

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 17400 OF 2013

Ramesh Chandra Panda and others* *Petitioner

Mr. A. Rath, Advocate

-versus-

State of Odisha and another* *Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.08.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. This writ petition has been filed assailing the order dated 8th May, 2013 (Annexure-4) passed by learned Civil Judge (Senior Division), Chhatrapur in C.S. No. 45 of 2004, whereby an application filed by the Plaintiffs-Petitioners under Order VI Rule 17 C.P.C. has been rejected.
3. Mr. Rath, learned counsel for the Petitioners submits that the suit was initially filed for declaration of right, title and interest as well as for confirmation of possession over the suit land. The suit being dismissed, the Plaintiffs-Petitioners preferred R.F.A. No. 32 of 2006, which was disposed of on 12th June, 2009 with the following order:

“The appeal is allowed on contest, but in the circumstances without cost. The judgment and decree of the learned trial court dated 20.3.06 and 3.4.2006 respectively is set aside in the interest of justice. The suit is remanded back to the learned trial court with an instruction to readmit the suit under its original number and to re-open and retry the case from the stage of framing issues after adding the parties as per the observation made above and to proceed with the suit in

accordance with law thereafter. Parties are asked to appear in the learned trial court on 3.8.2009.”

4. After remand, the Plaintiffs filed an application under Order VI Rule 17 C.P.C. to incorporate paragraph-4(a) in the plaint giving the details of entry into possession over the suit land as well as some essential facts to prove the adverse possession over the same. Learned trial court without realizing the purpose for which the amendment was sought for, rejected the petition vide order dated 8th May, 2013, which is under challenge in this writ petition.

5. Mr. Rath, learned counsel further submits that the Plaintiffs by virtue of amendment sought for, are not introducing any new fact. In view of the order of remand passed by learned Additional District Judge, Fast Track Court, Chhatrapur, more particularly, to frame additional issue of adverse possession, it was imperative on the part of the Plaintiffs to bring on record certain facts and information to prove their title through adverse possession. Learned trial court being swayed away by the order of remand recorded a finding that there is no scope to entertain the petition for amendment. As such, the impugned order is not sustainable in the eyes of law.

6. Mr. Mishra, learned Additional Standing Counsel, on the other hand, submits that the suit was initially filed claiming right, title and interest and confirmation of possession over the suit land on the basis of an unregistered sale deed. By virtue of amendment, the Plaintiffs sought to introduce a story which will certainly change the character of the suit to claim title over the suit land by virtue of adverse possession, which was never the case of parties at the beginning. Earlier, the Plaint did not

contain any date of entry into possession of the suit land. Introduction of such plea will not only amount to patch of lacuna but also certainly prejudice the Defendants. P.W.1 in paragraph-13 has categorically admitted that he has paid penalty to the Tahasildar for unauthorized occupation of the suit land which itself defeats the claim of the Plaintiffs on the basis of unregistered sale deed. He, therefore, prays for dismissal of the writ petition.

7. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that the suit (C.S. No. 45 of 2004) was decreed on contest in favour of the Plaintiffs. Assailing the same, the Defendants-Opposite Parties, namely, the State functionaries, preferred an appeal in RFA No. 32 of 2006. Learned Additional District Judge, Fast Track Court, Chhatrapur vide his judgment dated 12th June, 2009 allowed the appeal and remitted the matter back to learned trial court to try the suit from the stage of framing of issues by impleading some private parties as well as National Highways Authorities to the suit. Thus, learned trial court had the scope only to frame the issues by adding parties and try the suit from that stage accordingly. Admittedly, the issues are framed after the respective pleadings of the parties are complete. Hence, there is no scope to amend the pleadings at this stage, unless the case of the party seeking amendment falls under the proviso to Order VI Rule 17 C.P.C.. In the instant case, no such exception is made out. Moreover, no direction/liberty has been given by learned appellate court to amend the pleadings. The plea of Mr. Rath, learned counsel for the Petitioners that in order to prove their case through adverse possession, the Plaintiffs are

required to give certain information, i.e. entry into the suit land and other co-related informations to succeed in their claim for adverse possession, is not acceptable because the Plaintiffs while filing the suit had knowledge of entry into the possession of the suit land. In spite of the same, they did not take such plea in the plaint, probably for the reason that they claim the suit property on the basis of an unregistered sale deed. If the amendment sought for is allowed at this stage, it will certainly change the character of the suit, i.e. from claiming title over the suit land on the basis of an unregistered sale deed to that on adverse possession. Hence, such an amendment is not permissible under law at a belated stage more particularly after the order of remand passed by learned appellate court with specific direction.

8. In view of the above, I find no infirmity in the impugned order. Accordingly, the writ petition stands dismissed.

9. The interim order dated 2nd August, 2013 passed in Misc. Case No. 16193 of 2013 stands vacated.

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

(K.R. Mohapatra)
Judge

bks