

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 629 OF 2022

Smitarani Sahoo

.....

Petitioner

Mr. Manas Ranjan Panda, Advocate

-versus-

Prakash Kumar Dash

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.07.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Order dated 7th July, 2022 (Annexure-1) passed by learned Senior Civil Judge, Bhubaneswar in CS No.1317 of 2017, whereby, an application under Order VI Rule 17 CPC filed by the Defendant/Petitioner has been dismissed.
3. Mr. Panda, learned counsel for the Petitioner submits that the suit has been filed to declare the RSD No.3562 dated 13th May, 2003 executed in favour of the Defendant/Petitioner to be void. After filing of the written statement, it came to the notice of the Defendant that the sale deed on the basis of which the Plaintiff is claiming title over the suit land is void as one of the recorded tenants, namely, Ratnakar Sahoo, who was also one of the executants of the sale deed, was dead by the time the land was alienated in favour of the Plaintiff. Learned trial Court, without considering the relevance of such plea, rejected the petition observing that the sale deed executed in favour of the Plaintiff by the recorded tenants is not in issue in the suit.

Further, no counter claim has been filed quashing the validity of the sale deed executed in favour of the Plaintiff. It is submitted that the said plea is relevant to be considered in the present suit, as it was not within the knowledge of the Defendant at the time of filing of the written statement. Thus, plea to that effect could not be taken earlier. Hence, he prays for setting aside the impugned order and to allow the amendment sought for by the Petitioner/Defendant in his petition under Order VI Rule 17 CPC.

4. Upon hearing learned counsel for the Petitioner and on perusal of record, it appears that the validity of the RSD No. 3562 dated 13th May, 2003 is under consideration in the suit. Validity of the sale deed in respect of the self-same land executed in favour of the Plaintiff is not an issue in the suit itself. Further, trial of the suit had already commenced by the time the petition for amendment of the written statement was filed. Thus, the learned trial Court has rightly observed that the said document and supporting pleadings are not relevant for just adjudication of the suit. I find no infirmity in the impugned order.

5. Accordingly, the CMP is dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge

