



2026:CGHC:3995



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NAFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

### WP227 No. 48 of 2022

**1** - Ku. Chetishtha Malik D/o Shri Aanand Malik Aged About 20 Years Power Of Attorney Holder Father Aanand Malik S/o Birakh Malik, R/o C-161, Second Floor, South City-2, Sohna Road Gurgaon Hariyana Present R/o Village Mungeli PHN-20, Tahsil And District Bemetara Chhattisgarh

**2** - Ku. Subhagya D/o Shri Aanand Malik Aged About 16 Years Petitioner No. 2, Is Minor Through Their Legal Guardian I.E. Father Namely Aanand Malik S/o Birakh Malik, Aged About 48 Years, R/o C-161, Second Floor, South City-2, Sohna Road Gurgaon Hariyana Present R/o Village Mungeli Phn-20, Tahsil And District Bemetara Chhattisgarh

**3** - Leoan S/o Shri Aanand Malik Aged About 8 Years Petitioner No. 3, Is Minor Through Their Legal Guardian I.E. Father Namely Aanand Malik S/o Birakh Malik, Aged About 48 Years, R/o C-161, Second Floor, South City-2, Sohna Road Gurgaon Hariyana Present R/o Village Mungeli Phn-20, Tahsil And District Bemetara Chhattisgarh

... **Petitioner(s)**

**versus**

**1** - Smt. Neelam Malik D/o Shri Chandra Singh Aged About 40 Years W/o Shri Aanand Malik, R/o C-161, Second Floor, South City-2, Sohna Road Gurgaon Hariyana Present R/o Village Mungeli Phn-20, Tahsil And District Bemetara Chhattisgarh

**2** - State Of Chhattisgarh Through Collector, District Bemetara Chhattisgarh

... **Respondent(s)**

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For Petitioner(s) : Shri Vaibhav A. Goverdhan, Advocate

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For Respondent No.1 : Shri Shrijan Shukla, Advocate

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For Respondent No.2 / State: Shri Abhyuday Tripathi, Panel Lawyer



**{{Hon'ble Shri Justice Sachin Singh Rajput}}**

**Order on Board**

**22/01/2026**

This petition under Article 227 of the Constitution of India is filed challenging the legality, correctness and judicial propriety of order dated 22/12/2021 passed by the 2<sup>nd</sup> Civil Judge, Class -II, Bemetara, District-Bemetara (CG) (for short 'Civil Judge') in Civil Suit No.77-A/18 whereby an application filed by the petitioner/plaintiff under Order 6 Rule 17 of Code of Civil Procedure, 1908 (for short 'CPC') was rejected.

2. Learned counsel for the petitioner submits that the petitioners/plaintiffs are the children of respondent No.1/defendant No.1. The petitioners had filed civil suit (Annexure P/2) against respondent No.1/defendant No.1 and State seeking a decree of permanent and mandatory injunction in respect of property comprised in piece of khasra No.29 area 9.30 hectares situated at P.H.No.20, village-Mungeli, District-Bemetara (CG). As per pleadings of the plaint, the said property was purchased by father of the petitioners/plaintiffs from the income of the joint family in the name of respondent No.1/defendant No.1. A memorandum of understanding was executed by and between the father of the petitioners/plaintiffs and respondent No.1/defendant No.1 on 27/08/2018 and it was agreed upon that the said property would never be sold till the plaintiffs attain the majority. The status of respondent No.1/defendant No.1 was only as a patron. As the petitioners came to know that respondent No.1 is inclined to sell the suit property, immediately, they filed a suit before the Civil Judge praying for the abovementioned relief. Written statement in the civil suit was filed wherein respondent No.1 disputed the title of the suit property and it is pleaded that the suit property was purchased by her from her own source of income and the petitioners/plaintiff does not have any right or title over the suit property. As the purchase of the suit property was only an understanding that she would be treated as caretaker/patron in respect of the suit property, it was necessary for the petitioners to seek relief for declaration of title. Thus, an application under Order 6 Rule 17 was filed on 08/11/2019 seeking amendment in the prayer clause adding the prayer of declaration of title in the suit and ancillary amendments in respect of Court fee and valuation etc. The said application was resisted by respondent No.1/defendant



No.1. Learned Civil Judge, vide impugned order held that the proposed amendment appears to be changing the nature of suit and does not appear to be of subsequent nature, issues have already been framed and the suit is pending at the stage of evidence. Thus, rejected the application.

He further submits that the cause of action to file the application for amendment arose only after the written statement filed by respondent No.1/defendant No.1 wherein she has challenged the title of the petitioners/plaintiffs over the suit property. He fairly submits that the application for amendment though is not happily worded but as per the pleadings of the plaint, it is quite vivid that the suit property was purchased in the name of respondent No.1/defendant No.1 by the father of the petitioners/plaintiffs from the income generated by the joint family and the status of respondent No.1/defendant No.1 was only of a caretaker/patron. If the petitioners/plaintiffs are not permitted to get a declaration in respect of their title, it may cause irreparable loss and they may be precluded to file a separate suit for declaration of title in view of Order 2 Rule 2 and 3 of CPC. He submits that the amendment sought does not change the nature of the suit. It is only an addition in the relief clause. The due diligence though not happily worded in the application but it can be gathered from the record that it was filed only after the cause of action arose. He placed reliance on the decision of Hon'ble Supreme Court in the case of **Rajesh K. Aggarwal and ors. v. K.K.Modi and ors., (2006) 4 SCC 385, Godwin Agro Products Ltd. and anr. v. Santokh Singh and anr., (CR No.4291/2024) and Life Insurance Corporation of India v. Sanjeev Builders Private Ltd. and ors., AIR 2022 SC 4256**. Thus, he submits that in order to do justice and for adjudication of the dispute, the application may be allowed, may be on payment of cost.

3. Refuting the submission made by Shri Goverdhan, Shri Shukla vociferously argued that the petitioner had all opportunity to file a suit for declaration of title at the beginning. Deliberately, the petitioners/plaintiffs did not file the suit seeking the abovestated relief. He further submits that the suit property was purchased by the respondent No.1/defendant No.1 from her own funds and it cannot be said that it is purchased from the funds of father of the petitioners/plaintiffs. He submits that the defence of the respondents were disclosed by filing written statement and sensing that the petitioner/plaintiff may not succeed in the civil suit, the application for amendment was filed. He further submits that the application was



hit by proviso to Order 6 Rule 17 CPC as no due diligence has been shown by the petitioners/plaintiffs as to why he was precluded to file application for amendment before the trial commenced. It is submitted that it is incumbent upon the petitioner to show due diligence in the case in hand, they failed to do so. He submits that the suit is at the stage of trial and admittedly the trial has begun and the proposed amendment would change the nature of the suit and it is not necessary for adjudication of dispute on merits. The impugned order passed by the learned Civil Judge is absolutely justified based on proper appreciation of material on record. Therefore, it does not require any interference by this Court and the writ petition is liable to be dismissed. He placed reliance on the decision of High Court of Kerala in the case of **T.V.Sasikala and anr. v. C.P. Joseph, 2020 SCC OnLine Ker 7702** which relied upon the decision of Hon'ble Supreme Court in the case of **Vidyabai v. Padmalatha, (2009) 2 SCC 409**.

4. Heard learned counsel for the parties and perused the record.
5. There is no dispute to the fact that the petitioners are children of respondent No.1/defendant No.1. The suit was filed seeking for permanent injunction in respect of the suit property. As per pleadings of the plaint, the suit property was said to be purchased by the father of the petitioners/plaintiffs from the funds of the joint family. Though it was purchased in the name of respondent No.1 but a document has been appended as memorandum of understanding to demonstrate that the status of respondent No.1 was only in respect of a caretaker/patron of the property and perusal of which indicates that the suit property was purchased by the first party i.e. father of the petitioners/husband of respondent No.1 in the name of respondent No.1/defendant No.1 from the funds collected by the parents of first party i.e father of the petitioners/plaintiff. It also indicated that the said property would devolve in the name of children i.e. petitioners herein after attaining the age of majority. This factum is required to be determined by the learned trial Court. As the title of the suit property is in shadows by virtue of the written statement filed by the petitioner, it was incumbent upon the petitioners to seek declaration in respect of their title over the suit property at the strength of memorandum of understanding.
6. The rejection of application for amendment is firstly on the count that it



would change the nature of the suit. Hon'ble Supreme Court in the case of **Rajesh**

**K. Aggarwal** (supra) in paragraph 17 observed thus-

*17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."*

7. In the case in hand also, the amendment sought in the relief clause was allowed by the Hon'ble Supreme Court. Relying upon this judgment, in identical facts situation Hon'ble Punjab and Haryana High Court in the case of **Godwin Agro Products Ltd.** (supra), in para 13 held thus-

*"13. Thus, it is evident that the declaration is being sought w.r.t. same rasta qua which the injunction was sought initially. Obviously without declaring that the plaintiffs have easementary right, injunction could not have been granted recognizing the right of the plaintiff to use the rasta on the basis of easementary right i.e. right by prescription. Thus, merely by claiming declaratory relief by way of proposed amendment, nature of suit does not get altered. Every amendment in the prayer clause does not amount to alteration in the nature of the suit."*

8. Thus, in the opinion of this Court, placing reliance on the above two judgments, the amendment which has been sought by the petitioner does not amount to change of nature of the suit. Apart from this, in the case of **T.V.Sasikala** (supra), it has been observed in paragraph 17 and 18 as under -

*17. In Vidyabai (supra), it has been held as follows :*

*"Order 6 Rule 17 CPC is couched in a mandatory form. Unless the jurisdictional fact, as envisaged in the proviso to Order 6 Rule 17 CPC is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint. 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.”*

*18. The burden is on the person who seeks an amendment after commencement of the trial to show that inspite of due diligence, such an amendment could not have been sought earlier (See Revanna v. Anjanamma, AIR 2019 SC 940)*

9. Thus, the controversy involved in this case required to be adjudicated by the learned Civil Judge, thus, in the opinion of this Court, rejection of the application for amendment by the learned Civil Judge that it would amount to change of nature of the suit does not appear to be correct or proper. The application was also rejected on the second count that it is belatedly filed and the suit is listed for evidence and issues have already been framed. Ofcourse, the application for amendment is not happily worded but the fact remains that the application was filed after the written statement was filed. Ofcourse, the suit was fixed for evidence but it appears that the witnesses have not been examined. The right of the petitioners to claim the title over the suit property cannot be brushed aside simply on the fact that they have filed the application belatedly. The other party has right to have consequential amendment. Making an amendment in the plaint, improving the pleading or the relief clause would not *ipso facto* mean the proof of the pleadings. The petitioners are still required to prove the same by way of cogent and prudent evidence. The respondent would also be at liberty to contest the same and prove it otherwise.

10. In view of above, this Court is of the opinion that the order passed by the learned trial court is required to be set aside and is hereby set aside. The application filed by the petitioners/plaintiffs for amendment under Order 6 Rule 17 CPC is allowed. With due respect, the case law cited by learned counsel for respondent No.1/defendant No.1, in the given facts and circumstances and discretion made herein above, does not come to his rescue. The petitioners/plaintiffs shall carry out amendment within a period of 15 days from the next date of hearing before the learned Civil Judge. The respondent No.1/defendant No.1 shall be entitled to file consequential amendment if so desired. This Court imposes a cost of Rs.5,000/- on the petitioners/plaintiffs to be



paid to respondent no.1/ defendant No.1. It is made clear that if cost is not paid on or before the next date of hearing before the learned Civil Judge, the application under Order 6 Rule 17 CPC would be treated to be dismissed. The writ petition is accordingly allowed.

Sd/-

({Sachin Singh Rajput})

**JUDGE**