

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 18 of 2016

Suresh Chandra Mohanty ***Petitioner***
Mr. Dwarika Prasad Mohanty, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Dillip Kumar Mishra,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

01.12.2022

Order No.

7. 1. This matter is taken up through Hybrid mode.
2. Although the matter was listed under the heading 'For Orders', taking consent of learned counsel for the parties, the same is taken up for final disposal.
3. Petitioner in this CMP seeks to assail the order dated 27th November, 2015 (Annexure-5) passed by learned Civil Judge (Junior Division), Bargarh in CS No.98 of 2013, whereby an application filed by the Plaintiffs/Petitioners under Order VI Rule-17 CPC has been rejected.
4. Mr. Mohanty, learned counsel for the Petitioner submits that while preparing for adducing evidence, it came to the notice of learned counsel for the Plaintiffs/Petitioners that there are some typographical errors in the plot numbers of the plaint. There is also a wrong description of suit plot in the sketch map attached to the plaint. Hence, an application under Order VI Rule-17 CPC was filed for amendment of the plaint. Learned trial Court, although allowed the amendment with regard to

correction of typographical mistakes in the plot numbers in the plaint, but refused amendment of sketch map attached to the plaint. It is further submitted that although the petition for amendment was filed prior to commencement of trial, but by the time the impugned order under Annexure-5 was passed, the Plaintiffs had already examined one witness. It is his submission that amendment with regard to sketch map attached to the plaint will facilitate the Court for proper adjudication of the suit, failing which there will be no coherence between pleadings and the sketch map attached to the plaint. In that view of the matter, the impugned order is not sustainable and is liable to be set aside.

5. Mr. Mishra, learned AGA refuting the submission made by Mr. Mohanty, learned counsel for the Petitioner, contends that the petition for amendment of the plaint was filed after commencement of the trial. But, the Plaintiff-Petitioner has not given any explanation to the effect that in spite of due diligence, he could not have brought the amendment on record. To the contrary, the amendment sought for was within the knowledge of the Plaintiff-Petitioner before filing of the suit, as rightly observed by learned trial Court. Further, learned trial Court has meticulously considered the petition for amendment along with the objection filed by the Defendants/Opposite Parties and passed the impugned order. As such, the impugned order warrants no interference.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of record, it appears that the proposed amendment except correction of the sketch map attached to the plaint, has already been allowed.

Thus, the question arises as to whether the Plaintiffs/Petitioners should be permitted to replace the corrected sketch map attached to the plaint. On perusal of the sketch map attached to the plaint, it appears that it is not in consonance with the averments made in the plaint. On the other hand, the proposed amended sketch map is in consonance with the pleadings and averments made in the plaint. Thus, in order to facilitate proper adjudication of the suit, learned trial Court ought to have allowed such amendment, more particularly when it has already allowed amendment with regard to correction of plot numbers; otherwise, the map attached to the plaint will be meaningless.

7. The contentions of Mr. Mishra, learned AGA to the effect that the petition for amendment was filed after commencement of the trial does not appear to be correct, as from the averments made in the objection, it appears that the Defendants/Opposite Parties raised objection with regard to taking up the matter after commencement of trial, which is also admitted by Mr. Mohanty, learned counsel for the Petitioner. Be that as it may, since learned trial Court has partly allowed the petition for amendment, there was no impediment on its part to consider the amendment of the sketch map, which is otherwise necessary for proper adjudication of the suit.

7.1 As discussed above, the amendment of the sketch map will certainly facilitate the Court to adjudicate the suit properly.

8. In view of the above, this Court sets aside the impugned order and directs that the proposed sketch map be allowed to be substituted with the existing one attached to the plaint.

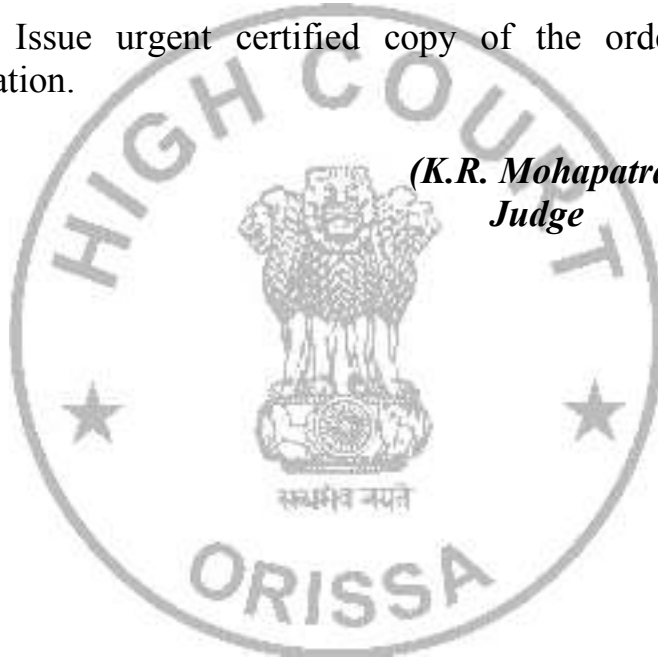
9. Since the suit is of the year 2013, learned trial Court shall make an endeavour for early disposal of the suit. Parties are directed to cooperate with learned trial Court for early disposal of the suit.

10. With the aforesaid observation and direction, the CMP is disposed of.

11. Interim order dated 3rd February, 2016 passed in Misc. Case No.11 of 2016 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy