

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 25982 OF 2022

Mahata Mendali and another* *Petitioners

Mr. Ramchandra Rath, Advocate
-versus-

Snehalata Mendali* *Opp. Party

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

**ORDER
10.10.2022**

Order No.

**W.P.(C) NO. 25982 OF 2022
& W.P.(C) NO. 25984 OF 2022**

4.
 1. This matter is taken up through hybrid mode.
 2. Both the writ petitions have been filed assailing the composite order dated 17th December, 2019 (Annexure-5 in both the writ petitions) passed in Mat. Case No.230/167 of 2014-16, whereby learned Judge, Family Court, Bargarh allowing an application under Order VI Rule 17 C.P.C. rejected the application filed by the present Petitioners under Order XIV Rule 2 C.P.C.
 3. W.P.(C) No.25982 of 2022 has been filed assailing the order allowing an application for amendment of the plaint and W.P.(C) No. 25984 of 2022 has been filed assailing the order rejecting an application under Order XIV Rule 2 C.P.C.
 4. Mr. Rath, learned counsel for the Petitioners submits that earlier the present Petitioners have approached this Court in CMP No.229 of 2017 assailing the order allowing amendment of

the petition filed under Section 19 of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act'). This Court without interfering with the impugned order of amendment disposed of the CMP with an observation that the Petitioners may raise the question of maintainability of the proceeding before learned Judge, Family Court, Bargarh. Accordingly, the Petitioners filed an application under Order XIV Rule 2 C.P.C. In order to patch up the lacunae in the petition under Section 19 of the Act, the Opposite Party filed an application under Order VI Rule 17 C.P.C. for amendment of the petition to convert the proceeding from Section 19 of the Act to that of Section 22 of the Act. Learned Judge, Family Court, Bargarh took up both the petitions simultaneously. Allowing the application for amendment, learned Judge, Family Court rejected the petition under Order XIV Rule 2 C.P.C.

5. It is submitted by Mr. Rath, learned counsel for the Petitioners that the Opposite Party is the daughter-in-law of the deceased Defendant No.1 and sister-in-law of the present Petitioner No.1. Thus, a petition under Section 19 of the Act is not at all maintainable. During pendency of the proceeding, the Defendant No.1 (father-in-law of Opposite Party) died. Since no application under Section 19 of the Act is maintainable, this Court while disposing of CMP No. 229 of 2017 made an observation that the Petitioners may file an application with regard to maintainability of the proceeding under Section 19 of the Act. Thus, the petition under Order VI Rule 17 C.P.C. is an attempt to patch up the lacunae in filing the petition and to

overreach the observation made by this Court in order dated 1st August, 2018 passed in CMP No. 229 of 2017. As such, the petition for amendment is not at all maintainable. Hence, the impugned order allowing such application is liable to be set aside.

6. When an application under Order VI Rule 17 C.P.C. to change the provision of the petition is not maintainable, the petition under Order XIV Rule 2 C.P.C. ought to have been considered on its own merit by holding the proceeding to be not maintainable. He, therefore, prays for setting aside the impugned order.

7. Upon hearing learned counsel for the Petitioners and on perusal of the record, it appears that by virtue of the petition filed under Order VI Rule 17 C.P.C., the Opposite Party has only prayed for amendment of the provision under which the petition for maintenance has been filed. Law is well settled that nomenclature of a petition is not material to consider the same on merit. It is the relief sought for in relation to the subject matter of dispute, which should be taken into consideration while adjudicating the matter. Only because a wrong provision has been mentioned in the petition but that does not disentitle the Opposite Party to seek for amendment to put in order the petition to avoid further complicity. On perusal of the petition for amendment, it is clear that the Opposite Party has only sought for amendment of the provision mentioned in the petition. That does not change the nature and character of the

proceeding as the subject matter of dispute and relief sought for remain unchanged.

8. In view of the above, the order allowing the petition for amendment does not warrant any interference. The amendment sought for being allowed, the petition for maintenance becomes maintainable. As such, learned Judge, Family Court, Bargarh has committed no error in dismissing the petition under Order XIV Rule 2 C.P.C. holding that the proceeding for maintenance is maintainable. It further appears that the impugned order was passed in the year, 2019 and in the meantime, three years have already elapsed. Thus, I am not inclined to interfere with the impugned order.

9. Accordingly, these writ petitions stand dismissed.

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

(K.R. Mohapatra)
Judge

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