

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.707 of 2022

Arjun Charan Giri *Petitioner*
Mr. Gopinath Mishra, Advocate
-versus-
Nityananda Giri and others *Opp. Parties*

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
19.12.2022

- 5.
1. This matter is taken up through Hybrid mode.
 2. In spite of issuance of notice to Opposite Party No.2 in his correct address the AD returned with report that '*no such addressee is found so returned to the sender*'.
 3. Mr. Mishra, learned counsel for the Petitioner submits that since Opposite Party No.2 had not filed any objection to his petition under Order VI Rule 17 CPC, the CMP can be disposed of in his absence, as notice to all other Opposite Parties is sufficient.
 4. Order dated 2nd July, 2022 (Annexure-3) passed by learned 2nd Additional Senior Civil Judge, Balasore in CS No.941 of 2017 is under challenge in this CMP, whereby learned trial Court partly allowed the petition under Order VI Rule 17 CPC filed by the Plaintiff/Petitioner.
 5. It is submitted by Mr. Mishra, learned counsel that during pendency of the suit, a petition for conversion of the land from agriculture to 'gharabari' was filed before the Tahasildar under the provisions of OLR Act. After commencement of hearing of the suit, the said application was

allowed converting the suit land from agriculture to 'gharabari'. Hence, the Petitioner by filing an application under Order VI rule 17 CPC only sought to incorporate the same in the pleadings including the land details. Learned trial Court, although allowed the Plaintiff/Petitioner to incorporate the pleading with regard to conversion of the land, but refused amendment to incorporate details of the land. It is his submission that land mentioned under 'Kha' schedule was described as it was before conversion. Hence, after conversion of the land from agriculture to 'gharabari', the Khata number, Plot number and extent was to be reflected to avoid any confusion while adjudicating the suit. He, therefore, prays the order to the extent of refusing amendment by learned trial Court should be set aside and the petition for amendment should be allowed in toto. Although notice on the Opposite Parties is made sufficient except Opposite Party No.2, none appears on their behalf. Mr. Mishra, learned counsel for the Petitioner submits that only Defendant/Opposite Party Nos.4 to 9 have filed the objection to the petition under Order VI Rule 17 CPC. Hence, presence of Opposite Party No.2 is not necessary for adjudication of the CMP.

6. Considering the submission made by learned counsel for the Petitioner, this Court finds that learned trial Court has allowed the prayer for amendment so far as conversion of the land from agriculture to homestead is concerned. However, learned trial Court refused to allow the prayer for amendment with regard to incorporation of the Hal Plot number, Khata number and extent of the land etc. (description of suit land after conversion).

6.1 Since learned trial Court has allowed the petition with regard to conversion of the land taking it to be a subsequent event during pendency of the suit, it should have allowed the Plaintiff/Petitioner to incorporate details of the land after conversion, failing which amendment allowed may not facilitate the Court for proper adjudication of the suit in absence of any detail particulars of the suit land after conversion. In view of the above, this Court directs that the Petitioner shall be allowed to incorporate details of the land after it was converted to 'gharabari' under 'Kha' Schedule of the plaint, as per the schedule of the amendment petition.

7. With the aforesaid modification in the impugned order, the CMP is disposed of.

8. Interim order dated 6th September, 2022 passed in IA No.780 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge