

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9929 of 2003

Arnapurna Dibya & Anr.

....

Petitioner(s)

Mr. P.K. Rath,
Advocate

-versus-

***Rama Chandra Dash @ Ramakanta
Dash & Anr.***

....

Opposite Party(s)

Mr. P.K. Kar,
Advocate for O.Ps.1 & 2

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
08.07.2022**

Order No.

07.

1. This matter involves rejection of an application at the instance of the defendant.
2. Referring to the proposed amendment and reading together with the pleadings of the defendant already existed in paragraph no.10 of the written statement at page 21 of the brief, Mr. Rath, learned counsel for the defendant-Petitioners attempted to demonstrate that the proposed amendment was nothing, but explaining and bringing in documents in consonance with the pleadings already available in paragraph no.10 of the written statement. Taking this Court to the impugned order Mr. Rath, learned counsel for the Petitioners alleged that there is mechanical rejection of the amendment application.
3. In his opposition learned counsel for the Opposite Party Nos.1 & 2 submits that since the written statement is already borne from the pleadings involving the development through the proposed amendment, nothing prevented the defendants from making the proper

pleadings through paragraph no.10 at the time of filing of the written statement. Learned counsel for the Opposite Party Nos.1 & 2 further alleged that for the timing of the proposed amendment, there is serious prejudice to the plaintiffs, in the event such amendment is allowed. Accordingly learned counsel for the Opposite Party Nos.1 & 2 prayed for dismissal of the writ petition.

4. Taking into account the rival contentions of the parties and reading the paragraph no.10 of the written statement this Court finds, the pleadings in paragraph no.10 reads as follows:

“10. That while Hrushikesh was living in separate mess and residence from Dassarith, Ramachandra and Basanta and dissention became more and as such the suit land along with other lands was partitioned in the year 1962 between Hrushikesh in one side and Dasarath, Rama-chandra and Basanta in other side and as such the suit land along with other lands was exclusively allotted in favour of Hrushikesh in the said partition. For the reason stated above Hrushikesh became the exclusive owner in possession over the suit lands along with other lands having his thatched residential house over the same portion of the suit lands and was residing with the debts and rest portion was used as bari over which he used to raise seasonal vegetables and enjoying usufruct there from oach and ever year. More the said Hrushikesh planted may valuable trees like cocoanut trees, mango trees and etc.

5. This Court here also takes into account the proposed amendment, which reads as follows:

“ **Proposed Amendment**

In para 10 in the last line after the word “and etc.” the following words “It is pertinent to mention here that the partition has been affected on dt.10.12.62 between Hrusikesh Dash and Rama Chandra, (*sic.*) and Basanta, in presence of the local gentries and which has been reduced to writing and both the side

had supplied one copy each. Moreover the defendants had applied to the Electric Department (*sic.*) 1978 for electric connection as a consumer and the same has been approved by the appropriate authority and since that date the residential house of the defendants has been electrified and the defendants are paying the electric rent and obtaining receipts and the new building has been electrified with the previous connection be added.

In documents relied on after Sl.No.6 “Sl.No.7” Bantan Patra” Sl.8 Electric Bills Approval letter, Sl. No.9 Consumer card, Sl.No.10 – Other documents” be added.”

6. Reading together the above, this Court finds, there is already existence of the allegation on the previous partition in the written statement, through the proposed amendment, there has been attempt to bring the plea already existed in the written statement. Further looking to the nature of the suit being a partition suit, claim of the defendants on the existing material to support previous partition could not be ignored. Failure of which there may not be effective adjudication of such suit. In the process this Court finds, there is mechanical rejection of the amendment application.

7. This Court, therefore, in interference in the impugned order at Annexure-1, as a consequence at this stage getting into the further impugned order at Annexure-5, this Court finds, the revisional order is justified, however, for the interference in the order at Annexure-1, there is no prejudice to the defendants otherwise, even if there is no interference in the order at Annexure-5. It is, however, considering the timing of the amendment to the written statement by the defendants, this Court finds, there is definite prejudice to the plaintiffs for the loss of time in final adjudication of proceedings. Thus while interfering in the impugned order and allowing the amendment application and also

permitting the Petitioners to file amended written statement within a period of fifteen days hence, this Court also imposes a cost of Rs.1,000/- (rupees one thousand) only on the defendant-Petitioners, which is paid in Court today to the learned counsel for the Opposite Party Nos.1 & 2.

8. Since the suit is of the year 1993, the trial court is directed to conclude the trial within a period of four months from the date of production of an authenticated copy of this order along with the written statement by the Petitioners.

9. Since Mr. Rath, learned counsel for the Petitioners submitted that there is death of Opposite Party No.1 during pendency of suit, the Petitioners are permitted to take steps for substitution in respect of the deceased Opposite Party No.1 in trial of the suit, which will be considered in accordance with law.

10. The writ petition stands disposed of with the above direction. Interim order passed earlier stands vacated.

(Biswanath Rath)
Judge