

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 350 OF 2014

Narayan Chandra Samal *Petitioner*
Mr. Soumya Mishra, Advocate

-versus-

Bharati Samal and others *Opp. Parties*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
13.12.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 3rd March, 2014 (Annexure-4) passed by learned Civil Judge (Junior Division), Jajpur in T.S. No.161 of 1997, whereby an application filed by the Plaintiff-Petitioner under Order VI Rule 17 C.P.C. has been rejected.
3. When the matter is taken up, it brought to the notice of this Court that notice on the Opposite Parties is not sufficient. Hence, learned counsel for the Petitioner prays for an adjournment to file fresh requisites for taking out notice on the Opposite Parties.
4. Since the suit is of the year, 1997 and the matter is pending before this Court since, 2014, this Court thought it proper to delve into the merit of the case.
5. Mr. Mishra, learned counsel for the Petitioner submits that the Defendants in their written statement have taken a plea that Malli Dei, who was the guardian of the Plaintiff-Petitioner allegedly executed different sale deeds during the year, 1947-48.

Since Malli Dei was a pre-Act widow and had limited right over the suit property, she could not have executed the sale deeds, as stated by the Defendants in their written statement. Hence, it necessitated the Plaintiff-Petitioner to amend the plaint suitably and to incorporate the prayer to declare such sale deeds to be null and void. Learned trial Court considering that the Plaintiff-Petitioner had knowledge of such sale deeds since 1998 when the written statement was filed, rejected the petition for amendment stating that the prayer sought for is barred by limitation.

6. It is his submission that, even if, the prayer is barred by limitation, but that cannot be a ground to refuse the amendment of the plaint as the proposed amendment of the pleadings amounts to only a different or an additional approach to the existing facts. Since the Plaintiff-Petitioner is in possession over the suit property in respect of which the sale deeds were executed by Malli Dei, the pleading as well as the prayer proposed to be incorporated are only a different approach to the existing fact. He further submits that merits of the proposed amendment should not be gone into at the time of considering an application for amendment. The Court should exercise its judicial discretion while exercising the power under Order VI Rule 17 C.P.C. taking into consideration the facts and circumstances of the case. In the instant case, learned trial Court has not made any endeavour to delve into the aforesaid aspects and rejected the petition for amendment only on the ground of limitation. As such, the impugned order under Annexure-4 is not sustainable and is liable to be set aside.

7. Mr. Mishra, learned counsel for the Petitioner also relied upon the ratio decided in the case of ***Life Insurance Corporation of India –v- Sanjeev Builders Private Limited and another***, reported in 2022 SCC OnLine SC 1128, in which the Hon'ble Supreme Court at Paragraphs-26 and 70 has held as under:

“26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

xxx xxx xxx

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)

He, therefore, submits that the amendment sought for should have been allowed.

8. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the materials on record including the case law cited, it appears that the pleadings which is otherwise barred by limitation can be considered at the discretion of the Court, if the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts. In the instant case along with the pleadings, the Plaintiff-Petitioner also seeks to amend the prayer to declare the sale deed executed by Malli Dei during the year, 1947-48 to be null and void and not binding on them. Further Paragraph-70 (iii) (c) clearly lays down that an amendment may be allowed, if the same does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right. In the instant case, by virtue of the sale deed executed by Malli Dei, a valuable right has been accrued to the Defendants, who are subsequent purchasers. It is not in dispute that the written statement was filed in the year, 1998 and

the Plaintiff-Petitioner had knowledge of the alleged sale deeds of 1947-48 since then. In that view of the matter, learned trial Court has committed no error in dismissing the amendment in respect of time barred claim.

7. As such, the CMP being devoid of any merit stands dismissed.

8. Interim order dated 2nd April, 2014 passed in Misc. Case No. 311 of 2014 stands vacated.

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

(K.R. Mohapatra)
Judge



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