

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

**CMP No. 412 of 2022**

***Satyanarayan Behera***

.....

***Petitioner***

Mr. Soumya Mishra, Advocate

*-versus-*

***Ashok Kumar Behera and others***

....

***Opp. Parties***

Mr. Sunit Sahoo, Advocate  
(For Opposite Party No.1)

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**22.08.2022**

**Order No.**

1. This matter is taken up through Hybrid mode.
2. This CMP has been filed assailing order dated 18<sup>th</sup> August, 2021 (Annexure-6) passed by learned Senior Civil Judge, Keonjhar in CMA No.6 of 2019 [arising out of CS No.34 of 2014 (FD)], whereby he rejected an application filed by the Plaintiff/Petitioner under Sections 151 and 153 CPC for correction of Plot number (Plot No.67 in place of 6) in the plaint, preliminary decree as well as in the final decree.
3. Mr. Mishra, learned counsel for the Plaintiff/Petitioner submits that CS No.34 of 2014 was filed for partition. One of the Plots, i.e., Plot No.67 was advertently mentioned as Plot No.6 in the plaint for which the said inadvertent error crept in the preliminary as well as final decree. It is his case that Plot No.67 would have been the correct plot number. The said inadvertent error could be pointed out after passing of the final decree. Hence, aforesaid application was filed for correction of such inadvertent error, as aforesaid. Although the Defendants

did not have any objection to the same, as the Defendant Nos. 1 to 9 and 18, though appeared did not file any objection to the same and Defendant Nos. 10 to 15 did not appear in the CMA, learned Civil Judge holding that the correction sought for is not permissible, rejected the said application. Hence, this CMP has been filed.

3.1 Relying upon a decision of this Court in the case of ***Santosh Kumar Sahoo Vs. Radhanath Sahoo and four others***, reported in 2013 (I) OLR 363, Mr. Mishra, learned counsel for the Petitioner submits that the application under Sections 152 and 153 CPC (CMA No.6 of 2019) ought to have been allowed. It is his submission that an application under Sections 152 and 153 CPC is maintainable if the same is bona fide and does not cause injustice to the other side and also does not affect the right already accrued in favour of the Defendants, as held by the Hon'ble Supreme Court in the case of ***Peethani Suryanarayana and another Vs. Repaka Venkata Ramana Kishore and others***, reported in (2009) 2 SCC 308. In the instant case, the Defendants did not have any objection to the correction of plot number as sought for in the CMA. Learned trial Court lost sight of the aforesaid settled position of law and passed the impugned order, which is not sustainable in the eye of law.

4. Mr. Sahoo, learned counsel for the contesting Opposite Party conceded to the submission of Mr. Mishra, learned counsel for the Petitioner and stated that amendment sought for will neither cause any prejudice to the Defendants nor it would affect the right already accrued in favour of the Defendants in the suit. The application appears to be bona fide. Learned trial

Court lost sight of the aforesaid settled position of law at the time of adjudication of the petition. Hence, he submits that the application under Sections 152 and 153 CPC in CMA No.6 of 2019 ought to have been allowed.

5. Considering the submissions of learned counsel for the parties and on perusal of the case laws, as aforesaid, it appears that this Court in ***Santosh Kumar Sahoo (supra)*** at paragraph 5 held as under:-

*“5. Applying the above ratio to the facts of the present case, it is seen that all the factors as mentioned above are satisfied in the present case as the mistake is a bona fide one and since both the parties agree for such correction, it cannot cause injustice to any of them inasmuch as by correcting the plaint and the compromise petition by way of amendment as well as the final decree, the same would not affect the right accrued in favour any of the parties. Rather incorrect description of the property would lead to a complex situation which may give rise to further proceedings inasmuch as the incorrect final decree neither can be worked out nor will be beneficial to any of the parties.”*

This Court, while laying down the aforesaid principle, also relied upon the decision of ***Peethani Suryanarayana (supra)***, in which it is held as under:-

*“The power of the court to allow such an application for amendment of plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors, viz., (i) the application must be bonafide; (ii) the same should not cause injustice to the other side and (iii) it should not affect the right already accrued to the defendants”.*

5.1 These material aspects ought to have been considered by learned trial Court while adjudicating the CMA No.6 of 2019 giving opportunity of hearing to the parties concerned. In the instant case, it appears that learned trial Court proceeded on an assumption that the plot number sought to be corrected is

already in the plaint, on the basis of which the preliminary decree as well as the final decree has been passed. Thus, it would not be permissible to amend the plot number at such a belated stage. Such finding has been arrived at without considering the ratio decided by the Hon'ble Supreme Court and this Court, as well.

6. In view of the above, the impugned order under Annexure-6 is set aside and the matter is remanded back to learned trial Court for fresh adjudication of CMA No.6 of 2019 giving opportunity of hearing to the parties concerned and keeping in mind the ratio referred to above.

7. The CMP is disposed of accordingly.

Issue urgent certified copy of the order on proper application.

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