

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 17367 OF 2008

Brajabandhu Sahoo and others* *Petitioners

Ms. Sumitra Mohanty, Advocate

-versus-

Kalandi Sahu and another* *Opp. Parties

None

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
22.11.2022**

Order No.

10. 1. This matter is taken up through hybrid mode.
2. Although this matter is listed for consideration of interim applications, this Court while adjudicating the same felt that merit of the case has to be gone into. Hence, on consent of learned counsel for the Petitioners and keeping in mind that the suit is of the year, 2002, this writ petition is taken up for final disposal.
3. The Petitioners in this writ petition seek to assail the order dated 19th November, 2008 (Annexure-1) passed by learned Civil Judge (Junior Division), Bhubaneswar in T.S. No.188 of 2002, whereby he allowed the application under Order VI Rule 17 C.P.C.
4. Ms. Mohanty, learned counsel submits that the Defendants are the Petitioners in this writ petition. On appearance, the Defendants-Petitioners filed their written statement taking a ground that they have acquired title over the suit land by virtue of a sale deed executed in the year, 1951. The written statement was filed as early as on 4th July, 2002 (Annexure-3). After the written statement was filed, the

Plaintiffs had filed an application for amendment of the plaint, which was allowed and attained its finality being not challenged. Subsequently, the Plaintiffs filed another application under Order VI Rule 17 C.P.C. on 30th September, 2008 under Annexure-4, which was allowed vide order dated 19th November, 2008 under Annexure-1. The said order is under challenge in this writ petition.

5. It is submitted by Ms. Mohanty, learned counsel that the Defendants-Petitioners had filed their objection to the petition for amendment stating that the proposed amendment sought for is barred by limitation. The amendment, if allowed, will change the nature and character of the suit. It is further submitted that the amendment suffers from delay and laches along with other grounds. Learned trial Court without considering the objection raised by the Defendants in its proper perspective, allowed the application under Order VI Rule 17 C.P.C. holding that the amendment is required for just adjudication of the suit. It is further submitted that while considering the application, the objection raised by the Defendants-Petitioners should have been taken into consideration by learned trial Court. As such, the impugned order under Annexure-1 is not sustainable in the eyes of law and is liable to be set aside.

6. Although, Opposite Parties are represented through the counsel, none appears at the time of call.

7. Upon hearing learned counsel for the Petitioners and the counter affidavit filed by the Opposite Parties, this Court finds that the Defendants-Petitioners claim their right through the sale deed executed in the year 1951. Hence, validity of the sale deed executed in the year, 1951 is a vital issue to be considered in the

suit itself. It is, of course, submitted by Ms. Mohanty, learned counsel for the Petitioners that the relief sought for by way of amendment is barred by limitation, the same is a matter of adjudication by leading cogent evidence to that effect. Further it appears that the trial of the suit has not yet commenced. Delay in filing the application for amendment of the plaint can be compensated by payment of cost, which has also been taken into consideration by learned trial Court while adjudicating the petition.

8. In view of the discussion made above, this Court finds that learned trial Court has committed no error in allowing the application for amendment of the plaint. It is however, made clear that the Defendants-Petitioners shall be allowed to file their additional written statement in view of the amendment of the plaint.

9. Since the suit is of the year, 2002, learned trial Court shall make an endeavour for expeditious disposal of the suit, if necessary by adhering to the procedure laid down under Order XVII Rule 1 C.P.C. Parties are also directed to co-operate with learned trial Court for early disposal of the suit.

10. With the aforesaid observation and direction, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge