

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.151 of 2019

Anupam Mishra & Anr.

....

Petitioner(s)

Miss.M.Mishra, Advocate

-versus-

Dillip Kumar Mishra & Ors.

....

Opp.Party(s)

Mr.N.K.Sahu, Advocate.

CORAM:

JUSTICE BISWANATH RATH

ORDER

19.04.2022

Order No.

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1. Heard learned counsel appearing for the petitioners.
2. This Civil Miscellaneous Petition involves the order in allowing an application under Order 6, Rule 17 of the Code of Civil Procedure at the instance of plaintiff. Undisputed fact remains that the suit involves partition. In the original stage of the suit, there was no involvement of Defendant Nos.11 and 12. These two defendants have been subsequently brought within the frame work of the suit on allowing an application under Order 1 Rule 10 of the Code of Civil Procedure. It is after written statement is filed by these defendants, it appears, the plaintiff no doubt after expiry of two years and even after closure of examination of the whole witnesses on the plaintiff side and some of the witnesses from Defendant side, brings an application under Order 6, Rule 17 of the Code of Civil Procedure, which petition appears to have been allowed on contest.
3. Assailing the order allowing an application under Order 6 Rule 17 of the Code of Civil Procedure, Miss. Mishra, learned counsel for the petitioner taking this Court to the objection of the plaintiff contended that looking to the proviso attached to Order 6, Rule 17 of the Code of Civil Procedure, for there is delay of two years in bringing such

amendment, plaintiff ought to have responded not coming with such application with due time and that despite of all attempt, it could not come to the notice of such issue so that such application at a belated stage for bringing the same to the fold of consideration of the suit. It is on the premises further also on the premises that the suit has already reached at the stage of closing the evidence of plaintiff and some of the defendant witnesses have already examined, there is also prejudice in the event amendment is allowed at this stage of the matter. It is in this view of the matter, Miss. Mishra, learned counsel appearing for the petitioner also attempted to support a decision in the case of ***Binodini Sadual Vs. Ranjit Ku. Mohanty & Ors., 2017 (II) CUT 1147*** to impress upon the ground taken by her.

4. Learned counsel appearing for the opposite parties even including plaintiff attempted to support the allowing of amendment on the premises that there is possibility of effective adjudication involving the disputes involved therein. It is in the above circumstance, the contesting opposite parties oppose the entertaining of the Civil Miscellaneous Petition.

5. Considering the rival contentions of the parties, this Court finds there is no dispute that the amendment application has been brought after two years. There also remains no dispute that the timing of filing of amendment application was almost after closure of the plaintiff witness and in the middle of the Defendants witnesses being examined. Considering the proposed amendment, this Court finds there is relevancy in such plea which is required to be considered in the suit subsequently for which there will be confusion at subsequent stage even if the judgment and decree have been passed. However, taking into consideration the delay aspect and no satisfaction on the due diligence aspect, this Court since forms opinion that the amendment ought to be allowed in the interest of justice and for getting an effective adjudication of all the disputes involved in one attempt, while allowing such amendment, trial court should have kept in mind to find out of

such outcome. This Court here also finds for the defendants contested right from filing of the suit, have no objection to such amendment and this application only involves party subsequently added to the suit i.e. Defendant Nos.11 and 12. In the process, this Court while confirming the order of the trial court finds there is definite loss of time for the parties to the contest for no fault of them. Further there has been also closure of plaintiff witnesses required to be re-opened for further chief and or cross examination keeping in view the amendment incorporated. It is keeping all these in view, this Court in confirmation of the order of the trial court directs the plaintiff to pay at least a sum of Rs.3,000/- (Rupees three thousand) by way of cost to be paid to both the defendant Nos.11 and 12 only. For there is allowing of the amendment, there is definite requirement of reopening of the evidence. As a consequence, this Court observes in the event any of the party files application for reopening of the witnesses either for chief or for cross-examination or for further examination in chief and or cross examination of the defendant witnesses already examined, such application shall be allowed but only to the extent amendment is concerned. As the suit is pending since 2009, the trial court is also directed to conclude the suit at least within a period of nine months.

6. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge