

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (C) No. 3367 of 2019**

-----  
Tilak Raj Mewar **Petitioner**  
Vs.  
1. Geeta Devi  
2. Manoj Kumar Tamboli  
3. Mukesh Kumar  
4. Shankar Choudhary  
5. Vijay Mewar  
6. Govind Prasad Mewar  
7. Smt. Mano Devi .... .... .... **Respondents**  
-----

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

-----  
For the Petitioner : Mr. Rajesh Kumar, Advocate  
For the Respondents : -----  
-----

**Order No. 04 : Dated 29<sup>th</sup> August, 2019**

This writ petition under Article 227 of the Constitution of India whereby and whereunder order dated 15.03.2019 passed in Title Suit No. 108 of 2005 by Civil Judge (Sr. Division)-IIIRD, Ramgarh is under challenge by which petition dated 12.09.2017 filed on behalf of plaintiff under Order VI Rule 17 read with Section 151 of the CPC has been allowed by which the amendment, as sought for in the plaint to the effect that after the word 'khas possession of the suit land' the entire sentence appearing thereafter be deleted as in its place the following be substituted "by demolishing the building/structures constructed thereon through the process of the court."

2. It is the case of the petitioner, who is defendant to the suit that the trial Court has committed gross error in allowing the petition filed under Order VI Rule 17 at the belated stage and as such the same ought not to have been allowed.

3. Learned counsel for the petitioner submits that by allowing the petitioner filed under Order VI Rule 17 CPC the interest of the petitioner has seriously been prejudiced, therefore, the order impugned is not sustainable in the eye of law.

4. This Court after hearing learned counsel for the petitioner and on appreciating the documents available on record, as also the finding recorded in the impugned order, has found that a title suit has been filed being Title Suit No. 108 of 2005 by one Sadhu Tamboli (since deceased) and Mukesh Kumar has filed suit against Most. Dhapa Devi (since deceased) and others for declaration of valid right, title and interest over the suit land, which has been purchased by the plaintiff by virtue of registered sale deed no. 2909 dated 02.11.1995 and registered sale deed no. 2967 dated 09.11.1995 from one Shailendra Kumar Chourasia alias Pappu a constituted Attorney of Deoki Ram.

5. After issuance of notice upon the petitioner/defendant, he appeared and filed a written statement in which it has been disclosed about the order passed in W.P (C) No. 1099 of 2004 and W.P. (C) No. 1245 of 2005, accordingly prayer has been made to dismiss the suit.

6. At this juncture, petition has been filed on 12.09.2017 seeking amendment in the plaint to the effect that after the word 'khas possession of the suit land' the entire sentence appearing thereafter be deleted as in its place the following be substituted "by demolishing the building/structures constructed thereon through the process of the court."

7. Rejoinder to the petition has been filed and thereafter the order has been filed by the trial Court allowing the amendment, as sought for, which is impugned in this writ petition.

8. It is not in dispute that the amendment is to be allowed as per the provision made in Code of Civil Procedure only when nature and character of the suit is not going to be changed as also it may not be allowed after framing of the issues but by virtue of amendment incorporated in the Code of Civil Procedure amendment under Order VI Rule 17 can be allowed at any stage of the suit subject to the condition that the party who is seeking amendment either the plaintiff or the defendant in the plaint or in the written statement, as the case may be, he is supposed to show the due diligence but while allowing the amendment even in case of the said due diligence the court of law while allowing the petition is to see the nature and character of the suit must not be changed.

9. Here the suit has been filed by the respondent/plaintiff and as would appear from the plaint more particularly paragraph 28 and 33 thereof, regarding the construction on the suit land, which reads as under:

*“28. That the Plaintiffs along with their friends went to the place of construction and found that actually construction by the Defendants No. 3,4,5 and 6 with the Connivance of Defendants No. 1 and 2 have been started on the land purchased by the Plaintiffs.*

*33. That it came to the knowledge of Defendants No. 1 to 6 that now the matter will be placed before the Court of Law they have started construction rapidly to damage the claim of the Plaintiffs.”*

10. It is evident from the aforesaid statement made in the plaint that the specific averment has been made in the plaint by the plaintiffs that when they went to the site they found that construction work has been started by defendant nos. 3 to 6 in connivance with defendant nos. 1 and 2 and further at paragraphs 33, it is stated that the defendants have started construction work rapidly to demolish the claim of the plaintiffs, which occasioned the petitioner to file petitioner on 12.09.2017 for seeking amendment, which has been allowed by the trial Court.

11. As has been stated herein above and that it is settled position of law that amendment cannot be allowed to be incorporated if the nature and character of the suit is going to be changed. The nature and character of the suit will be said to be changed if any foreign statement or relief is being sought for by the plaintiff in the plaint or any submission which is not pleaded by the defendant in the written statement is sought to be incorporated and if the trial Court comes to the conclusion that the said material which is now sought to be incorporated by way of amendment would change the nature and character of the suit, cannot allow the amendment.

12. As has been referred herein above, the statement made by the plaintiffs in the plaint at paragraph 28 and 33 wherein description about the construction over the land in question has been mentioned and, therefore, the amendment has been sought to get the relief to the effect that after the word 'khas possession of the suit land' the entire sentence appearing thereafter be deleted as in its place the following be

substituted “by demolishing the building/structures constructed thereon through the process of the court”, would not change the nature and character of the suit.

Certainly, if the decree would be passed against the petitioner/defendant, he will have title over the land in question as such the construction being made over there, the defendants will have no adverse consequence after the decree is passed against the said defendants, herein the present petitioner.

13. Therefore, according to conscious view of the court if such prayer has been made by way of filing amendment petition, for demolishing the building/structure constructed on the suit property, even if it would not be allowed the petitioner's interest would not be prejudiced and therefore, the nature and character of the suit will not be said to be changed.

14. Further, the trial Court after taking into consideration all the matter has allowed the amendment application and as such this Court is of the view that while doing so, the trial Court has committed no error warranting interference in the case at hand.

15. Accordingly, the writ petition is dismissed.

**(Sujit Narayan Prasad, J.)**