

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.267 of 2020

Himanshu Sekhar Behera ***Petitioner***

Mr. Anam Charan Panda, Advocate

-versus-

Baidehi Behera and others ***Opp. Parties***

Mr. Amit Prasad Bose, Advocate

(For Opposite Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.08.2022

Order No.

6. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 18th December, 2019 (Annexure-7) passed by learned Civil Judge (Senior Division), Patnagarh in Civil Suit No.51 of 2014, whereby an application under Order VI Rule 17 CPC has been rejected.
3. Mr. Panda, learned counsel for the Petitioner submits that in course of recording of evidence it came to light that certain other properties have been left out to be brought to hotchpot for partition. Plaintiff had also not impleaded some necessary parties to the suit. In that view of the matter, the Petitioner filed an application under Order VI Rule 17 CPC for amendment of the written statement. So far as impletion of parties is concerned, the same has been taken care of on the petition filed by Plaintiff/Opposite Party No.1 to implead them as parties. But the properties under Holding Nos.101, 250, 15 and 22 were not sought for partition by the Plaintiff. It is his

submission that a partial partition is not permissible. Learned trial Court although allowed the application for addition of parties going beyond the pleading and permitting Plaintiff/Opposite Party No.1 to implead any other persons necessary to be impleaded as Defendants, refused to allow the petition for amendment. In order to seek partition of additional properties, the Defendants need not file counter claim for partition of the said properties. He is only required to bring the same to the notice of the Court, which can be taken into consideration for partition. He further submits that although the petition for amendment was filed at the stage of argument of the suit, but by impletion of the parties, the suit was relegated to the position of filing of written statement by newly added parties. Hence, the petition for amendment can be considered without explanation of due diligence on the part of Defendant No.1. He, therefore, prays for setting aside the impugned order and to allow the amendment sought for.

4. Mr. Bose, learned counsel for Plaintiff/Opposite Party No.1 objecting to the above submission, contended that the petition at the stage of argument is not maintainable. There is no assertion in the petition under Order VI Rule 17 CPC itself explaining due diligence of Defendant No.1. There is also no pleading in the petition for amendment to the effect that Defendant No.1 had no knowledge of the properties, he sought to be incorporated by way of amendment. Out of the properties mentioned in the schedule proposed for amendment of Holding Nos.15 and 22 are not partible. He further submits that Holding Nos.101 and 250 are also not required to be

partitioned. Hence, learned trial Court has rightly refused to allow the petition for amendment as it will necessarily linger the matter. He, therefore, prays for dismissal of the CMP.

5. Taking into consideration the rival contentions of the parties and on perusal of record, it is apparent that the petition for amendment was filed at the stage of argument of the suit. Mr. Bose, learned counsel for Plaintiff/Opposite Party No.1 has also submitted that the Petitioner has not explained in the petition that in spite due diligence he could not have sought for amendment before commencement of the trial. On perusal of the proposed amendment, it is also apparent that Defendant No.1 has not explained the basis on which he claims partition of the properties sought to be incorporated. In absence of foundational pleading on which he sought the properties to be partitioned, the same can be considered for partition even if the amendment is allowed. Moreover, the Plaintiff being the *dominus litis* has sought for partition of the properties mentioned in the schedule, which has not been objected to by the Defendant No.1 in his written statement.

6. Taking into consideration the totality of the facts and circumstances of the case, this Court is of the considered opinion that allowing the prayer for partition of certain additional properties at the stage of argument, without any pleading to that effect, will be a futile exercise and it will be wastage of judicial time. In view of the above, this Court finds that learned trial Court has committed no error in rejecting the petition under Section VI Rule 17 CPC.

7. Accordingly, the CMP is dismissed being devoid of any merit.

8. Interim order dated 14th September, 2021 passed in IA No.281 of 2020 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy