

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 671 OF 2022

Prafulla Kumar Das

.....

Petitioner

Mr. Lingaraj Sarangi, Advocate

-versus-

Bipin Bihari Biswal

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.08.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 13th July, 2022 (Annexure-8) passed by learned 3rd Additional District Judge, Bhubaneswar in R.F.A. No.72 of 2016, whereby an application under Order VI Rule 17 C.P.C. for amendment of the plaint was rejected.
3. Mr. Sarangi, learned counsel for the Petitioner submits that C.S. No. 1691 of 2010 was filed by the Appellant-Petitioner for specific performance of contract. The suit being dismissed, R.F.A. No. 72 of 2016 has been filed, which is pending before learned 3rd Additional District Judge, Bhubaneswar. During pendency of the appeal, the Appellant-Petitioner filed an application under Order VI Rule 17 C.P.C. for amendment of the plaint as per the schedule of proposed amendment, which reads as under:

“6(A). That, the defendant in the agreement dated 12.12.2004 has clearly mentioned that after he will mutate the Schedule Property, he would execute the Registered Sale Deed in favour of the plaintiff. However, the defendant had neither served any written nor made any

oral communication to the plaintiff by stating that the "Schedule of property" has been mutated by the defendant. Therefore the plaintiff is not able to file the Civil Suit earlier."

And sought for insertion of the proposed amendment after the paragraph-6 of the plaint. Learned Appellate Court taking into consideration that the Plaintiff had knowledge of contents of the agreement much prior to filing of the suit and had not made such a prayer during pendency of the suit rejected the petition for amendment.

4. Mr. Sarangi, learned counsel further submits that the proposed amendment is imperative for just adjudication of the appeal. The amendment sought for will not change the nature and character of the suit. Hence, there cannot be any legal impediment for allowing such amendment at the appellate stage. Loss, if any, to the Opposite Party may be compensated by cost. Hence, he prays for setting aside the impugned order and to allow the petition filed under Order VI Rule 17 C.P.C.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the averments sought to be incorporated by virtue of amendment were within the knowledge of the Plaintiff-Petitioner during pendency of the suit. Parties contested the suit on the basis of the pleadings and the materials available on record. Incorporation of the proposed amendment at the appellate stage will certainly amount to incorporation of new facts, which may render the decree passed in the suit infructuous. The Plaintiff-Petitioner having knowledge of the terms of agreement dated 12th December, 2004 before filing of the suit did not sought for incorporation of the said averments in the plaint during pendency of the suit. Hence, he cannot be allowed at the

appellate stage, which will certainly prejudice the Defendant. 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

