

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP No. 962 of 2022**

***Akhil Mahanto @ Loknath Mahanto .... Petitioners  
and another***

Mr. Tusar Kumar Mishra, Advocate

*-versus-*

***Nanhu Mahato .... Opp. Party***

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

**ORDER  
15.11.2022**

**Order No.**

01. 1. This matter is taken up through Hybrid mode.
2. This CMP has been filed assailing order dated 10<sup>th</sup> December, 2021 (Annexure-5) passed in CS No.69 of 2011, whereby learned Senior Civil Judge, Rourkela while allowing amendments sought for at Sl. No. 'a' to 'g' and 'i' of the proposed amendment, refused to grant the prayer with regard to amendment at Sl. No. 'h' of the proposed amendment.
3. Mr. Mishra, learned counsel for the Petitioners draws attention to the averments made in para-18 of the plaint, which reads as follows:

*“ 18. That the cause of action for the suit arose on 16.7.1982 and 17.7.1982 when the deeds were obtained from the plaintiff Akhil Mahato at Uditnagar Court premises and on 15.2.2011 when the plaintiff Akhil Mahato discovered these deeds no.947 of 1982, dt.17.7.1982 and deed No.945 of 1982, dt.16.7.1982. The cause of action and the suit lands situate within the jurisdiction of the hon'ble court.”*

The Plaintiffs/Petitioners sought for the following amendment to para-18 of the plaint:-

*“(h) That the cause of action for the suit arose on Dt.15/02/2011 when the plaintiff Akhil Mahato came to know about the sale deed relating schedule “B” land and the Nadabi Patra relating to schedule “A” land. The cause of action arose within the jurisdiction of the Hon. Court and the suit lands situate within the jurisdiction of the Hon. Court.”*

He, therefore, submits that if the amendment is allowed it will not change the nature and character of the suit, although learned trial Court has recorded that if the amendment at Sl. (h) is allowed it will change the nature and character of the suit. Further, no reason has been assigned to that effect. It is his submission that the fact with regard to cause of action is already there in para-18 of the plaint. But by virtue of amendment, Petitioners want to clarify the same. Hence, the impugned order to the effect of rejecting prayer in respect of proposed amendment at Sl. No.(h), is not sustainable and is liable to be set aside.

4. Considering the submission made by learned counsel for the Petitioners and on perusal of record, it appears that Petitioners at para-18 of the plaint have stated that the cause of action arose on 16<sup>th</sup> July, 1982 when the sale deeds were obtained from the Plaintiff Akhil Mahato at Uditnagar Court premises and on 15<sup>th</sup> February, 2021 when the Plaintiff Akhil Mahato discovered those deeds. By virtue of amendment, the Plaintiffs/Petitioners sought to clarify that the cause of action for the suit arose on 15<sup>th</sup> February, 2011 when Plaintiff Akhil Mahato came to know about the sale deed relating to Schedule

‘B’ land and the Nadabi Patra relating to Schedule ‘A’ land. Since no reason has been assigned by learned trial Court as to how the proposed amendment if allowed, will change the nature and character of the suit, the same requires fresh consideration.

5. In that view of the matter, the impugned order to the extent of rejecting the proposed amendment at Sl. No. ‘h’ of the petition under Order VI Rule 17 CPC is set aside and the matter is remitted back to learned trial Court to adjudicate the petition afresh to the aforesaid extent only by passing a reasonable order.

5. It is made clear that this Court has not expressed any opinion with regarding allowing amendment in respect of Sl. No. ‘a’ to ‘g’ and ‘i’, which has already been allowed by the learned trial Court.

6. With the aforesaid observation and direction, the CMP is disposed of.

Issue urgent certified copy of the order on proper application.

**(K.R. Mohapatra)**  
**Judge**

*s.s.satapathy*