

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.342 OF 2016

Nirmala Adhikari (Panda)

....

Petitioner

Mr.B.Routray, Sr. Adv.

-versus-

Swapan Kumar Padhi & ors.

....

Opposite Party(s)

Mr.R.K.Sahu, Adv. For O.P.4

CORAM:

JUSTICE BISWANATH RATH

ORDER

11.3.2022

Order

No.

10.

1. Heard learned counsel for the Petitioners and learned counsel for O.P.4.

2. This Petition involves rejection of an Application under Order 6 Rule 17 of C.P.C. at the instance of the Plaintiff. The Suit was filed in the year 2012 and the amendment petition undisputedly was brought on 20.12.2014 undisputedly before commencement of trial of the Suit. Considering the amendment taken together with the objection of the Defendants, the trial court has come to reject the amendment petition. Hence, this petition.

3. Taking this Court to the prayer of the proposed amendment, Mr.B.Routray, learned senior counsel for the Petitioner submitted that pleading having not been sought to be changed and only

additional prayer sought to be applied, looking to the stage of the proceeding, there was no obstruction in fact in allowing such Petition. Mr.Routray, learned senior counsel also contended that for the nature of the proposed amendment, it is on the other hand allowing such amendment would be avoiding multiplicity of litigations, as deciding all disputes in one go. Taking this Court to the observation of the lower court, learned senior counsel for the Petitioner prayed this Court for interfering with the impugned order and allowing it.

4. Mr.R.K.Sahu, learned counsel for one of the Defendants, the contesting O.P.4, however in his objection to the claim of the Petitioner contended that the Suit being filed in 2012 with a particular prayer involved therein, even assuming there was no change in the pleading but allowing the proposed amendment would be allowing entertaining further relief and a different contest all together. Mr.Sahu, learned counsel for O.P.4 taking this Court to the proposed amendment to the Plaint contended that the prayer also remaining to be highly belated even entering into raising of valuation of suit. It is at this stage of the matter, Mr. Sahu attempted to justify the impugned order on the premises that in the event such amendment is allowed at this stage of the matter, there would be

definite prejudice to O.P.4. Thus there is an attempt to justify the impugned order.

5. Considering the rival contentions of the Parties, this Court finds, in the Suit the original prayer remains as follows :-

“It is prayed therefore that the Hon’ble Court be pleased to

- i) Direct the Defendant No.1 and also the Defendant No.6, Smt. Purnabasi Panigrahi to dismantle the encroachment and remove the materials which he had brought into the suit site and in the alternative the encroached structures be removed by due process of law at the cost of the Defendant No.1.
- ii) Grant payment of compensation of Rs.20,000/- estimated to be cost of all damages for removal of trees and damages caused to cemented platform round the well, and
- iii) Grant such other reliefs as are found to be available to the Plaintiff under the circumstances of the case.”

6. Looking to the Amendment Petition at Annexure-3, this Court finds, there is no dispute that there is no request for bringing additional plea. The Amendment Petition only contains additional prayer and as a consequence also some statement in relation to change in the valuation of the Suit showing preparedness to pay additional Court-Fee, if any. Considering the request through the Order 6 Rule 17 of C.P.C. Petition and taking into account the attempt only to bring additional prayer vis-à-vis increasing the valuation thereby, for the opinion of this Court, since the Suit was pending on the file of the Civil Judge (Sr.Divn.), Berhampur, there

was even no possibility of transfer of the Suit to the appropriate court, as there was no involvement of different court jurisdiction even assuming the additional value. It is at this stage, again going through the nature of amendment sought for, this Court finds, there is no attempt for brining additional pleading in the Plaint. The Petition rests only brining additional prayer, in the event there is also no necessity for bringing a detailed additional written statement except her additional written statement in the event of any opposition to such decree. Further looking to the stage of the matter bringing such Petition, trial yet to be commenced, as the additional prayer would avoid multiplicity of litigations, in the interest of justice, such amendment should have been brought to case purview. It is in the circumstance, considering the observation of the trial court, this Court finds, there has been no proper consideration in deciding such matter.

7. For the view of this Court herein, this Court interfering with the impugned order dated 16.2.2016 passed in C.S. No.6/2012 and setting aside the same allows the proposed amendment. While permitting the Plaintiff to bring the amended Plaint within seven days of receipt of copy of this order on service of the same on the Defendants, permit the Defendants for their bringing additional written statement, if any, within a further period of ten days. The

Suit since pending consideration for operation of the interim order here, while vacating the interim order of this Court dated 4.3.2016 passed in Misc. Case No.340/2016, this Court directs the trial court to proceed in the trial of the Suit and conclude the same within a period of nine months.

8. The C.M.P. stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout

