

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5296 of 2004

***Rabindranath Khilar @ Rasindra
Khilar***

....

Petitioner(s)

Mr. N.P. Parija,
Advocate

-versus-

Kailash Barik & Ors.

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
24.08.2022**

Order No.

04.

1. This writ petition involves a challenge to the order of rejection of the amendment application during pendency of the trial court proceeding at the instance of the plaintiff.

2. This matter was entertained on 30.09.2004 with interim order vide order no.3 thereby directing stay of further proceeding in T.S. No.9/2 of 1989/98 pending before the learned Civil Judge (Jr. Divn.), Barbil until further orders and the suit could not be tried as of now. The suit by now is already 33 years. While deprecating such long pendency this Court observes, time has come to find special measures for disposal of such miscellaneous proceedings pending in the guise of writ petition. This Court accordingly directs the Registry to make special categorization of such miscellaneous disputes so as to listing of such matters before assigned Benches no sooner than the appearance in such matters gets completed. To find immediate service of notice on the party to contest there is no difficulty in also directing for dasti

service of notice on Advocate for such contesting party in the trial court for expediting the hearing while also directing for issuing notice.

3. Even though Mr. Parija, learned counsel for the Petitioner claims, there has been filing of requisites for issuing notice to the Opposite Parties, but this Court on perusal of the note sheet finds, there is no noting regarding receipt of requisites. However, the Office note dated 9.11.2004 discloses notice to have been issued to the Opposite Parties fixing it to 10.12.2004. For there is already issuing of notice on filing of the requisites and further since the stay order dated 30.09.2004 is already communicated to the trial court; it can be reasonably believed that there is deliberate default by the contesting Opposite Parties. This Court, therefore, records deliberate non-appearance by the Opposite Parties. The matter is, therefore, considered only hearing the submission of Mr. Parija, learned counsel for the Petitioner.

4. Keeping in view the grounds raised herein and perusing the amendment application at Annexure-3, this Court finds, the followings are the proposed amendment:-

“(i) That, after the end of para-5 of the plaint the following be added “Due to disturbance from the side of defendant No.5 for the suit land the plaintiffs father initiated a Crl. Misc. Case No.67/76 which ended in compromise and accordingly court order was passed. Before such petition before the court there was a village Panchayat where defendant No.5 admitted the possession of plaintiff and also relinquished claims over the suit land for which necessary papers were prepared so also one Kailash Barik deft. No.1 also given investing before O.I.C. Bamebari Out Post regarding the possession of the plaintiff over the suit land.

(ii) That, the averments of para-13 be deleted and its place the following be added “That, the suit is valued at Rs.2500/- being the value of the suit land and Rs.100/- for the relief of permanent injunction accordingly the total valuation is of Rs.2600/- and

advolorem court fees worth of Rs.344.25 is payable thereon.

(iii) That, in the prayer portion of the plaint after prayer no.1 the following be added

“the Hon’ble Court further be pleased to pass a decree declaring the right, title, interest of the plaintiff over the suit land.”

5. Looking to the proposed amendment placed on record this Court finds, there is attempt for enlargement of the suit bringing the suit for injunction to a suit for declaration. Attempt of the Plaintiff-Petitioner appears to be avoiding multiplicity of litigation. Since the suit was pending, there is possibility of additional written statement depending on the amendment and the amendment sought for appears to be in the interest of both the parties.

6. In the circumstance and perusing the reason of rejection of the amendment application, this Court is of the opinion that there has been mechanical disposal of the application and wrong understanding of the provision of amendment under the C.P.C by the trial court. In the process, this Court interfering in the impugned order at Annexure-4 sets aside the same and as a consequence allows the application for amendment vide Annexure-3 and directs the plaintiff to file amended plaint along with a copy of the order of this Court before the trial court within a period of seven working days hence. Further, considering the suffering of the Opposite Parties for the delayed attempt of amendment by the plaintiff, this Court imposes a cost of Rs.5,000/- (rupees five thousand) only on the Plaintiff-Petitioner to be paid to the contesting defendants in the trial court also on the date of filing of the amended plaint.

7. Considering that the suit is pending originally since 1989 and renumbered in 1998, this Court further directs the trial court to allow

two weeks' time from the date of filing of the amended written statement to the contesting defendants to file their response and make all attempt to complete the proceedings finally within six months from the date of filing of the amended plaint.

8. The writ petition stands disposed of.

9. Copy of this order be also brought to the notice of the Registrar (Judicial) to take care of the direction of this Court vide para-2.

(Biswanath Rath)
Judge

Ayaskanta Jena

