

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 490 of 2018

Sanjib Kumar Sen and others* *Petitioners

Mr. Ranjan Kumar Nayak, Advocate

-versus-

Gouranga Sen and others* *Opp. Parties

Mr. Maheswar Mohanty, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.07.2022

Order No.

10. 1. This matter is taken up through hybrid mode.
2. Although this matter was listed for orders, on consent of learned counsel for the parties, the same is taken for final disposal.
3. This CMP has been filed assailing the order dated 21st March, 2018 (Annexure-1) passed by learned 3rd Addl. Senior Civil Judge, Balasore in C.S. No. 385 of 2011, whereby an application under Order VI Rule 17 C.P.C. filed by the Plaintiffs-Petitioners was rejected.
4. Mr. Nayak, learned counsel for the Petitioners submits that the suit has been filed for declaration and permanent injunction. Since the written statement was filed late, it was not accepted and the Defendants were precluded from leading evidence in the suit. After filing of the evidence in affidavit by P.W.1, it came to the knowledge of the Plaintiffs that in FAO No. 142 of 2011, the Defendants had filed a registered partition deed showing that there was a partition in respect of the suit property. The Plaintiffs wanted to bring the same on record by

way of amendment. Learned Additional Senior Civil Judge without realizing the purpose for which the amendment was sought for, rejected the petition vide order under Annexure-1. It is his submission that there is no absolute bar to entertain an application under Order VI Rule 17 C.P.C. after commencement of the hearing. In view of the fact that there was earlier partition and it came to knowledge of the Plaintiffs after commencement of hearing, the petition for amendment was filed at that stage. The amendment of the pleadings is imperative for just adjudication of the suit. Hence, he prays for setting aside the impugned order and to allow the amendment sought for.

5. Mr. Mohanty, learned counsel for the Opposite Parties objecting to the submission made by Mr. Nayak, learned counsel for the Petitioners submits that the Defendants were never precluded from filing the written statement or contesting the suit. Taking into consideration the written statement filed by them, issues were framed. Moreover, the Plaintiffs had knowledge of the registered partition deed since 23rd June, 2011, i.e. during pendency of FAO No. 142 of 2011 as they were parties to the said appeal. Thus, the amendment petition is barred under proviso to Order VI Rule 17 C.P.C. The Plaintiffs having knowledge of the registered partition deed have neither pleaded about the same in the plaint nor filed an application for amendment prior to commencement of hearing. Hence, there is no illegality in the impugned order.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the impugned order, it is manifest that the petition for amendment under Order

VI Rule 17 C.P.C. was filed after commencement of the trial. It further appears that the Plaintiffs were parties to the FAO No. 142 of 2011 in which the registered partition deed stated to have been filed. Thus, the Plaintiffs had knowledge of the registered partition deed much prior to commencement of hearing of the suit.

7. It cannot be said that in spite of due diligence, the Plaintiffs-Petitioners could not have brought the aforesaid amendment on record before commencement of the suit. Thus, I find no infirmity in the impugned order. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks