

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CMP NO. 1212 OF 2016**

***Md. Rasid***

....

***Petitioner***

Mr. Pabitra Kumar Nayak, Advocate

*-versus-*

***Mandhata @ Ratnamani Banchhor***  
***and others***

....

***Opp. Parties***

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

**ORDER**

**22.07.2022**

**Order No.**

**CMP NO. 1212 OF 2016**  
**& I.A. No. 220 of 2022**

7.        1.        This matter is taken up through hybrid mode.
2.        I.A. No. 220 of 2022 has been filed for extension of the interim order dated 31<sup>st</sup> August, 2016 passed in the CMP.
3.        While considering the I.A., it was felt necessary to go into the merit of CMP. Hence, Mr. Nayak, learned counsel for the Petitioner prays for disposal of CMP.
4.        The Petitioner in this CMP prays for setting aside the order dated 22<sup>nd</sup> July, 2016 (Annexure-5) passed by learned Civil Judge (Junior Division), Jharsuguda in C.S. No. 3 of 2011, whereby he rejected an application under Order VI Rule 17 C.P.C. filed by him praying to amend the written statement by introducing a counter claim in the matter.
5.        Mr. Nayak, learned counsel for the Petitioner submits that C.S. No. 3 of 2011 has been filed to declare the registered sale deed executed by Defendant No.2 (brother of the Plaintiff) in favour of the present Petitioner (Defendant No.1) to be void.

In course of trial, it came to the notice of Defendant No.1 that there was already a partition between the Plaintiff and Defendant No.2. The Defendant No.2 pursuant to such partition has sold the land in favour of Defendant No.1. In that view of the matter, an application for amendment under Order VI Rule 17 C.P.C. was filed to amend the written statement and to introduce counter claim seeking declaration of right, title and interest over the suit property. Learned trial court rejected the said petition relying upon the decision in the case of **Ramesh Chandra Ardawatiya –v- Anil Panjwani**, reported in (2003) 7 SCC 350.

6. Mr. Nayak, learned counsel for the Petitioner relying the upon the decision of the Hon'ble Supreme Court in the case of **Vijay Prakash Jarath –v- Tez Prakash Jarath**, reported in AIR 2016 SC 1304 submits that even after framing of issues, the counter claim can be accepted. He, therefore, submits that even if the trial has commenced by the time the amendment was sought for, there was no impediment on the part of learned trial court to consider the application for amendment. Hence, he prays for setting aside the impugned order and to remit the matter back to the learned Civil Judge (Junior Division), Jharsuguda to consider the petition under Order VI Rule 17 C.P.C. afresh, giving opportunity of hearing to the parties concerned.

7. None appears for the Opposite Parties at the time of call.

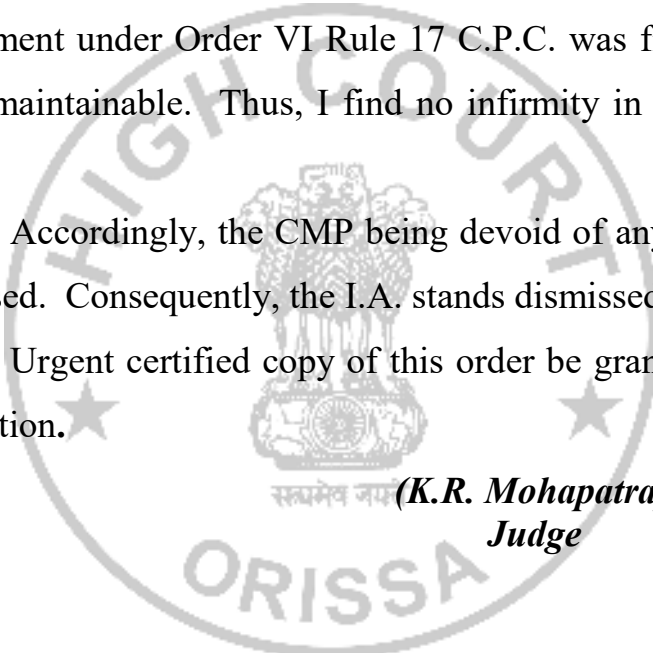
8. It appears from the office note that notice issued to the Opposite Party No.2 returned unserved with a postal remark that the addressee refused to accept the same. Hence, it is treated to

be sufficient. Office note further indicates that notice issued to the Opposite Party No.3 has not yet returned back.

9. Law is well settled that the counter claim can be filed after the Defendant submits his defence, but not later than framing of issues. In the case of **Ashok Kumar Karla –v- Wing CDR Surendra Agnihotri and others**, reported in (2020) 2 SCC 394, the Hon'ble Supreme Court has held that the counter claim should be filed prior to settlement of issues. In the instant case, since the trial has already commenced, by the time a petition for amendment under Order VI Rule 17 C.P.C. was filed, the same is not maintainable. Thus, I find no infirmity in the impugned order.

10. Accordingly, the CMP being devoid of any merit stands dismissed. Consequently, the I.A. stands dismissed.

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

The seal of the Orissa High Court is a circular emblem. It features the State Emblem of India at the top center, with the motto 'Satyameva Jayate' in Devanagari script below it. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. Two stars are positioned on either side of the central emblem.  
(K.R. Mohapatra)  
Judge

bks