

(2018) 07 CHH CK 0380
Chhattisgarh High Court
Case No: WP227 No. 648 Of 2018

Mukesh Das

APPELLANT

Vs

Nira Bai Navrang And Ors

RESPONDENT

Date of Decision: July 31, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 151, Order 2 Rule 2, Order 6 Rule 17
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: B.P. Gupta, S.K. Mishra

Final Decision: Dismissed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the order dated 08.05.2018, wherein the trial Court has allowed the application filed by the plaintiff under Order 6

Rule 17 read with Section 151 CPC. The order as would reflect that a civil suit was filed by the plaintiff for declaration, permanent injunction along

with claiming declaration of the WILL dated 31.08.2012 as nullity. During the pendency of this civil suit an application under Order 6 Rule 17 read

with Section 151 CPC was moved after the evidence of the plaintiff, wherein the plaintiff claimed for possession of the land. The learned trial Court

has allowed the same on the ground that allowing the amendment would not change the nature of the suit only the possession has been prayed for and

further to avoid the multiplicity of the proceeding of the civil suit, the amendment was allowed.

3. Learned counsel for the petitioner submits that after closure of the evidence of the plaintiff, the said application has been filed without any explanation thereof, therefore, the same could not have been allowed.

4. Perusal of the order, record and the application would show that the amendment was sought for claiming the possession in respect of the land. It is

not in dispute that the amendment has been sought for same suit property, therefore, if the amendment is allowed when the evidence of both the

parties have not yet concluded, then in such case, it cannot be said that amendment has caused any prejudice to the petitioner/defendant as otherwise

disallowing the application for amendment would amount to closure of right of plaintiff in future as he could not bring further suit for the same property

for possession as it would be barred under Order 2 Rule 2 CPC. Considering the nature of the amendment it cannot be said that the trial Court has

exceeded its jurisdiction vested in it.

5. In view of the above, I do not find any merit in this petition warranting interference by this Court in exercise of powers under Article 227 of the

Constitution of India. Accordingly the petition is dismissed.