

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 641 OF 2022

Prafulla Kumar Mahapatra ***Petitioner***
Mr. Gouri Mohan Rath, Advocate
-versus-
Pratulla Kumar Mahapatra and ***Opp. Parties***
another

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

Order No.

**ORDER
21.07.2022**

1. This matter is taken up through Hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 30th June, 2022 (Annexure-1) passed by learned Senior Civil Judge, Sambalpur in C.S. No.140 of 2015, whereby an application under Order VI Rule 17 C.P.C. filed by him has been rejected.
3. Mr. Rath, learned counsel for the Petitioners submits that after closure of the evidence and during preparation of the argument, the Petitioner as Plaintiff could point out that the Defendants have made construction by making further encroachment. It was incumbent on the part of the Plaintiff to bring the same on record by way of amendment for just adjudication of the suit. Accordingly, a petition for amendment was filed seeking for the following amendments:

“In the prayer portion of the plaint at the end of prayer no.II the following may be added in between the last word “On” and “.” (Full stop).

“And therefore the Hon’ble court may be pleased to direct the defendants to demolish the structures constructed by them over the Yellow marked portion of the plaint map and keep it vacant for the common use of both the parties”.

3.1. Mr. Rath, learned counsel further submits that no further evidence is required to be adduced for the proposed amendment sought to be incorporated in the prayer portion of the plaint. Unless the amendment is allowed, it may lead to multiplicity of litigation. Hence, the amendment is imperative for just adjudication of the suit and should have been allowed. It is further submitted that the Plaintiff undertakes not to adduce any further evidence in the matter. Hence, the amendment sought for being formal in nature ought to have been allowed.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the materials placed before this Court, more particularly the proposed amendment, it appears that the Plaintiff wants to incorporate a prayer to issue direction to the Defendants to demolish the structure made by them over yellow mark portion of the sketch map appended to the plaint. On perusal of the plaint annexed to the CMP as at Annexure-2, it appears that at para-9 of the plaint, the Plaintiff has averred that the Defendants have started construction over yellow portion of the map. Being aware of situation, no prayer for restraining the Defendants to demolish the structure over yellow portion of the map was made by them. It further appears that on the basis of the pleadings, parties have led evidence and the suit is at the stage of argument. At that stage, an application under Order

VI Rule 17 C.P.C. has been filed to amend the prayer portion of the plaint.

5. On perusal of the petition for amendment, it does not appear that in spite of exercising due diligence, the Plaintiff could not have made such prayer to amend the prayer portion of the plaint before commencement of the trial. Thus, the amendment if allowed will certainly prejudice the Defendants.

6. In view of the above, I find no infirmity in the impugned order under Annexure-1. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks

