

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.917 of 2019

Sarata Panda & Ors.

....

Petitioner(s)

Mr.M.Mohnaty, Advocate

-versus-

Harihara Panda & Ors.

....

Opp.Party(s)

Mr.S.B.Mohanty,
Advocate

CORAM:

JUSTICE BISWANATH RATH

ORDER

20.04.2022

Order No.

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1. Heard Mr. Mohnaty, learned counsel appearing for the petitioners. In spite of appearance of series of counsels on behalf of the contesting opposite parties, nobody is there to contest the litigation.
2. This Civil Miscellaneous Petition involves rejection of an application under Order 6, rule 17 of the Code of Civil Procedure at the instance of the plaintiffs undisputedly after commencement of evidence and from the side of the plaintiff. Mr.Mohanty, learned counsel appearing for the petitioners disclosed that there is no commencement of evidence of the defendants. It is on the background involving a development during the cross examination of Defendants witnesses particularly, P.W.1, petitioners claimed that a party outside the suit owns Lot No.2, in an attempt to correct the suit pleading and claim to see a logical end to the suit, plaintiffs attempted for amendment of the suit by bringing application under Order 6, rule 17 of the Code of Civil Procedure, which was heard in the contest of the existing defendants and ultimately rejected for having no ground.
3. Taking this Court to the reasoning, Mr.Mohanty, learned counsel submitted through the pleading in the amendment application that no

doubt there is a delayed attempt but plaintiffs having a cause of action on 07.06.2016, having brought the amendment in the month of April, 2019 even assuming the suit has already entered into trial, to see a logical end of the suit, in allowing the application involved, keeping in view the suffering of Defendants already existing could have compensated the defendants by way of cost. Mr. Mohanty, learned counsel for the petitioners also contended that on refusal of the amendment, the suit will render no result and for the loss of time in the meantime, there may be bringing of a dispute involving delayed cause of action and the plaintiff will suffer on account of delay. Mr. Mohanty, learned counsel thus contended that the trial court did not apply its proper mind while considering the prospect of such amendment.

4. Nobody is appearing for the opposite parties. However, looking to the objection by the existing defendants, this Court finds, the defendants had the only contention that such a position has been taken after the commencement of plaintiffs witness. P.W.1 already examined and cross examined further since the written statement already disclosed the ground on the suit suffering for non-rejoinder of necessary party having prevented the plaintiff to bring amendment in appropriate time. There also appears, the defendants further objected to such amendment on the premises that plaintiffs had earlier also thrice amended their plaint being allowed on 23.6.2017 and 13.10.2017. At this stage, this Court finds from the impugned order, the reasoning assigned by the trial court appears to be no amendment should be allowed after the commencement of trial and further the plaintiffs have also not assigned any reason constraining the plaintiffs to file the petition at such belated stage.

5. Considering the submission of Mr. Mohanty, learned counsel for the petitioners, this Court finds undisputedly the Civil Suit was filed on 17.06.2016 on the cause of action dated 07.06.2016. The written statement appears to have been filed on 20.11.2016. There has been two amendment attempt in the year 2017. This Court here observes, the

amendment involved cannot be restricted on the premises that there has been two earlier attempts for amendment. As the present amendment involved absolutely a new cause of action, may be already available to the plaintiffs at the time of filing of the suit or in the worse on filing the written statement on 28.11.2016. For the suit was brought on 17.06.2016, it is looking to the reasoning bringing such party to have an effective adjudication, plaintiffs had the cause of action for three years from 07.06.2016 i.e. the date of cause of action and the suit was filed on 17.06.2016, for at least three years making it till 10th of July, 2019. Here this Court finds, the amendment application was filed on 09.04.2019. Even considering that there has been inordinate delay but however the attempt by way of amendment being brought within three years of the cause of action further keeping in view that if such an attempt is defeated, not only this suit will fail but there may be applying of resjudicata in bringing a fresh suit. Here, this Court finds, the trial court did not keep all the above in mind in considering an application for amendment. This Court observes, in the event there was inordinate delay in making such attempt, nothing prevented the trial court while allowing the amendment application to award heavy cost but in no circumstance, the amendment application would have been rejected.

6. In the above background of the case and to have a logical end to the Civil Suit, the dispute involved therein involving appropriate party, this Court interfering in the impugned order at Annexure-3, sets aside the same. As a consequence, allowing the amendment application, this Court directs the plaintiffs to file amended plaint and shall also attempt for rolling back the P.W.1 for further examination and cross examination but, however, only based on further pleading by way of amendment. This Court here also finds for the inordinate delay in bringing such application, there is definite loss to the defendants already in existence and their suffering should also be weighed while allowing such application. Keeping this in view, this Court while permitting the Defendants existing to file their additional written

statement also permits the petitioners to take out the notice on the newly added defendants. Trial court should ensure while issuing notice and fixing the date of appearance, written statement of such party should come on record at least within a period of three months. For suffering of the existing defendants for no fault of them, this Court imposes a cost of Rs.4,500/- (Rupees four thousand five hundred) to be paid by the defendants in equal proportionate within a period of fifteen days hence. This order will be worked out after the plaintiffs file receipt showing payment of the aforesaid cost along with copy of this order.

7. The Civil Miscellaneous Petition succeeds.

(Biswanath Rath)
Judge



Sks