

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9862 of 2012

Biswamohan Mishra

Petitioner
....
Mr. T. K. Mishra, Advocate

-versus-

Radharani Mishra and another

Opposite Parties
...

M/s. D. Dhal and associates, Advocates

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
16.09.2022**

- 06.
1. The present petition has been filed challenging the order dated 19th May, 2012 passed by the learned Civil Judge, Junior Division, 1st Court, Cuttack in an application filed in CS No.18 of 2009 under Order 6 Rule 17 seeking to amend the plaint.
 2. The amendment was sought 3 years after the filing of the suit to bring on record some purported typographical mistakes and some facts concerning the area of the land in question, which had been claimed by the Plaintiff/Petitioner.
 3. The above amendment was resisted by the Opposite Parties/Defendants by pointing out that the facts pleaded by way of amendment were already within the knowledge of the Petitioner/Plaintiff, and that the Plaintiff need not have waited till at the stage of the cross-examination of the Amin i.e. C.W.1 to file the amendment application and that it would interminably delay the adjudication of the suit itself.

4. The trial Court has agreed with the Defendants and rejected the application for amendment.

5. Having heard learned counsel for the parties, the Court is of the view that no error can be found in the impugned order of the trial Court. The case of the Plaintiff was that he had purchased Acre 0.83 decimal of land whereas in the Hal RoR, it was recorded as Acre 0.79 decimal. The counter claim by the Defendants was that the Defendants had purchased Acre 0.50 decimal of land but the vendor had in turn purchased only Acre 0.49 decimal of land from her vendor. The counter claim was filed on 7th September, 2009 itself. In other words, the fact regarding the difference in measurement was known to the Plaintiff in September, 2009 itself. However, the amendment application was moved more than 2 years later in 2012.

6. In the circumstances, the decision of the trial Court disallowing the amendment application cannot be faulted.

7. The petition is accordingly dismissed. The interim order passed earlier stands vacated. A copy of this order be communicated to the concerned Court i.e. Civil Judge, Junior Division, 1st Court, Cuttack, forthwith.

(Dr. S. Muralidhar)
Chief Justice