

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 790 OF 2022

Sarat Kumar Panda

....

Petitioner

Mr. Bikram Keshari Bal, Advocate

-versus-

Rajendra Kumar Panda

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

17.10.2022

Order No.

CMP No. 790 OF 2022

& CMP No. 791 OF 2022

2. 1. This matter is taken up through hybrid mode.
2. Learned counsel for the Petitioner produces a certified copy of the order dated 28th March, 2022 passed in C.S. No.26 of 2015 before this Court, which is taken on record.
3. These CMPs have been filed assailing the order dated 28th March, 2022 passed by learned Civil Judge (Junior Division), Salipur in C.S. No.26 of 2015, whereby applications under Order VI Rule 17 C.P.C. as well as Order VII Rule 11 C.P.C. filed by the Defendant Nos.1 to 3 have been rejected.
4. Mr. Bal, learned counsel for the Petitioner submits that C.S. No.26 of 2015 has been filed for partition. After examination of D.W.1, the Petitioner could get the valuation certificate in respect of the suit land. From the valuation certificate, it is apparent that C.S. No.26 of 2015, which was filed for partition, is grossly undervalued. Hence, he filed two applications under Order VI Rule 17 C.P.C. as well as Order VII Rule 11 C.P.C. Learned trial Court without considering the matter from its proper perspective rejected both the

petitions by two separate orders. Hence, the aforesaid two CMPs have been filed.

5. It is further submitted by Mr. Bal, learned counsel for the Petitioner that if the valuation certificate is accepted on record, the pecuniary jurisdiction of the Court will be ousted. Further, the Plaintiff being well aware of the valuation of the property has grossly undervalued the same and filed a suit for partition. The Defendant Nos.1 to 3 could not bring the same to the notice of learned trial Court as they were unaware of the same. Only after getting the valuation certificate, they could realize that the suit is grossly undervalued. Although hearing of the suit has already commenced, but the amendment sought for could not have been brought on record before commencement of the trial. Hence, the impugned order rejecting petition for amendment is not sustainable.

6. Further the suit being grossly undervalued is not maintainable and the plaint is liable to be rejected under Order VII Rule 11 C.P.C.. Learned trial Court observing that on perusal of the plaint it does not appear that the suit is undervalued, rejected the said petition. As such, the order rejecting the petition under Order VII Rule 11 C.P.C. is also not sustainable. In view of the above, he prays for setting aside both the orders and to direct learned trial Court to consider the same afresh in accordance with law.

7. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that trial of the suit has already commenced and D.W.1 has already been examined. At that stage, the Petitioner filed an application under Order VI Rule 11 C.P.C. to bring certain new facts by way of amendment of the written statement introducing the valuation certificate and contending that the suit is grossly undervalued. There is no material

on record to show that the Defendant Nos.1 to 3 could not have taken such a plea before commencement of the trial by obtaining the valuation certificate. Thus, in absence of due diligence on the part of the Opposite Party No.1 to 3, the petition under Order VI Rule 17 C.P.C. is not maintainable. Hence, I find that learned trial Court has committed no error in rejecting the petition under Order VI Rule 17 C.P.C..

8. So far as the petition under Order VII Rule 11 C.P.C. is concerned, it is filed during trial of the suit. Further, learned trial Court has rightly observed that on perusal of the plaint, it does not appear that the suit is undervalued. While considering the application under Order VII Rule 11 C.P.C., the Court has to see the averments and contents of the plaint only, nothing more or less. No additional fact or material can be taken into consideration at the time of adjudication of petition under Order VII Rule 11 C.P.C. Thus, learned trial Court has committed no error in rejecting the petition under Order VII Rule 11 C.P.C. Further, rejection of an application under Order VII Rule 11 C.P.C. is revisable under Section 151 C.P.C.

9. In view of the discussion made above, I am not inclined to interfere with the impugned order dated 28th March, 2022 rejecting applications under Order VI Rule 17 C.P.C. as well as Order VII Rule 11 C.P.C.

10. Both the CMPs are accordingly dismissed.

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

(K.R. Mohapatra)
Judge