

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 781 of 2022

***Kishori Mohan Champupaty and
another*** ***Petitioners***

Mr. Prafulla Kumar Rath, Advocate

-versus-

***The Special Secretary to Government,
G.A. & PG Department and another*** ***Opp. Parties***

Mr. Dillip Kumar Mishra,
Additional Government Advocate

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

**ORDER
12.09.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. This CMP has been filed assailing the order dated 30th July, 2022 passed by learned Additional District Judge-cum-Special Judge, CBI-1 Court, Bhubaneswar in RFA No.38 of 2017, whereby he rejected an application for amendment of the plaint at appellate stage.
3. Mr. Rath, learned counsel for the Petitioners submits that Plaintiffs-Appellants had filed the suit in CS No.139 of 2007 for declaration of right, title and interest over the suit land by virtue of sale deed executed by one Jagannath Mohapatra, the Lessee in whose favour, the lease was granted by the trust after obtaining permission from the Commissioner of Endowments. In the alternative, Plaintiffs/Petitioners prayed for declaration that they have acquired right and title over the suit property by adverse possession. At the appellate stage, Plaintiffs-Petitioners filed an application for amendment to incorporate prayer for declaration

of possessory right over the suit property and also to incorporate the foundational pleading to establish the same. Said application was rejected on the ground that the observation that it would circumvent the findings of learned trial Court impugned in the appeal.

3.1 Mr. Rath, learned counsel placed reliance upon a decision of the Hon'ble Supreme Court in the case of *Nair Service Society Ltd vs Rev. Father K. C. Alexander & Ors.*, reported in AIR 1968 SC 1165, wherein the Hon'ble Court has laid down the principle for allowing an application for amendment at appellate stage. In the instant case, learned appellate Court has not examined the petition for amendment in the light of the ratio decided therein. Hence, the impugned order is not sustainable in the eye of law. Thus, the petition under Order VI rule 17 CPC requires fresh consideration by learned appellate Court.

4. Mr. Mishra, learned AGA appearing for Opposite Parties submits that learned appellate Court considering the matter in its proper perspective has passed the impugned order. Amendment sought for was available to be taken up by the Plaintiff in the suit itself. The suit was contested by the parties on the materials available on record and being unsuccessful, the Plaintiffs-Petitioners filed the instant appeal. At the appellate stage, Plaintiffs/Appellants sought to introduce some new facts and prayer for adjudication of the suit/appeal. It will certainly prejudice the Defendants/Respondents. The same is also not permissible in law.

5. At this stage, Mr. Rath, learned counsel for the Petitioners submits that since no new fact is sought to be introduced by way of amendment in the appeal, the

Petitioners/Appellants may be permitted to bring the same to the notice of learned trial Court at the time of adjudication of the appeal.

6. In view of submissions made by learned counsel for the parties, the CMP is disposed of with an observation that Petitioners/Appellants are at liberty to raise all grounds of fact and law before learned appellate Court at the time of adjudication of the appeal permissible under law.

7. Accordingly, the CMP is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

