

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 634 of 2022

Baikuntha Bej

.....

Petitioner

Mr. Anam Charan Panda, Advocate

-versus-

Dungei Bhoi and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

30.08.2022

Order No.

2.
 1. This matter is taken up through Hybrid mode.
 2. On perusal of office note it appears that there is inadvertent typographical error with regard to CMP number mentioned in the cause title of the order dated 5th August, 2022. It should be '*CMP No.634 of 2022*' instead of '*CMP No.643 of 2022*'. Necessary correction be carried out accordingly.
 3. Petitioner in this CMP seeks to assail the order dated 8th July, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division) Nimapara in CS.No.40 of 2016, whereby an application for amendment of the plaint was rejected.
 4. Mr. Panda, learned counsel for the Petitioner submits that CS No.40 of 2016 has been filed for declaration of right, title, interest and permanent injunction. After closure of evidence, Plaintiff/Petitioner filed an application under Order VI Rule 17 CPC to incorporate the prayer for recovery of possession in the plaint and also prayed for consequential amendment of valuation of the relief as well as payment of court fee. It is submitted that prayer for recovery of possession is imperative to be incorporated as the decree of declaration of right, title, interest and permanent

injunction may be frustrated by not seeking recovery of possession.

5. Taking into consideration the submission of learned counsel for the Petitioner, this Court, vide order dated 5th August, 2022, directed learned counsel for the Petitioner to take instruction as to whether the Plaintiff would adduce further evidence in the event the amendment sought for is allowed.

5.1 Mr. Panda, learned counsel for the Petitioner on instruction submits that the Plaintiff will not adduce further evidence in the event the amendment sought for is allowed.

5.2 In view of the above, this Court is of the considered opinion that since the Plaintiff/Petitioner undertakes not to adduce any further evidence in the event the amendment is allowed, it may not prejudice the Defendants/Opposite Parties in the suit.

5.3 Accordingly, this Court is of the considered opinion that amendment sought for is to be allowed to meet the ends of justice.

6. In view of the above, the impugned order dated 8th July, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division) Nimapara in CS No.40 of 2016 is set aside. Amendment sought for is allowed. The Plaintiff shall file consolidated plaint and pay deficit court fee within a period of fifteen days hence.

6.1 Since the order is passed without issuing notice to Opposite Parties/Defendants they are at liberty to seek variation of this order, if they feel aggrieved.

Issue urgent certified copy of the order as per rule.

s.s.satapathy

(K.R. Mohapatra)
Judge