

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 1099 OF 2012

Smt. Rekha Sarangi

....

Petitioner

Mr. Maheswar Mohanty, Advocate

-versus-

Collector, Balasore and another

....

Opp. Parties

Mr. Suvashish Pattnaik,

Additional Government Advocate

Mr. S.B. Jena, Advocate

(For Opp. Party No.2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.09.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. Although this matter is listed for extension of the interim order, on consent of learned counsel for the parties, it is taken up for final disposal.
3. The Petitioner in this writ petition seeks to assail the order dated 7th January, 2012 (Annexure-5) passed by learned Civil Judge (Junior Division), Balasore in C.S. No. 713 of 1990, whereby an application under Order VI Rule 17 C.P.C. filed by the Plaintiff-Petitioner has been dismissed.
4. Mr. Mohanty, learned counsel for the Petitioner submits that the suit has been filed for declaration and permanent injunction as well as consequential relief. After the death of original Plaintiff, the present Petitioner was substituted, who detected that the suit is undervalued. Hence, he filed an application proposing for the following amendment:

“1. In para 23 of the plaint the word “500” be deleted and in its place the word “55,000/-” be inserted and Rs.22.50 are deleted and in its place “Rs.750/-” be inserted, Rs.23.55 be deleted in its place Rs.751.05P. be

inserted. Further in the last line of paragraph 23 following sentence are added "plaintiff is a lady she is exempted of payment of court fee as per provision sec. 35 of the court fees Act.

2. That in the cause title of the plaint after defendants column suit for declaration of title and permanent injunction valued at Rs.510/- be deleted and in its place Rs.55,010/- be inserted."

5. Learned trial Court misconstruing the fact that the Petitioner has not shown any due diligence in approaching the Court for amendment of valuation of the suit and court fee rejected the petition. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that proviso to Order VI Rule 17 C.P.C. is not applicable to the present suit as it is of the year, 1990. The proviso is only applicable to the suit filed after the Civil Procedure Code was amended in 2002. As such, the ground on which the petition was rejected is not sustainable in the eyes of law. On the other hand, the proposed amendment in enhancing the valuation of the suit and court fee is required for just adjudication of the case. As such, he prays for setting aside the impugned order and to permit him to amend the plaint accordingly.

6. Mr. Jena, learned counsel for the Opposite Party No.2 submits that the amendment sought for is not *bona fide*. The suit is of the year, 1990 and the petition for amendment was filed in the year, 2011, when the suit was posted for hearing. The Petitioner has not shown any reason as to why there was an inordinate delay in filing such petition. In that view of the matter, learned trial Court has rightly observed that the Petitioner has not shown any due diligence in filing the petition at a belated stage.

7. Mr. Pattanaik, learned Additional Government appearing for Opposite Party No. 1 submits that amendment sought for with an intention to take away the suit from the jurisdiction of learned trial Court. Such an attempt should not be encouraged by way of amendment. Hence, he prays for dismissal of the writ petition.

8. Upon hearing learned counsel for the parties, this Court finds that the suit was initially valued at Rs.510/- and subsequently, the Plaintiff by way of amendment prayed for enhancement of valuation of the suit to Rs.55,000/-. No reason has been assigned by the Plaintiff for enhancement of valuation of the relief claimed.

9. On perusal of the petition under Order VI Rule 17 C.P.C., it appears that the Petitioner by way such amendment is trying to enhance the valuation of the suit, which will be beyond the pecuniary jurisdiction of learned trial Court. Such an attempt should not be encouraged by the Court in absence of any valid reason thereto. As no material is available on record for seeking enhancement of valuation of the suit from Rs.510/- to Rs.55,000/-, I am not inclined to entertain the writ petition. Accordingly, the writ petition being devoid of any merit stands dismissed.

10. Since the suit is of the year, 1990, learned trial Court shall do well to make an endeavour for early disposal of the suit.

11. The interim order dated 2nd February, 2012 passed in Misc. Case No. 941 of 2012 stands vacated.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge