amendment application before this Court, but same is not inconsistent with the application filed before this Court for amendment. Consequently, by dismissing the application the Court below has committed illegality.
6. Accordingly, the petition is allowed and the order dated 22-9-2010 passed by the 4th Civil Judge Class-II, Raipur in Civil Suit No.178A/91 is hereby set aside. The application for amendment filed on behalf of the petitioner herein is allowed. The Court shall provide opportunity of consequential amendment to the respondent and decide the old suit as early as possible. No order as to costs.

Sd/-
T.P. Sharma
Judge