

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 701 OF 2022

Bhabani Parida and others* *Petitioners

Mr. Vivekananda Jena, Advocate

-versus-

Daitari Parida

.... *Opp. Party*

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.08.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 21st July, 2022 passed by learned Civil Judge (Senior Division), Pipili in C.S. No. 97 of 2021, whereby an application filed by the Plaintiffs-Petitioners under Order VI Rule 17 C.P.C. has been rejected.
3. Mr. Jena, learned counsel for the Petitioners submits that the suit has been filed for partition. Since the Defendant by filing written statement brought on certain new facts, the Plaintiffs-Petitioners in order to clarify the same sought for amendment of the plaint. The suit is posted for settlement of the issues. Hence, there is no legal impediment for allowing the amendment, which is imperative for just adjudication of the suit. Learned trial court without considering the same rejected the application on the ground that proposed amendments are mere elaboration of fact already stated in the plaint, which is sought to be incorporated in response to the averments made in the written statement. It is further submitted that such a finding is not sustainable in the eyes

of law and the impugned order is liable to be set aside and the Petitioner should be permitted to amend the plaint suitably.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the proposed amendments are mere elaboration of the averments made in the plaint. At some places, the Plaintiffs made an endeavour to reply the averments made in the written statement by way of amendment. Elaboration of averments made in the plaint can be done at the time of leading evidence by the witnesses to be examined on behalf of the Plaintiffs. The reply to the averments made in the written statement can also be taken care of at the time of recording of the evidence. Hence, the amendment sought for cannot be said to be imperative for just adjudication of the suit. Accordingly, learned trial Court on discussion of the materials on record has passed a reasoned order, which warrants no interference.

5. Accordingly, the CMP is dismissed.

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

(K.R. Mohapatra)
Judge

bks