

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.1145 of 2016

Basanti Nayak & Anr.

.... ***Petitioner(s)***
Mr. A.N.Pattanayak,
Advocate

-versus-

Ram Chandra Mohapatra & Ors.

.... ***Opposite Party(s)***

CORAM:
JUSTICE BISWANATH RATH

ORDER

06.05.2022

Order No.

11.

1. Heard the submission of learned counsel for the petitioners.
2. Petition involves rejection of an amendment application at the instance of the plaintiff. Undisputedly involving the pre-trial attempt, taking this Court to the purposed amendment available in running Page-55 of the brief, an attempt is made by the counsel appearing for the petitioners. Reading through the Paragraph-1 of the plaint, an attempt is made to satisfy the Court that there is virtually no taking away of admission. In the circumstance, taking this Court to the ground of rejection by the counsel appearing for the petitioner submitted that there has been wrong appreciation of the proposed amendment resulting in a wrong disposal involved herein. In spite of notice, there is no appearance on behalf of the opposite parties, this matter is heard and decided in the context of petitioners only.
3. Looking to the grievance of the petitioners, this Court takes into account the plea of the petitioners in Paragraph-1 of the plaint involving Original Suit No.342 of 1992-I finds the averments read as follows:-

1. "That, the genealogy of the plaintiffs and defendant no.2 and defendant nos.19 and 20 is described in detail in schedule-A of the plaint and the disputed land in this suit for which the plaintiffs have prayed for partition are described in detail in Schedule 'B' and Schedule 'C' and Schedule 'D' of the Plaint. All other Schedule of land mentioned in the plaint are either the part and parcel of 'B' Schedule or 'C' schedule of 'D' schedule which are the self acquired properties of the plaintiff No.1's father and his other co-sharers. The Parties are governed by Hindu Mitakshara School of Law".

This Court also takes into account the proposed amendment involved herein which reads as follows:-

That, para 1 of the plaint be deleted and following sentences be added.
 "1. That, the genealogy of the plaintiffs and defendants No.2, 19 and 20 is declined in detail in Schedule "A" of the plaint and the disputed land in the suit for which the plaintiffs have prayed for partition and permanent injunction and described in detail in Schedule "B" and the self acquired properties of the plaintiffs No.1's father. All other schedule of land mentioned in the plaint are either the part and parcel of "C" Schedule or "D" Schedule which are the self acquired properties of the plaintiff No.1's father and his other co-sharer. The parties are governed by Hindu Mitakshara School of Law. As per genealogy was arrayed as common ancestor but actually he had another brother namely Satendra and both Umakanta and Satendra are two sons of Jagannath Pattanayak the common ancestor of Pattanayak family" be added."

4. In comparison of the aforesaid pleadings both in plaint as well as amendment application particularly reading through the first para of the amendment, this Court finds there should not be any doubt that there is a clear attempt of the plaintiff to take out an admission. In the first part of the plaint supported with the genealogy and involving an attempt in the year 2016 when suit is of the year 1992. Both on account of taking out clear admission and an attempt for amendment almost after two and half decades, this Court declines to interfere in the impugned order.

5. As a consequence, this CMP stands dismissed.

(Biswanath Rath)
Judge