



HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 962 of 2000

SMT. BASDEYI DIED AND DELETED *versus* TILAKDHARI MISHRA (DIED)

Order Sheet

<u>29.07.2025</u>	Mr. Y. C. Sharma, Senior Advocate, along with Ms. Pooja Loniya, Advocate, for the appellant(s). Dr. N. K. Shukla, Senior Advocate, along with Mr. Dinesh Bole and Mr. Nitikesh Gupta, Advocates, for the respondent(s). Heard on I.A. No. 33/2025, an application for amendment of plaint under Order VI Rule 17 of the CPC. Mr. Sharma, learned Senior Counsel appearing for the appellants would submit that an additional substantial question of law was framed vide order dated 09.05.2025, and therefore, occasion has arisen for the appellants to move the present



application seeking amendment of the pleadings. He contends that the late Prabhunath Mishra had executed a will deed dated 07.09.1976 in favour of the appellant and her daughter. The subsequent will deed was not properly challenged before the learned trial Court. He further submits that Civil Suit No. 55A/1986 was decided on 16.01.1997, wherein it was pleaded that a will was executed by late Prabhunath Mishra in favour of Basdeyi Devi and Mangleshwari Devi on 07.09.1976, which was never challenged by the plaintiff. He submits that witnesses were examined to prove the due execution of the said will, and the Nazul Officer had passed an order of mutation in favour of the defendant and her daughter, and order dated 03.05.1982 was challenged before the Collector. He prays that the application may be allowed.

On the other hand, Dr. Shukla, learned Senior Counsel for the respondent(s) would submit that the facts stated in the amendment application were within the knowledge of the appellants/defendants at the time of filing of the written statement before the learned trial Court. He further submits that most of the issues have already been adjudicated by the learned trial Court as well as by the first appellate Court. He



contends that in view of the proviso appended to Order VI Rule 17 of the CPC, the application at this belated stage ought not to be allowed.

Heard.

The application was filed on 02.07.2025 after the framing of an additional substantial question of law on 09.05.2025. However, it appears that the proposed amendment has no nexus with the newly framed substantial question of law.

The facts sought to be incorporated by way of amendment were well within the knowledge of the appellants/defendants at the time of filing of the written statement before the learned trial Court. Despite this, no steps were taken by the appellants before the Courts below. The present second appeal was instituted in the year 2000, and the application for amendment has been filed after a lapse of 25 years.

Order VI Rule 17 of the CPC reads as under:

“[17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such



Nadim	terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.” It appears that application has been moved at belated stage, after commencement of trial, therefore, in my opinion, application (I.A. No.33/2025) is liable to be and is hereby rejected. With the consent of the parties, call this matter for final disposal at the motion stage hearing on 12.08.2025. Sd/- (Rakesh Mohan Pandey) Judge
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