

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 243 OF 2021

Baijayanti Pradhan

....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Biswanath Gauda and others

....

Opp. Parties

Mr. S. R. Pattnaik, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

02.11.2022

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. Although this matter is listed for consideration of interim application filed for extension of interim order, on consent of learned counsel for the parties, it is taken up for final disposal.
 3. The Petitioner in this CMP seeks to assail the order dated 7th April, 2021 (Annexure-4) passed by learned Civil Judge (Senior Division), Baliguda in C.S. No. 25 of 2018, whereby an application under VI Rule 17 C.P.C. filed by the Petitioner is partly allowed refusing to amend the Prayer No.1 of the plaint.
 4. Mr. Bhuyan, learned counsel for the Petitioner submits that the Prayer No.1 of the plaint in C.S. No. 25 of 2018 is as follows:

“To pass order and decree in favour of plaintiff that if the plaintiff is in possession and enjoyment of the suit land adversely against the defendants particularly defendant No.1 in respect of suit land of mouza-Budugudari, Khata No.126/61, Plot No.157/1229 an extent of H0.020R and defendant No.1 has no manner of right, title, interest over the suit land at this stage.”

5. Since the prayer of the plaint was confusing, an application seeking amendment of Prayer No.1 along with other pleadings of the

plaint has been filed. The proposed amendment of Prayer No.1 is as follows:

“Let the right, title, interest of the plaintiff over the suit land be declared, her possession over the same be confirmed and in case she is found to have been dispossessed in the meanwhile, recovery possession thereof may be made through process of the court at the cost of the defendants.”

Learned trial Court while refusing the prayer to amend the Prayer No.I in the plaint, allowed rest of the amendments sought for, on the ground that the Plaintiff had prayed for declaration of title through adverse possession and by virtue of amendment, he has sought to make a prayer for declaration of his right other than the adverse possession.

6. It is submitted by Mr. Bhuyan, learned counsel for the Petitioner that the Plaintiff has all throughout laid a claim of title over the suit property on the basis of a sale deed. Since the Prayer No.1 was made confusing, an amendment was required to be made to that effect. Hence, the application was filed.

7. Mr. Pattnaik, learned counsel for the Opposite Parties submitted that the Defendants-Opposite Parties had also filed a suit in C.S. No. 26 of 2018 claiming right, title and interest over the self-same land and the suit has already been decreed in favour of present Opposite Parties declaring their right, title and interest. However, the Petitioner has filed RFA No. 24 of 2019, which is pending in the Court of learned Additional District Judge, Baliguda for adjudication. Thus, right, title and interest of Opposite Parties having already declared in C.S. No. 26 of 2018, C.S. No. 25 of 2018 is not at all maintainable. He further submits that after the decree was passed in

C.S. No. 26 of 2018, a demarcation of the suit land was made and the Tahasildar, Tikaballi has submitted a report stating that the Petitioner is the owner of Plot No. 157/1235 to an extent of H.0.020R and not Plot No. 157/1229 to an extent of H.0.020R (the suit land). As such, the amendment was neither necessary nor *bona fide*. The Petitioner by virtue of the amendment is trying to change the basis of claim over the suit land. Hence, learned trial Court has rightly rejected the petition for amendment so far as the Prayer No.1 of the plaint is concerned.

8. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the Prayer No.1 made in the plaint is confusing and does not make out any sense. As such, for proper adjudication of the case, the Petitioner sought for amendment of Prayer No.1 in the plaint.

9. On a bare perusal of the pleadings in the plaint, it is apparent that the Petitioner claims his title over the suit property by virtue of a registered sale deed. Mr. Pattnaik, learned counsel for the Opposite Parties, however, submits that the Petitioner is the earlier purchaser in respect of the suit property. Hence, his right, title and interest has been declared in C.S. No. 26 of 2018. The same is a matter of adjudication in the suit itself. Law is well settled that merit of the amendment sought for should not be gone into at the time of consideration of the application for amendment. It further appears that the amendment of Prayer No.1 will facilitate the Court for proper adjudication of the suit.

10. In view of the above, this Court is of the considered opinion that learned Civil Judge (Senior Division), Baliguda should have allowed the amendment with regard to Prayer No.1 in the plaint.

Accordingly, the impugned order refusing to amend the Prayer No.1 in the plaint is set aside and the petition for amendment under Order VI Rule 17 C.P.C. is allowed in toto subject to payment of cost of Rs.2,000/- (Rupees two thousand) to the Defendants. Consolidated plaint shall be filed and the cost shall be paid within a period of fifteen days hence. After filing of the consolidated plaint, the Defendants shall be allowed to file additional written statement within a period of fifteen days therefrom. Since the suit in relation to the self-same plot has already been decided and is pending before the appellate authority, an endeavour shall be made by learned trial Court for early disposal of the suit, giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge

bks