

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 996 of 2022

Malati @ Malatilata Senapati and others ***Petitioners***

Mr. Alok Kumar Panda, Advocate

-versus-

Padmini Sahu @ Senapati and another ***Opp. Parties***

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

**ORDER
17.10.2022**

Order No.

2. 1. This matter is taken up through hybrid mode.
2. 2. Petitioners in this CMP seeks to assail order dated 29th August, 2022 (Annexure-5) passed by learned Civil Judge (Senior Division), Bhawanipatna in CS No.98 of 2016, whereby an application filed by the Petitioner under Order VI Rule 17 CPC has been rejected.
3. 3. Mr. Panda learned, learned counsel for the Petitioners submits that the suit has been filed by Opposite Parties for partition. Defendant No.1 filed his written statement stating that he is the absolute owner in possession of the suit property. After commencement of trial of the suit, Defendant No.1 died and the present Petitioner No.1, his widow was substituted, as Petitioner Nos. 2 and 3 were already on record as Defendant Nos. 2 and 3. After his death, Defendants could detect the Will executed by deceased Defendant No.1 during his life time, bequeathing the suit property in favour of present Petitioners. Hence, an application under Order VI Rule 17 CPC was filed to incorporate pleadings to that effect by amending the written

statement. Learned trial Court, under misconception of law, holding that Defendant No.1 had never pleaded about the Will in his written Statement nor has disclosed about execution of such Will during his life time, rejected the petition. It was also observed by learned trial Court that Defendants have not stated as to why they could not bring the proposed amendment on record before commencement of trial.

4. It is submitted that since the Will is executed after commencement of trial and thereafter Defendant No.1 died when the Court was closed due to outbreak of COVID-19, the fact of execution of the Will could not have been brought on record before hand. The proposed amendment is necessary for just adjudication of the suit and to avoid multiplicity of litigations. Hence, he prays for setting aside of the impugned order and direct learned trial Court to permit the Petitioners to incorporate the proposed amendment in their pleadings.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of record, it appears that the petition for amendment was filed to bring on record the pleadings with regard to execution of the Will by deceased Defendant No.1 on 15th January, 2019 in favour of present Petitioners. The Defendant No.1, during his life time, did not make any endeavour to bring the said fact to the notice of the Court for adjudication of the suit. Although Mr. Panda, learned counsel for the Petitioners submits that due to outbreak of COVID-19, the amendment could not be sought for earlier, but there is no pleading to that effect in the petition for amendment itself. Admittedly, PW-1 has already been examined in the present case. It also appears from record that present Petitioners

are claiming right over the suit property through deceased Defendant No.1. Thus, the amendment sought for is not necessary for just adjudication of the suit. The suit is for partition and the Defendant No.1 claimed right over the suit property stating that he had acquired the suit property. Hence, Defendants, who stepped into shoes of Defendant No.1 would acquire right over the property in the event they prove that the suit land is the self-acquired property of Defendant No.1. As such, I find no infirmity in the impugned order.

6. Accordingly, the CMP stands dismissed being devoid of any merit.



(K.R. Mohapatra)
Judge