

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.1040 OF 2018

Dr.Madhuri Singh & anr.

....

Petitioners

Mr.R.Roy, Adv.

-versus-

Manoranjan Dalai

....

Opposite Party(s)

Mrs.S.Mohanty, Adv.

CORAM:

JUSTICE BISWANATH RATH

Order
No.

ORDER
12.5.2022

10. 1. Heard learned counsel for the Parties.
2. The CMP involves rejection of an Application under Order 6 Rule 17 of C.P.C. moved at the instance of the Plaintiffs.
3. Taking this Court to the written statement pleading reading together with the proposed amendment, learned counsel for the Petitioner-Plaintiffs claiming the recital in the proposed amendment, being the source from the written statement pleading, submitted that for the development through three suits, such as T.S. Nos.121/1970 & 248/1992 and C.S.No.724/2012 are relevant for the purpose of effective adjudication of the suit. Further dependent on the response of the Defendant in his written statement, there is strong necessity to bring the proposed amendment to at least get into effective adjudication of the suit. Taking this Court to the reasoning, learned

counsel for the Petitioners alleged that while considering the matter on proposed amendment and its necessity in effective adjudication of the suit, the trial court instead of considering the necessity of such amendment has almost entered into finality on the factual aspect therein. Mr.Roy, learned counsel for the Petitioners thus claimed, there is mechanical rejection of the Application under Order 6 Rule 17 of C.P.C.

4. Learned counsel for the Defendant in his opposition to the claim of the learned counsel for the Petitioners while not disputing that the source of proposed amendment is through the written statement averments but however brought to the notice of the Court that in the meantime, C.S. No.724 of 2012, which was pending at the time of amendment application has already come to an end by virtue of decree passed on 27.3.2019. Learned counsel though supported the impugned order, however prayed early disposal of the suit involved.

5. Considering the rival contentions of the Parties, on perusal of the written statement pleading and the proposed amendment, this Court finds, the amendment is very much germane and required to be considered on the finality of the suit. For the opinion of this Court, considering the Application under Order 1 Rule 10 of C.P.C., the trial court is only to see the necessity in such amendment and if

at all there is relevancy in just decision of the suit and in no circumstance, it is available to the court considering such Application to go into the merit involved therein, as merit aspect has to be left open to be considered in the ultimate trial of the suit. At this stage of the matter, this Court takes into account the allegation of the Petitioners on the mode of disposal of the Application involved herein.

6. For the view of this Court already recorded herein above, this Court finds, there has been no proper consideration of the Application of the Plaintiffs under Order 6 Rule 17 of C.P.C. In the process, this Court interfering with the impugned order at Annexure-5 sets aside the same and allows the Application under Order 6 Rule 17 of C.P.C.

7. For this Court recording the joint submission of the learned counsel for the Parties that in the meantime, C.S. No.724 of 2012 has been disposed of by a decree on 27.3.2019, this Court permitting the Plaintiff-Petitioners to bring a formal Application on the date of appearance with service of such copy on the learned counsel for the Defendant to further amend the Plaint giving in the disposal of the above suit. In such event, such Application shall also be allowed within seven days from the date of filing of the formal Application. For the amendment involved, the Plaintiff is also directed to bring a

consolidated plaint at least within seven days after service of copy of the same on the Defendant. In such event the Defendant is directed to file additional written statement within two weeks. Considering the suit is pending long since, the trial court is directed to dispose of C.S. No.1117 of 2017 at least within a period of nine months from the date of filing of the additional written statement.

8. With the above order, the CMP stands disposed of.

M.K.Rout

