

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

**CMP No. 590 of 2022**

***Kasinath Dash***

***..... Petitioner***

Mr.Saroj Kumar Padhi, Advocate

*-versus-*

***Rama Chandra Dash***

***.... Opp. Party***

**CORAM:  
JUSTICE K.R. MOHAPATRA**

**ORDER  
06.09.2022**

**Order No.**

2. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 29<sup>th</sup> April, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division), Pipili in CS No.36 of 2007, whereby he allowed an application filed by the Plaintiff/Opposite Party under Order VI Rule 17 CPC.
3. Mr. Padhi, learned counsel for the Petitioner submits that the Opposite Party had filed the aforesaid suit for declaration and permanent injunction. When the matter was posted for settlement of issues, the Plaintiff/Opposite Party filed an application for amendment of the plaint, whereby he effectively sought for substituting the plaint. The Plaintiff/Opposite Party also sought for amendment of the relief sought for in the plaint. Learned trial Court, while considering the matter, did not at all take these material aspects into consideration. It is his submission that learned trial Court, ought to have considered, whether amendment sought for is necessary to decide the real controversy

between the parties; whether any prejudice or injustice is caused to the other side; and whether the amendment sought for is bona fide or not. In this regard, he relied on a decision of this Court in ***Pramod Kumar Prusty and others Vs. Aina Prusty (since dead) represented by her legal heirs and others***, reported in 2014 (2) OLR 1035. The aforesaid settled law was not taken into consideration by learned trial Court while adjudicating the petition under Order VI Rule 17 CPC. Hence, he prays to set aside the impugned order.

4. Upon hearing learned counsel for the Petitioner and on perusal of case record as well as the ratio relied upon by him, it appears that hearing of the suit has not yet commenced. It is true that the schedule of proposed amendment of the petition under Order VI Rule 17 CPC is voluminous. The Plaintiff had also sought for amendment of the prayer in the plaint. Learned trial Court, however, taking into consideration the materials available on record, came to hold that the amendment sought for are only clarificatory and explanatory in nature, which will not change the nature and character of the suit land, as no new allegation has been alleged by the Plaintiff by virtue of the proposed amendment. Since the Defendant/Petitioner has an opportunity to file additional written statement to the amended plaint and that learned trial Court has observed that it will not cause any prejudice to the Defendant, I am of the considered opinion that interference in the impugned order will cause further delay in the matter. On perusal of the proposed amendment, though voluminous, it appears that the same are clarificatory and explanatory in nature. The Plaintiff, however, proposed to amend

the prayer portion of the plaint by seeking mandatory injunction and declaration. But, the same will not change the nature and character of the suit.

5. In view of the above, this Court, without interfering with the impugned order, disposes of the CMP with an observation that the Defendant/Petitioner shall be allowed to file additional written statement to the amended plaint by the learned trial Court and the same shall be taken into consideration while adjudicating the suit.

Issue urgent certified copy of the order on proper application.

