

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 24176 of 2012

Naba Kishore Moharana and others

Petitioners

Miss R. Khatun., Advocate

-versus-

State of Odisha and another

.... Opp. Parties

Mr.Suvashish Patnaik,

Additional Government Advocate

(For Opposite Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

27.10.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. Petitioners in this writ petition seek to assail the order dated 6th December, 2012 (Annexure-5) passed by learned Civil Judge (Senior Division), Puri in TS No.314 of 1995-I, whereby an application filed by the Plaintiffs/Petitioners under Order VI Rule 17 CPC has been rejected.
3. Miss Khatun, learned counsel for the Petitioners submits that the suit has been filed for declaration of occupancy right of the Plaintiffs over the suit land and confirmation of their possession. They have also prayed for a decree of permanent injunction. During cross-examination of PW-1, the Plaintiffs could detect that inadvertently a plea with regard to acquisition of the land through lease deeds and orders passed in OEA Claim Case No.101 of 1974 and OEA Appeal No.2 of 1995 could not be pleaded in the plaint. Hence, an application under Order VI Rule 17 CPC was filed for amendment of the plaint to introduce the following proposed amendment:-

“1) At the end of para 5 of the plaint, “The plaintiffs’ ancestors Madhu Maharana and Tara Dei, W/o Shyama Maharana have acquired the suit property through registered lease deed No.1537 dt.16.4.1923, No.4103 dt. 3.9.1937 and Sale deed No.5323 dt.23.8.1941” to be inserted.

2) At the end of para 14 of the plaint “One Jagannath Das, the so called Mahanta of Hatiakhada Matha, Puri had filed O.S. No.174/1969 in the Court of the Munsif, Puri in respect of the suit property for declaration of right, title, interest and for eviction of the plaintiffs’ ancestors which is dismissed for default on 15.2.1974. The order passed in O.E.A. Case No.101/74 by the Tahasildar, Puri in favour of the defendant no.2 is set aside by the A.D.M., Puri in O.E.A. Appeal No.2/95” to be inserted.”

Learned trial Court failed to appreciate that the amendment sought for was necessary for proper adjudication of the suit. The amendment application was rejected on a flimsy ground that it was filed after 17 years of filing of the suit and after commencement of hearing. Proviso to Order VI Rule 17 CPC is not applicable to the case at hand as the suit has been filed prior to amendment of Code of Civil Procedure in the year 2002. The amendment sought for is necessary for proper adjudication of the suit. Hence, learned trial Court should have allowed the amendment to see that the controversy between the parties is settled for good. Thus, the impugned order is not sustainable in the eyes of law.

4. Mr. Patnaik, learned AGA for Opposite Party No.1 submits that if the amendment sought for is allowed it will change the basis of the claim of the Plaintiffs. The amendment was sought for during cross-examination of PW-1 that too after 17 years of filing of the suit. There is no explanation for the delay in filing the petition for amendment. Hence, learned trial

Court has committed no error in dismissing the petition under Order VI Rule 17 CPC.

5. Considering the submissions made by learned counsel for the parties and on perusal of record, it is apparent that Plaintiffs have specifically pleaded in their plaint that one Madhu Maharana and Shyama Maharana, ancestors of the Plaintiffs were the tenants under the intermediaries, namely, Sitaram Das, Mahanta of Hatiakheda Math, Balagandi Sahi, Puri. By virtue amendment, the Plaintiffs sought to introduce a completely new story to the effect that the ancestors of the Plaintiffs Madhu Maharana and Tara Dei have acquired the suit property through registered lease deed Nos.1537 dated 16.04.1923, 4103 dated 03.09.1937 and Sale deed No.5323 dated 23.08.1941. Thus, the basis of the claim of occupancy right to that of right through lease/sale deeds is sought to be substituted in the plaint by virtue of amendment. Thus, the amendment sought for is not permissible in law.

5.1 Further, the amendment petition was filed after 17 years of filing of the plaint. Although proviso to Order VI Rule 17 CPC is not applicable to the instant suit, but the delay in filing the amendment application has to be explained, more particularly when it was sought for in course of trial of the suit. There is no plausible explanation for filing of the petition with such inordinate delay. As such, the amendment sought for is completely an afterthought to patch up the lacunae in the case of the Plaintiffs.

6. In view of the discussions made above, this Court finds that learned trial Court has committed no error in dismissing the

petition under Order VI Rule 17 CPC for amendment of the
plaint.

7. Accordingly, the writ petition being devoid of any merit
stands dismissed. Since the suit is of the year 1995, learned trial
Court shall make an endeavour to dispose of the suit in
accordance with law, as expeditiously as possible without
granting unnecessary/long adjournments.

8. Interim order dated 14th January, 2013 passed in Misc.
Case No.20853 of 2012 stands vacated.

(K.R. Mohapatra)
Judge

