

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.13387 of 2007

Sabitri Das & Ors.

....

Petitioner(s)

Mr. A.R.Dash,
Advocate

-versus-

Antaryami Nandi & Ors.

....

Opposite Party(s)

Mr. S.K.Mishra,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER

10.05.2022

Order No.

07.

1. Heard the submission of learned counsel appearing for the parties.
2. This Court though finds, there is no service of notice on some of the opposite parties in as much as 6(b) and 6(c) but however, position of this parties being subsequent purchaser and the vendor/defendant is already contesting the suit, further the subsequent purchaser has to step into the shoe of the contesting defendant, the vendor, this Court finds, there is no requirement of such service of notice on such parties and accordingly proceeding for final outcome.
3. This writ petition involves rejection of an application under Order 6 Rule 17 of C.P.C. at the instance of the plaintiff. Undisputedly such application was moved after the closer of the evidence of the plaintiff and in course of undertaking the exercise of defendant evidence. Taking this Court to the proposed amendment reading together through the plaint averments copy of which presented in Court, an attempt is made to satisfy to the extent that there was bona fine mistake in some part of the plaint, when there is correct

mentioning of the suit plot number in the subsequent part of plaint and also in Schedule of property area.

4. It is in this view of the matter, reading through the grounds of rejection Mr. Mohant, learned counsel for the petitioner submitted that there is no proper consideration of the amendment and unless such amendment is allowed further proceeding in the suit will be innocuous. It is also contended that there will also be leading to multiplicity of the litigation as the plaintiff cannot be debarred from commencing further suit. In his opposition Mr. Mishra, learned counsel for the opposite parties, taking this Court to the disclosure of Plot No.106/689 by the plaintiff himself in his deposition submitted allowing amendment of this nature will change the nature and character of the suit. Further looking to the stage of attempt bringing application under Order 6 Rule 17 of C.P.C. Mr. Mishra, learned counsel while supporting the impugned order seriously objected to the timing of the amendment application.

5. Considering the rival contentions of the parties this Court reading through the proposed amendment at Page-10 of the brief, at this stage reading together with the plaint averments in Paragraph-5 as well as Schedule of properties finds there is clear mentioning of the Plot No.106/689. In the circumstance this Court finds the mistake in Paragraph-4 indicating the Plot number to be 104 is a human error and as a consequence there is also possibility of evidence involving such plot.

6. It is at this stage of the matter, this Court also takes into effect of such amendment in refusal by the impugned order and finds such rejection with the leading into unnecessary exercise involving the suit and further complication thereafter even in the future litigations, if any. It is on the other hand if such amendment is allowed and the defect in

the plaint is cured, there will be effective adjudication of the dispute involved. At this stage, this Court also keeps in mind the timing of such amendment by the plaintiff and the prejudice to the defendant and this Court finds, there is definite prejudice to the contesting defendant. In the meantime there is time loss of almost fifteen years and suit of the year 1985 is also delayed in the meantime for fifteen years for no fault of the defendant.

7. In the interest of justice and to see effective disposal of the dispute involved and also keeping in view the prejudice of the defendant for the negligence on the part of the plaintiff, this Court while observing there is mechanical disposal of such application by the trial court and setting aside the impugned order at Annexure-3 allows the application for amendment under Annexure-1, but however subject to payment of cost of Rs.7,500/- (rupees seven thousand five hundred only) to the contesting defendants in the Court below at least within ten days of the order. On eleventh day petitioner shall file a receipt of payment of cost along with the amended plaint of such filing, defendant will be provided with opportunity of additional written statement, if any, for there is necessity of rolling back to the witnesses for chief as well as for cross-examination of the amendment. There will be allowing of such opportunity to all the parties involved. The suit is pending since 1985. This Court directs both the parties also to appear in the trial court along with copy of the order on 18th May, 2022.

8. The writ petition succeeds however with award of cost.

(Biswanath Rath)
Judge