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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 808 of 2022

1. Hetram Dewangan S/o Late Sunauram, Aged About 60 Years R/o Village Rakshapali, Tahsil Kharsiya District : Raigarh, Chhattisgarh (Defendant No.5),

2. Shanti D/o Late Sunauram Dewangan, W/o Tikam Dewangan Aged About 65 Years R/o Village Mura Tahsil Kharsiya District : Raigarh, Chhattisgarh (Defendant No.6)

3. Kusum D/o Late Sunauram Dewangan, W/o Liladhar Dewangan Aged About 57 Years R/o Village Kaserpara Sakti, Tahsil Sakti At Present District Sakti (C.G.)(Defendant No.8)

4. Sevati D/o Late Sunauram Dewangan, W/o Netram Dewangan Aged About 51 Years R/o Saranggarh, Tahsil Sarangarh District : Raigarh, Chhattisgarh (Defendant No.9)

5. Parwati D/o Late Sunauram Dewangan, W/o Surendra Dewangan Aged About 51 Years R/o SECL Gevra Project Urja Nagar Quarter No. M 222 Korba, Tahsil Korba District : Korba, Chhattisgarh (Defendant No.10),

6. Bhoj Bai D/o Late Sunauram, W/o Mahadev Dewangan Aged About 48 Years R/o Village Jhul Kadam Sothi, Sakti Tahsil Sakti At Present District Sakti (C.G.) (Defendant No.11)

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The petitioner No.2 to 6 through Power Of Attorney Holder Hetram Dewangan i.e. petitioner No.1.

---- Petitioner

Versus

1. Yadram Dewangan S/o Sahebram Aged About 47 Years R/o Village Rakshapali Tahsil Kharsiya District : Raigarh, Chhattisgarh (Plaintiff No.1),

2. Premshankar S/o Sahebram Aged About 45 Years R/o village Rakshapali, Tahsil Kharsiya District : Raigarh, Chhattisgarh (Plaintiff No.2),

3. Chaitanaya Prasad S/o Sahebram Aged About 42 Years R/o village Rakshapali, Tahsil Kharsiya, District Raigarh (CG) (Defendant No.1)

4. Pili Bai W/o Moolchand Aged About 38 Years R/o Village Darrabhatha, Sakti Tahsil and District Sakti (CG) (Defendant No.2)

5. Usha Bai W/o Manharan Aged About 47 Years R/o FCI Godown Kabir Chowk Tahsil and District : Raigarh, Chhattisgarh (Defendant No.3)

6. State Of Chhattisgarh Through Collector Raigarh District : Raigarh, Chhattisgarh (Defendant No.4),

7. Bhagvat S/o Balram Dewangan Aged About 33 Years (Defendant No.12)

8. Pitambar S/o Balram Dewangan, Aged About 31 Years (Defendant No.13)

9. Firantin D/o Balram Dewangan, Aged About 29 Years (Defendant No.14)

10. Vinod S/o Balram Dewangan Aged About 27 Years (Defendant No.15)

Respondents 7 to 10 R/o Seoni, Near Nahar Colony, Champa Tahsil Champa District : Janjgir-Champa, Chhattisgarh

---- Respondent

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For Petitioners Mr. Ram Kumar Tiwari, Advocate

SB.: Hon'ble Mr. Justice Deepak Kumar Tiwari
Order On Board

2/1/2023

1. Heard.

2. The petitioners have filed this petition being aggrieved with the order dated 14.9.2022 passed by the First Civil Judge, Class-II, Kharsia District Raigarh (CG) in Civil Suit No.A/29/2012, whereby, the application preferred by the petitioners under Order 6 Rule 17 of CPC, was dismissed.

3. Considering the nature of the case, the notice to the respondents is dispensed with.

4. Learned counsel for the petitioners submits that the plaintiffs/respondents 1 & 2 had filed a civil suit for declaration of title, partition, separate possession and permanent injunction against the petitioners as well as other defendants alleging that the suit land is ancestral property. The petitioners have denied the contents of the plaint and also filed a counter plaint. He submits that during pendency of the case, since defendant No.7 Malti @ Chandrakumari died and on account of her death, the share of the petitioners also increased, they moved an application for amendment but such application has been dismissed on the ground of delay itself. Hence, he prays to interfere with the impugned order.

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5. Heard learned counsel for the petitioners and perused the documents filed along with the petition.

6. Having considered the submissions of learned counsel for the petitioners as also considering the entire facts' situation of the case, it appears that the amendment was sought on account of the subsequent development i.e. death of defendant No.7 Malti @ Chandrakumari, which took place during pendency of the case and in consequence of which, some modification was required with regard to the share of the parties and to fulfill the said purpose, an application for amendment was moved but the concerned Court only on the ground of delay, dismissed the said application.

7. It is well settled in the matter of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another***

reported in ***AIR 2022 SC 4256.***, that the delay in applying for amendment alone is not a ground to disallow the prayer. In dealing with a prayer for amendment of pleadings, the Court should avoid a hypertechnical approach and is ordinarily required to be liberal.

8. In the instant case, considering the nature of amendment, this Court finds it appropriate to allow the petition. However, it is directed after such amendment is carried out, the other side be also given an opportunity to move an application for consequential amendment.

9. With the aforesaid observations, the petition is allowed.

10. Consequently, the impugned order dated 14.9.2022 is quashed.

11. A copy of this order be sent to the concerned Court for necessary compliance.

Sd/-

(Deepak Kumar Tiwari)
Judge

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