

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP NO. 935 OF 2017**

***Gauranga Chandra Das***

.....

***Petitioner***

Mr. S.S.K. Nayak, Advocate

***-versus-***

***Kokila Das and others***

....

***Opp. Parties***

***None***

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**26.07.2022**

**Order No.**

10. 1. This matter is taken up through hybrid mode.
2. This CMP has been filed assailing the order dated 19<sup>th</sup> July, 2017 (Annexure-6) passed by learned Civil Judge (Junior Division), Bhadrak in C.S. No. 174 of 1996-I, whereby an application under Order VI Rule 17 C.P.C. filed by the Plaintiffs for amendment of the plaint was rejected.
3. Mr. Nayak, learned counsel for the Petitioner submits that before settlement of the issues, by order of the learned trial court, a survey knowing commissioner was deputed. Upon local inspection, he submitted his report to the learned trial court. On perusal of the report, the Plaintiff No.1-Petitioner came to learn that descriptions of some of the suit schedule properties have been wrongly mentioned in the body of the plaint as well as in the schedule. Hence, he filed an application under Order VI Rule 17 C.P.C. to amend the plaint in consonance with the report of survey knowing commissioner. The said application was rejected vide order dated 4<sup>th</sup> April, 2014. Assailing the same, the Petitioner filed CMP No. 462 of 2014, which was disposed of on

2<sup>nd</sup> December, 2015 by remitting the matter back to the learned trial court for fresh consideration of the petition under Order VI Rule 17 C.P.C. Accordingly, the petition for amendment was considered afresh and the impugned order has been passed.

4. It is his submission that the petition for amendment was rejected on the ground that although the survey knowing commissioner has submitted his report to the learned trial court, but the same has not yet been admitted in evidence and if the report of the survey knowing commissioner is not accepted, the amendment, if any, made to the plaint pursuant to such report, may lead to multiplicity of litigation and change the nature and character of the suit. It is further submitted that amendment of description of the suit land will never change the nature and character of the suit land and it is filed only to rectify the dimension and measurement of the land. The Petitioner does not want to change the plot number and khata number. Further, if the report of the survey knowing commissioner is not accepted, the Petitioner has to prove his case by leading cogent evidence. It is his submission that the suit is at the stage of settlement of issues. Thus, proviso to Order VI Rule 17 C.P.C. is not applicable to the present case. In that view of the matter, the impugned order is not sustainable in the eyes of law. He, therefore, prays for setting aside the impugned order and to allow the amendment sought for.

5. None appears for the Opposite Parties.

6. Office note discloses that A.D. has not returned back from Opposite Party No.6. It further appears from the office note that notice issued to the Opposite Party No. 8 has returned unserved with a postal remark that he refused to accept such

notice. As such, notice on Opposite Party No.8 is treated to be sufficient. Notices on all other Opposite Parties have been validly served.

7. Taking into consideration the submission made by learned counsel for the Petitioner as well as the materials available on record, it appears that the Petitioner has proposed to amend the dimension and measurement of certain plots in the body of the plaint as well as in the schedule. The amendment was required pursuant to the report submitted by the survey knowing commissioner. Changing the dimension and measurement of the suit land will certainly not change the nature and character of the suit, which has been filed for declaration of right, title and interest as well as for permanent injunction. Further, the Defendants will get an opportunity to file additional written statement, if the amendment sought for is allowed. If the report of the survey knowing commissioner is not accepted by the learned trial court, the Petitioner has to prove his case by leading cogent evidence in support of his case. Thus, finding of the learned trial court to the effect that it will lead to multiplicity of litigation and change the nature and character of the suit, is not correct. Since the issues have not yet been settled, no party will be prejudiced by such amendment. Although it is observed by the learned trial court that the suit is posted for hearing, but learned counsel for the Petitioner submits that hearing of the suit has not yet commenced.

8. Accordingly, the impugned order under Annexure-6 is set aside and the amendment sought for is allowed. The Petitioner is directed to file a consolidated copy of the plaint along with certified copy of this order within a period of fifteen

days hence before learned trial court. On receipt of the same, learned trial court shall do well to make an endeavour for early disposal of the suit.

9. Accordingly, the CMP is allowed to the aforesaid extent.

10. The interim order dated 17<sup>th</sup> August, 2017 passed in Misc. Case No. 1059 of 2017 stands vacated.

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

***(K.R. Mohapatra)***  
***Judge***

*bks*

