

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.550 of 2019

Gopal Rout @ Gopal Krushna Rout ***Petitioner(s)***
Mr. S.K. Baral,
Advocate

-versus-

Mani Charan Rout & Ors. ***Opposite Party (s)***
Mr. S.S.K. Nayak,
Advocate for the O.P.1

CORAM:
JUSTICE BISWANATH RATH

ORDER
11.01.2022

Order No.

06.

1. This matter is taken up by video conferencing mode.
2. This Civil Miscellaneous Petition involves a challenge to the order of rejection of an application at the instance of the sole defendant under Order 6 Rule 17 of C.P.C by the trial court.
3. Taking this Court to the plea and the nature of amendment, Mr. Baral, learned counsel for the Petitioner contended that once there is some important aspect germane to the dispute brought on record, delay, if any, should not come on the way of consideration of such application. It is, in the above premises, Mr. Baral, learned counsel for the Petitioner attempted to challenge the impugned order under Annexure-6 and prayed this Court for setting aside the same and passing appropriate order.
4. In his opposition Mr. Nayak, learned counsel for the Opposite Party No.1 taking this Court to the disclosures at page 32 of the brief contended that since the written statement was filed in the year 2014

even assuming that the R.P. Case No.81 of 2015 was instituted in the year 2015, nothing prevented this defendant from bringing this fact in filing additional written statement filed in the year 2017. It is, accordingly, taking this Court to the filing of the application under Order 6 rule 17 of C.P.C. in the year 2019, Mr. Nayak, learned counsel for the Opposite Party No.1 while supporting the findings of the trial court in rejection of such application, prayed this Court for rejection of the present Civil Miscellaneous Petition.

5. Considering the rival contentions of the parties this Court finds, there is no dispute that the R.P. Case No.81 of 2015 involves the very same disputed property. From the context of the matter this Court finds, it may be altogether a different fact, but however, looking to the nature of decree sought for through the plaint, it cannot be totally ruled out that the information brought through the amendment has nothing to do with the case. For effective adjudication of the dispute and looking to the stage of filing of the application under Order 6 rule 17 of C.P.C in the year 2019 undisputedly on just commencement of trial, this Court is of the opinion that not only there is no prejudice to the plaintiffs in bringing in such pleadings as it is having clear opportunity of evidence involving such information / pleadings, but keeping in view the prejudice to be caused to the plaintiffs in making such attempt belatedly such application could have been allowed by award of cost. It is, keeping this in view and as this Court finds, there is no prejudice to the plaintiff in bringing such pleadings in the written statement, the reasons in rejecting such application becomes bad. In the above circumstance this Court while interfering in the impugned order vide Annexure-6 allows the application at the instance of the sole defendant under Order 6 rule 17 of C.P.C. Keeping in view that the application was filed at a belated stage and there is certain amount of suffering to

the plaintiffs, this Court imposes a cost of Rs.2,000/- (rupees two thousand) on the sole defendant, which will be paid to the plaintiffs in the court below at least within a period of ten days hence. It is further directed that upon filing of a receipt showing payment of such cost the trial court shall deem to have allowed the application under Order 6 rule 17 of C.P.C. and thereby will allow the defendant to file an incorporated statement in order to commence the trial involving the suit.

6. Taking into consideration that there is already filing of evidence by way of chief of plaintiff as P.W.1, this Court directs, if necessary, there may be recalling of the P.W. 1 for further chief.

7. Further considering that the suit is of the year 2013, this Court directs the trial court to make an attempt for expeditious disposal of the suit at least within a period of nine months from the date of communication of an authenticated copy of this order by the Petitioner.

8. With the aforesaid direction the Civil Miscellaneous Petition stands disposed of.

9. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide memo Nos.514 & 515 dated 7th January, 2022.

(Biswanath Rath)
Judge