

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.670 of 2022

Biranchi Narayan Tripathy* *Petitioner

Mr. Sanjeev Ddgata, Advocate

-versus-

Kailash Chandra Tripathy and another* *Opp. Parties

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

**ORDER
29.08.2022**

Order No.

1. 1. This matter is taken up through Hybrid mode.
2. 2. Petitioner in this CMP seeks to assail the order dated 22nd November, 2021 passed by learned 2nd Additional District Judge, Bolangir in RFA No.20/49 of 2015-2017, whereby an application under Order VI Rule 17 CPC has been rejected.
3. 3. It was submitted by Mr. Udgata, learned counsel that the Petitioner is the Defendant in the Civil Suit No.142 of 2009. On the basis of the materials available on record, learned Civil Judge (Senior Division), Bolangir decreed the suit in favour of Plaintiffs/Opposite Parties permanently restraining him from interfering with the possession of the Plaintiffs over the suit property in any manner. Assailing the same the Petitioner filed appeal. During pendency of the appeal, the Petitioner filed an application under Order VI Rule 17 CPC to amend the written statement stating that the amendments are formal in nature and will not change the nature and character of the suit.

3.1 Further, the amendments are necessary for proper adjudication of the appeal. Although learned appellate Court held that the amendments are formal in nature, but rejected the same holding that the amendments sought for may change the nature and character of the suit. It is submitted by Mr. Udgadata, learned counsel for the Petitioner that the aforesaid observations made by learned appellate Court are contradictory to each other. The amendments are, in fact, formal in nature and will not change the nature and character of the suit. Petitioner only wants to incorporate the pleadings with regard to manner of settlement of the land in question in his name and also to dismiss the suit for non-joinder of functionaries of the State as parties to it. Learned appellate Court failed to appreciate the same and dismissed the same. It is submitted that there is no bar for amendment of the pleadings at the appellate stage. Hence, for the ends of justice the amendment as sought for ought to have been allowed. He, therefore, prays for setting aside the impugned order and to allow the amendments as sought for by the Petitioner/Defendant.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of record, it appears that the suit has been decided on the basis of materials available on record. Defendant, at the appellate stage, wants to introduce certain new pleadings and also to explain the reasons as to why he could not seek for such amendment before the trial Court, which was not there in the written statement itself. In view of the above, the amendment sought for, if allowed, will enlarge the scope of the suit, which is

not permissible at the appellate stage. As such, I find no infirmity in the impugned order.

5. Accordingly, the CMP stands dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy

