

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 167 OF 2018

Bidhu Bhusan Behera

Petitioner

Mr. Mritunjay Banerjee, Advocate

-versus-

Rabindranath Behera and another

.... Opp. Parties

Mr. Kalyan Pattnaik, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.07.2022

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 15th January, 2018 (Annexure-6) passed by learned Civil Judge (Senior Division), Puri in C.S. No.75 of 2015, whereby an application filed by the Plaintiff-Petitioner under Order VI Rule 17 C.P.C. has been rejected.
 3. Mr. Banerjee, learned counsel for the Petitioner submits that C.S. No.75 of 2015 has been filed for partition of the suit schedule property, which was purchased jointly by the Plaintiff and Defendants. Pursuant to the direction to the Defendants to begin the hearing of the suit, Defendant No.1 led evidence in the matter and exhibited the R.O.R. in respect of the suit property as Ext.A. However, the witness examined on behalf of Defendants further deposed that the suit land was sold and property mentioned in Ext.B was purchased out of the sale consideration on the same day i.e. on 23rd November, 2007. This fact was not within the knowledge of the Plaintiff. Hence, he filed an application under Order VI Rule 17 C.P.C. to incorporate the following pleadings:

“PROPOSED AMENDMENT

That at the end of para-4 (four) of plaint the following facts may inserted and in 2nd line of same para the words “The schedule of” be deleted.

That while we the parties were in possession over our recorded area for our convenience transferred the same vide R.S.D. No.4591 and purchased the schedule of property vide R.S.D. No.4592 on one day i.e. 23.11.2007.

In schedule of property of plaint the Khata no.165/912, Plot no.155/1713 and area Ac.0.09.500 decimal be deleted and in its place the following be inserted.

Khata No.75(seventy five), Plot No.154 (one hundred fifty four), area A0.10 (ten) decs out of A0.23 (twenty three) decs as described in R.S.D. No.4592 dt.23.11.2007.”

4. Mr. Banerjee, learned counsel for the Petitioner submits that the amendment, if allowed, will not change the nature and character of the suit. On the other hand, it is imperative for just adjudication of the suit. The Defendants have clandestinely made the transaction for which the Plaintiff-Petitioner could not know about the same. Learned trial Court without appreciating the same has passed the impugned order under Annexure-6 with a finding that the property sought to be introduced is a new property in place of the suit schedule property of the plaint. Hence, it will certainly change the nature and character of the suit and cause prejudice to the Defendants. Thus, such finding is not sustainable in the eyes of law and the impugned order is liable to be set aside.

5. Mr. Pattnaik, learned counsel for the Opposite Party, on the other hand, submits that the Plaintiff had knowledge about the sale deed under Ext.B, as he was one of the executants in

the sale deed. Validity of the sale deed is not challenged either in the plaint or by way of amendment. Introduction of the property under Ext.B will certainly change the nature and character of the suit as the Plaintiff has never claimed for partition of the property under Ext.B. It is his submission that the Plaintiff-Petitioner may seek remedy in respect of the property under Ext. B by filing a separate suit. As the amendment was sought for during the course of the trial, it should not be allowed in view of proviso to Order VI Rule 17 C.P.C.

6. Taking into consideration the rival contentions of the parties, it is apparent that after commencement of the trial, the Petitioner has filed a petition for amendment under Order VI Rule 17 C.P.C. It further appears that the Plaintiff was also an executant in the sale deed under Ext.B. Thus, it cannot be said that he had no knowledge about the sale deed (Ext.B). The Plaintiff-Petitioner also does not challenge the validity of the sale deed under Ext.B. Further, the Plaintiff-Petitioner could not satisfy the Court that in spite of exercising due diligence, he could not have sought for amendment as proposed before commencement of the trial.

7. In that view of the matter, I am not inclined to interfere with the impugned order under Annexure-6.

Accordingly, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge