

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 885 OF 2022

Ghasinath Behera

....

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Purnima Chawda and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.09.2022

Order No.

- 01.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 8th August, 2022 (Annexure-1) passed by learned Additional District Judge, Athamallik in R.F.A. No.07 of 2019, whereby he allowed an application under Order VI Rule 17 C.P.C. filed by the Defendant No.1-Appellant (present Petitioner) for amendment of the written statement in part.
 3. Mr. Bose, learned counsel for the Petitioner submits that assailing the judgment passed by learned Civil Judge (Senior Division), Athamallik in C.S. No.16 of 2015, the Defendant No.1 filed R.F.A. No.7 of 2019. During pendency of the suit, it came to light that some inadvertent error has crept in drafting the written statement and it is required to incorporate certain facts for just adjudication of the suit. Hence, an application was filed under Order VI Rule 17 C.P.C. by the Defendant No.1-Appellant. The amendments proposed are stated hereunder:

“Proposed Amendment of WS

- (i) *In second line of Para No.7 of the WS, the word “plaintiff” may be deleted and in that place “defendant No.1” may be substituted.*
- (ii) *In the 4th line of the Para No.7 and in between the word “the” and “other”, a new word “suit land and” may be inserted.*
- (iii) *After the end of the Paragraph No.7 and before the full stop following may be added as, “but in the month of ‘Aswina’ of the year 1956, Ramji Hari Das had left the suit village for good by orally selling the suit land to Kalia Behera for a consideration of rupees two only”*
- (iv) *In Para No.9 of the WS and in the 10th line after the number ‘1984’, following may be added as, “However in the year 1980, after final publication of Hal Settlement ROR, the plaintiff had been to suit village and had threatened Kalia Behera to vacate possession of the suit land but it was resisted by Kalia Behera.”*

Learned appellate Court while allowing the proposed amendment as at Paragraphs-(i) and (ii) of the proposed amendment, refused to entertain the amendment as proposed at Paragraphs-(iii) and (iv). Being aggrieved, the Petitioner has filed this CMP for the aforesaid relief.

4. It is submitted by Mr. Bose, learned counsel for the Petitioner that no further evidence is required to be adduced by the Defendant No.1, if the amendment sought for is allowed. Further, the amendment sought for is imperative for just adjudication of the real controversy between the parties. These material aspects were not considered by learned appellate Court while amending the written statement. Hence, he prays for setting aside the impugned order under Annexure-1 so far as rejection of prayer with regard to proposed amendment at

Paragraphs-(iii) and (iv) are concerned and to allow the Defendant No.1-Appellant to incorporate the same in the written statement by way of amendment.

5. Upon hearing learned counsel for the Petitioner and on perusal of the case record, it appears that learned appellate Court allowed the proposed amendment at Paragraphs-(i) and (ii) stating that they are formal in nature, but it refused to entertain the proposed amendment at Paragraphs-(iii) and (iv) stating that by way of amendment, the Petitioner intended to introduce certain new facts. Said facts were within the knowledge of the Defendant No.1 during pendency of the suit. Resorting to proviso to Order VI Rule 17 C.P.C., learned appellate Court held that there is nothing on record to show that in spite of due diligence, the Defendant No.1 could not have brought amendment before commencement of hearing of the suit. On perusal of the petition for amendment as at Annexure-5, it appears that the Petitioner-Appellant has not taken any plea as to why amendment was not sought for during pendency of the suit. The plea taken only discloses that inadvertently, some facts had been left out in Paragraphs-7 and 9 of the written statement. There is no material on record to show that in spite of due diligence, the Defendant No.1-Petitioner could not have sought for the proposed amendment at paragraphs-(iii) and (iv) before commencement of hearing of the suit. Thus, a bald plea that inadvertently some facts were left out to be pleaded cannot be a ground to allow the amendment at the appellate stage. Further, it appears that learned appellate Court considering the amendment

sought for at Paragraphs-(i) and (ii) of the proposed amendment, allowed the same stating it to be formal in nature.

6. In view of the above, this Court finds no infirmity in the impugned order under Annexure-1.

7. Accordingly, this CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge



ms