

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 588 OF 2022

Prafulla Chandra Pradhan ***Petitioner***
Mr. Bhuban Mohan Bhuyan, Advocate
-versus-
Niranjan Pradhan and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
18.07.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 12th May, 2022 passed in C.S. No. 58 of 2021, whereby learned Civil Judge (Junior Division), Salipur rejected an application filed by him under Order VI Rule 17 C.P.C.
3. Mr. Bhuyan, learned counsel for the Petitioner submits that C.S. No. 58 of 2021 has been filed for demarcation of the suit land and for permanent injunction. When the Defendants started construction over the suit land, the Petitioner filed an application for amendment of the plaint to incorporate the following prayer:

“(iii) Let a decree for recovery of illegal possession of the suit land from the defendants over the suit land through court.”

4. It is his submission that when the Defendants started construction over the suit land, it was inevitable on the part of the Plaintiff to amend the prayer made in the plaint. Learned

trial Court without considering the purpose for which the prayer is sought to be incorporated, rejected the petition.

5. Upon hearing learned counsel for the Petitioner and on perusal of the case record, it appears that there is no pleading as to the when the Petitioner entered into the possession over the suit land and started construction over the same. Learned trial Court held that in absence of any pleading to the effect that since when the Petitioner is in possession over the suit land, prayer for recovery of possession cannot be granted and rejected the petition under Order VI Rule 17 C.P.C.

6. In absence of any pleading to the effect that either the Defendants were in possession over the suit land or they entered into the possession over the same during pendency of the suit, no prayer for recovery of possession can be granted. Thus, I find that the amendment sought for cannot be allowed.

7. In view of the above, I find no infirmity in the impugned order. Accordingly, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks