

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 867 OF 2018

Jaibun Nisa Bibi

....

Petitioner

Mr. Basanta Kumar Mishra, Advocate

-versus-

Mirza Yunus Baig

....

Opp. Party

Mr. S.A. Nayeem, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

08.09.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. In view of the order of even date passed in CMAPL No. 331 of 2022, the CMP is restored to file. On consent of learned counsel for the parties, the CMP is taken up for final disposal.
3. The Petitioner in this CMP seeks to assail the order dated 8th May, 2018 (Annexure-2 series) passed by learned Civil Judge (Senior Division), Salipur in Civil Suit No.42 of 2003, whereby he rejected an application filed by the Defendant No.1-Petitioner for amendment of written statement.
4. Mr. Mishra, learned counsel for the Petitioner submits that C.S. No.42 of 2003 has been filed for partition and permanent injunction. During course of hearing of the suit, it came to light that one Aman Ali Baig had executed a Hebanama in favour of Gafar Ali Baig, father-in-law of the present Petitioner out of his free will and volition. Said Hebanama was not within the knowledge of the Petitioner, who is an old lady of

sixty-five years. When the Hebanama came to the knowledge of the Petitioner, which conferred right on her father-in-law and after him on the Petitioner, she filed an application for amendment of the written statement under Order VI Rule 17 C.P.C. Said application was rejected on the ground that the evidence from the side of the parties has been closed and the suit is posted for argument. It is his submission that when Hebanama came to the knowledge of the Petitioner after closure of the evidence from the both sides, the Petitioner had no other option than to file a petition for amendment of the written statement at that stage only. Thus, restriction under proviso to Order VI Rule 17 C.P.C. is not applicable to the case of the Petitioner as she could not have filed the petition for amendment of the written statement before commencement of hearing of the suit. This material aspect was lost sight by learned trial Court. Hence, the impugned order under Annexure-2 series is not sustainable in the eyes of law and the same is liable to be set aside.

5. Mr. Nayeem, learned counsel for the Plaintiff-Opposite Party submits that after closure of the evidence, the Defendant No.1 took several adjournments for argument. When she failed in her attempt to linger the matter further, she filed an application under Order VI Rule 17 C.P.C. for amendment of the written statement. Said Hebanama is not admissible in evidence as it is not registered. It is his submission that an oral gift is permissible in Mohammadian Law. But, once it is reduced to writing, it should be registered under Section 123 of the Transfer of Property Act, 1882 (for short 'the Act'). As such, no right can

flow to the Defendant No.1 by virtue of said Hebanama. Hence, the amendment sought for is neither *bona fide* nor lawful. As such, he prays for dismissal of CMP.

6. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the Defendant No.1 has never taken a plea that Aman Ali Baig had made any gift in favour of her father-in-law, namely, Gafar Ali Baig. After adducing evidence by both the parties, the suit is posted for argument. It also appears from the record that the Defendant No.1 took several adjournments for argument in the suit. At that stage, she came up with a petition under Order VI Rule 17 C.P.C. proposing to introduce a completely new story. The basis on which the Petitioner claims amendment of written statement is a 'Hebanama'. In the schedule of proposed amendment, it is averred that Aman Ali Baig had executed a Hebanama in the name of her father-in-law of Gafar Ali Baig in presence of some local gentlemen of his community and said Aman Ali Baig had signed the Hebanama on 1st January, 1962. In Mohammadian Law, an oral gift deed is permissible. But, when it reduced to writing, the same should require registration under Section 123 of the Act. Said Hebanama had not seen the light of the day till it was filed before the Court when the suit was posted for argument. The petition for amendment is also silent as to when the Petitioner could find out the said Hebanama. Thus, it appears that introduction of story by way of amendment is only an afterthought and intended to linger the suit. Since the parties have already adduced evidence and the suit is posted for

argument, parties have to cooperate with learned trial Court for early disposal of the suit on the basis of the materials available on record. Without adhering to the same, the Defendant No.1-Petitioner has filed an application for amendment of written statement, which appears to be not *bona fide* and the same is also not lawful.

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

8. The interim order dated 21st June, 2018 passed in I.A. No.935 of 2018 stands vacated.

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

(K.R. Mohapatra)
Judge

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