

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 237 OF 2020

Parthabi Sahu and another

Petitioners

Mr. Suryakanta Dash, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. A.R. Dash,

Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

12.08.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 21st January, 2015 passed by learned Civil Judge (Junior Division), Kesinga in C.S. No. 1/10 of 2004-14, whereby an application filed by the Plaintiffs-Petitioners under Order VI Rule 17 C.P.C. was rejected.
3. Mr. Dash, learned counsel for the Petitioners submits that the suit has been filed for declaration of right, title and interest as well as for permanent injunction. It is his submission that before commencement of the trial, it could be pointed that some properties were left out to be included in the schedule of the plaint and in order to prove their right, title and interest over the suit property, some foundational pleadings have to be made and proved. Hence, the Plaintiffs-Petitioners filed an application under Order VI Rule 17 C.P.C. Learned trial Court by misconstruing the fact that trial of the suit has already commenced, refused to entertain the application on

the ground of delay as well as non-explanation of due diligence in filing the petition earlier. Learned trial Court did not at all discuss the relevancy of the amendment sought to be incorporated in the plaint. Since trial of the suit has not commenced as yet, it is open to the State-Defendant to file its additional written statement, in the event the amendment sought for is allowed. Facts pleaded are to be proved by the Plaintiffs-Petitioners by leading cogent evidence. Hence, no prejudice will be caused to the Defendant if the amendment is allowed. Further, in the event the amendment is allowed, it will prevent multiplicity of litigation. Hence, he prays for setting aside the impugned order under Annexure-4 and to allow the amendment as sought for.

4. Mr. Dash, learned Additional Government Advocate, on the other hand, submits that there is nothing on record to show that the proposed amendment was not within the knowledge of Plaintiffs beforehand. The amendment petition was filed belatedly after ten years of institution of the suit. The Petitioners by virtue of amendment seek to incorporate certain new facts and plot numbers for adjudication of the suit. Of course, the Plaintiffs have to prove their case. But, such a lengthy amendment at a belated stage will certainly prejudice the State-Defendant. Hence, he submits that learned trial Court has committed no error in refusing such amendment and prays for dismissal of CMP.

5. Taking into consideration the rival contentions of the parties and on perusal of the proposed amendment (Annexure-3), it appears that the Petitioners do not pray for amendment of the relief sought for in the suit, but seek to incorporate certain plot numbers and

foundational pleadings to prove their right, title and interest over the said plots. Learned counsel for the parties submit that trial of suit has not yet commenced.

6. In fact, the amendment sought for is lengthy in nature, but keeping in view that the Court has to consider the amendment liberally before commencement of the trial and that the Petitioners have to prove the same by leading cogent evidence, this Court feels that the amendment sought for will not prejudice the State-Defendant.

7. In view of the above, the impugned order is set aside and the proposed amendment as per Annexure-3 is allowed. The Plaintiffs-Petitioners are directed to file the consolidated plaint along with certified copy of this order within a period of fifteen days hence serving copy thereof on the State-Defendant. On receipt of copy of the consolidated plaint, the State-Defendant will be at liberty to file additional written statement.

8. With the aforesaid observation and direction, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks