

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 218 OF 2018

Gajendra Nayak ***Petitioner***

Mr. Gopinath Mishra, Advocate

-versus-

Snehalata Nayak and others ***Opp. Parties***

Mr. Amit Prasad Bose, Advocate

(For Opp. Party Nos.2,3 and 6)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
27.09.2022

Order No.

16. 1. This matter is taken up through hybrid mode.
2. Mr. Gopinath Mishra, learned counsel by filing Vakalatnama has entered appearance on behalf of the Petitioner in Court, which is taken on record.
3. Although, this matter is listed for orders, but on consent of learned counsel for the parties, the same is taken up for final disposal.
4. The Petitioner in this CMP seeks to assail the order dated 4th January, 2018 (Annexure-5) passed by learned Civil Judge (Senior Division), Balasore in C.S. No.287 of 2013-I, whereby an application under Order VI Rule 17 C.P.C. filed by the Defendant Nos.1 to 4 has been allowed.
5. Mr. Mishra, learned counsel for the Petitioner submits that the proposed amendment amounts to rewriting the written statement itself. Earlier Defendant Nos.1 to 4 had filed petitions for amendment of written statement, which were rejected. The

said order was once confirmed by this Court observing that the Defendants cannot take away admission made in the written statement by virtue of amendment. In order to avoid the same, Defendant Nos.1 to 4 again filed a petition for amendment by drafting the same in a manner, which would not pose as withdrawal of admission. Such amendment is not *bona fide* in nature and it will enlarge the scope of the suit. The suit has been filed for partition and if the impugned order is allowed to stand, it will convert the suit to be a declaratory one, which is not permissible in law. Learned trial Court while adjudicating the matter, although recorded the contentions of the parties and law on the point, but without discussing the objections made by the Plaintiff-Petitioner, allowed the amendment without assigning any reason. Hence, the impugned order is not sustainable.

6. Mr. Bose, learned counsel for Opposite Party Nos. 2, 3 and 6 submits that the proposed amendment does not take away the averments made by Defendant Nos.1 to 4 in their pre-amended written statement. Although the proposed amendment is lengthy, but the same is required for complete adjudication of the suit itself. Unless the amendment is allowed, it may lead to multiplicity of litigation. Since the trial of the suit has not commenced, there is no legal bar on the part of the trial Court to entertain an application for amendment. He further submits that the Plaintiff has received the cost as directed by learned trial Court in lieu of amendment of the written statement. He, therefore, submits that the CMP is liable to be dismissed.

7. Considering the submissions made by learned counsel for the parties and on perusal of the proposed amendment as at Annexure-3, this Court finds that Defendants No.1 to 4 sought for amendment to elaborate certain factual aspects. There is nothing on record to come to a conclusion that by virtue of amendment, the Defendants were trying to withdraw the admission, if any, made in the pre-amended written statement. Further trial of the suit has not commenced as yet.

8. Although, learned trial Court has not discussed the objection raised by the Plaintiff-Petitioner and not assigned any reason for allowing the written statement, but it has observed that the amendment will not change the nature and character of the suit and the same should be allowed to prevent multiplicity of litigation.

9. In that view of the matter, I find no infirmity in the impugned order under Annexure-5.

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

11. Since the suit is of the year, 2013, parties are directed to cooperate with learned trial Court for early disposal of the suit.

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

(K.R. Mohapatra)
Judge