

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 978 OF 2022

Amaresh Sarkar

....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

***Cuttack Durgabari Samitty, Cuttack and
others***

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

26.10.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 16th May, 2022 (Annexure-5) passed in C.S. No. 9 of 2011, whereby learned Civil Judge (Junior Division), 1st Court, Cuttack allowed an application filed by the Plaintiff-Opposite Party No.1 under Order VI Rule 17 C.P.C.
3. Mr. Bhuyan, learned counsel for the Petitioner submits that the Plaintiff-Opposite Party No.1 describing it to be a licensee under the Petitioner's mother filed the suit for declaration of right, title and interest as well as confirmation of possession and permanent injunction along with other ancillary relief.
4. The Defendant No. 3 filed written statement by accepting the pleading of the Plaintiff to the effect that he was a licensee under the mother of present Petitioner. The written statement was filed on 5th November, 2016. When the suit became ready for hearing, the Plaintiff filed an application under Order VI Rule 17 C.P.C. to amend the plaint with an intention to introduce a pleading to the effect that

the Plaintiff was a lessee under the mother of Petitioner and not a licensee. Said nomenclature will certainly change the nature and character of the suit. Further, in view of the pleadings, the prayer made in the suit cannot be granted in view of the provision under Section 116 of the Indian Evidence Act, 1872. Thus, amendment sought for is barred under law. As such, amendment sought for could not have been allowed. Learned trial Court only observing that hearing of the suit has not commenced and the amendment sought for is formal in nature, allowed the same on payment of cost of Rs.1,000/-. Hence, this CMP has been filed.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that hearing of the suit has not yet commenced. The plaintiff wants to introduce a pleading to the effect that it (Durgabari Samity) is a lessee under the mother of the Petitioner by virtue of execution of the lease deed. As such, it does not change the nature and character of the suit. However, sustainability of the relief claimed can be decided at the time of adjudication of the suit.

6. In view of the above, learned trial Court has committed no error in allowing the petition for amendment as the Plaintiff has only sought to introduce a pleading to the effect that he is a lessee under the mother of the Petitioner. Hence, the CMP being devoid of any merit stands dismissed.

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

bks

(K.R. Mohapatra)
Judge