

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1691 OF 2017

Kandarpa Rout

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Aswini Biswal and others

.... Opp. Parties

Mr. Sisir Kumar Purohit, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
11.07.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 20th November, 2017 (Annexure-1 series) passed by learned Civil Judge (Junior Division), Sambalpur in C.S. No.2 of 2016, whereby he allowed an application filed by the Defendants-Opposite Parties under Order VI Rule 17 C.P.C.
3. Mr. Bose, learned counsel for the Petitioner submits that the suit has been filed by the Petitioner for declaration of right, title and interest, confirmation of possession and for permanent injunction in respect of the suit property. The Defendant Nos.1 and 2 appeared and filed their written statement. Evidence from the side of the Plaintiff was closed on 21st July, 2017. Thereafter, the Defendant Nos.1 and 2 sought for adjournment on several occasions, i.e., on 2nd August, 2017, 16th August, 2017, 22nd August, 2017, 4th September, 2017, 11th September, 2017, 16th September, 2017 and 12th October, 2017. On 21st October, 2017 the

Defendants-Opposite Party Nos.1 and 2 filed a petition for amendment of the written statement. On 2nd November, 2017, they filed a memo stating that the word "*Defendant No.1 occurring in the 2nd sentence of P.W.1 of the amendment petition filed by the Defendant Nos.1 and 2 be read as proforma Defendant No.5.*" Accordingly, the memo was kept on record. Although the Plaintiff-Petitioner filed his objection stating that the Defendant Nos.1 and 2 have not shown due diligence in filing the amendment petition after closure of the evidence from the side of the Plaintiff and that the amendment sought for is not necessary for just adjudication of the case, learned trial Court has passed the impugned order without discussing the objection raised by the Plaintiff. It is his submission that no good reason whatsoever was assigned by learned trial Court to allow the application for amendment of the written statement at a belated stage. It is further submitted that the impugned order is otherwise not sustainable and is liable to set aside.

4. Mr. Purohit, learned counsel for the Opposite Party Nos.1 and 2 (Defendant Nos.1 and 2 before trial Court) submitted that the amendment sought for is necessary for proper adjudication of the case. The amendment sought to be incorporated was suppressed by the Plaintiff in the plaint. In Paragraph-1 of the amendment petition, the Defendant Nos.1 and 2 have explained the reasons, which compelled them to file the petition for amendment at a belated stage. Learned trial Court though not discussed the matter in detail but has stated that amendment sought for is necessary for just

adjudication of the suit and will not change the nature and character of the same. Hence, he prays for dismissal of the CMP.

5. Taking into consideration the rival contentions of the parties and on perusal of the impugned order, it appears that learned trial Court has passed the impugned order without discussing the respective cases of the parties. Admittedly, the amendment petition was filed after commencement of the trial. Although the Plaintiff has raised objection to the effect that the Defendants have not shown due diligence in filing the amendment petition at a belated stage, no discussion to that effect has been made by learned trial Court nor any finding is recorded to that effect. It further appears that learned trial Court has not recorded any finding as to how the amendment is imperative for just adjudication of the suit.

6. In view of the above, this Court is of the considered opinion that the impugned order (Annexure-1 series) is not sustainable in law being a cryptic and non-speaking one. Accordingly, the impugned order is set aside and the matter is remitted back to learned trial Court to adjudicate the petition for amendment filed by the Defendant Nos.1 and 2 afresh, giving opportunity of hearing to the parties concerned.

7. The interim order dated 9th January, 2018 passed in Misc. Case No.1954 of 2017 stands vacated.

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

(K.R. Mohapatra)
Judge