

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 643 OF 2019

Panchanan Sethi and another* *Petitioners

Mr. S.S.K. Nayak, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Swayambhu Mishra,

Additional Standing Counsel

(For Opp. Party No.1)

Mr. P.K. Satapathy, Advocate

(For Opp. Party Nos.3 and 4)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

13.12.2022

Order No.

- 4.
1. This matter is taken up through hybrid mode.
 2. The Petitioners in this CMP seek to assail the order dated 8th April, 2019 (Annexure-5) passed by learned Civil Judge (Junior Division), Dhamnagar in C.S. 251 of 2012, whereby an application filed by them under Order VI Rule 17 C.P.C. to amend the plaint has been rejected.
 3. Mr. Nayak, learned counsel for the Petitioners submits that at the time of cross-examination of the Plaintiff No.1, it came to the light that the suit land has not been properly described in the pleading as well as in the schedule of the plaint. Hence, an application at this stage was filed for amendment of the pleadings. The amendment sought for will neither change the nature and character of the suit nor prejudice the

Defendants. By virtue of the amendment, the Petitioners want to reduce the area mentioned in the plaint. This material aspect was not taken into consideration by learned trial Court. He further submits that in the case of ***Revajeetu Builders and Developers –v- Narayanaswamy & Sons and others***, reported in (2009) 10 SCC 84, it is held that when amendment sought for is necessary for proper adjudication of the case, it should be allowed. In that view of the matter, he prays for setting aside the impugned order under Annexure-5 and to allow the amendment sought for.

4. Mr. Satapathy, learned counsel appearing for Opposite Party Nos.3 & 4 and Mr. Mishra, learned Additional Standing Counsel appearing for Opposite Party No. 1 vehemently object to the same and contend that by virtue of the amendment, the Petitioners want to take away the admission made in the cross-examination. If the amendment sought for is allowed, the dimension of the suit property will be changed. As such, the Defendants will be seriously prejudiced, if the amendment is allowed. It is, therefore, prayed that the CMP being devoid of any merit should not be entertained.

5. Considering the rival contentions of the parties, this Court finds that the Plaintiff No.1 was examined as P.W.1. In his cross-examination, he has categorically admitted that dimension of the land mentioned in the pleading as well as in the body of the plaint is not correct. Once the P.W.1 in his cross-examination has admitted that correct dimension of the property involved in the suit is not mentioned in the plaint, a

petition for amendment to amend the same should not be allowed, more particularly when hearing of the suit has commenced. Hence, learned trial Court has committed no error in dismissing the petition under Order VI Rule 17 C.P.C.

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

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

(K.R. Mohapatra)
Judge

bks

