

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 1011 OF 2022

Purusottam Behera ***Petitioner***
Mr. Rama Chandra Jena, Advocate
-versus-
Sabita Rout and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
25.11.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. Order dated 14th September, 2022 (Annexure-1) passed by learned 3rd Additional District Judge, Balasore in R.F.A. No.187 of 2018/13 of 2020 is under challenge in this CMP, whereby an application under Order VI Rule 17 C.P.C. read with Order XLI Rule 27 C.P.C. filed by the Plaintiff-Petitioner has been rejected.
3. It is submitted by Mr. Jena, learned counsel for the Plaintiff-Petitioner that being unsuccessful before the Court of learned Civil Judge (Junior Division), Balasore in C.S. No.889 of 1997, the Plaintiff-Petitioner has filed R.F.A. No.187 of 2018. During pendency of the appeal, the Plaintiff-Petitioner applied for certain certified copies before different authorities and came to know that Makara Ch Behera being the Karta of the joint family had acquired the suit land by utilizing the money of the joint family. As such, the Plaintiff along with his younger brothers, namely, Sankar and Chema Chandra @ Chemei used to possess the same as part and parcel of their ancestral property.

Apart from the above, the Petitioner also came to know that a portion of the joint family property was sold to one Gangadhar Rout jointly by Sankar and Chemei. Hence, he sought for an amendment of the plaint at the appellate stage and also prayed for admission of additional evidence of the aforesaid documents for just adjudication of the appeal. Learned appellate Court observing that by allowing the amendment and introduction of additional evidence, the matter has to be remitted back to learned trial Court and there has to be fresh adjudication of the suit, rejected the petition. Hence, this CMP has been filed.

4. It is his submission that the information proposed to be introduced came to the knowledge of the Petitioner after filing of the appeal, when he received certified copies of the aforesaid documents. Hence, the amendment sought for is *bona fide*. There is no legal bar for entertaining an application under Order VI Rule 17 C.P.C. at the appellate stage. As such, the impugned order under Annexure-1 being contrary to the settled position of law is liable to be set aside.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it is evident that, the fact and document sought to be introduced by the Petitioner were within his knowledge much prior to the filing of the suit, as it is alleged that they have jointly sold a portion of the suit land to one Gangadhar Rout. It further appears that the property was acquired by their father Makar much prior to the filing of the suit. If the amendment sought for is allowed, it will certainly change the basis of claim of the Plaintiff-Petitioner, which is not permissible in law at the appellate stage.

6. In view of the above, this Court is of the considered opinion that the Plaintiff-Petitioner did not at all exercised due diligence either in filing of the suit or in bringing those facts before commencement of the trial of the suit.

7. As such, I find no infirmity in the impugned order under Annexure-1.

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

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



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