

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.1019 OF 2022

Ramani @ Ramani Kanta Mandal ***Petitioner***
Mr. Prafulla Ch. Acharya, Advocate

-versus-
Rabishankar Swain and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
02.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Order dated 22nd September, 2022 (Annexure-3) passed by learned Senior Civil Judge, Jaleswar in C.S. No.69 of 1996/C.S. No. 31 of 2011 is under challenge in this CMP, whereby an application under Order VI Rule 17 C.P.C. filed by the Plaintiffs-Opposite Party Nos.1 to 5 has been allowed.
3. Mr. Acharya, learned counsel for the Petitioner submits that after the death of original Plaintiff, the present Opposite Party Nos.1 to 5 filed an application to be transposed as Plaintiffs. Said application being allowed was challenged before this Court in W.P.(C) No.7220 of 2011, which was disposed of vide order dated 4th December, 2013 with a direction to hear the matter afresh. Learned trial Court while allowing the application for transposition of Opposite Party Nos.1 to 5 directed the present Petitioner to be impleaded as Defendant No.43. Although the order was passed in the year, 2014, the Plaintiffs-Opposite Party Nos.1 to 5 delayed the matter and when the matter was ready for hearing after settlement of

the issues, they filed an application to incorporate the following amendment.

“1. At the end of paragraph-10 of the plaint, the following sentence may be added-

“The substituted and transposed plaintiffs namely Sudhir Kumar Swain (since dead) includes his legal representatives and his three other brothers and one sister, being the four sons and one daughter of late Padmanava Swain are the nearest successors and legal representatives of the deceased sole and original plaintiff namely Maheswari Swain in the eye of law, but not Ramani Mandal, who is the defendant No.43 in this suit. Accordingly, these substituted and transposed plaintiffs are in peaceful possession and enjoyment of the suit lands having their absolute right, title and interest therein. Said Ramani Mandal has no manner of right, title, interest and possession in the lands involved in this suit and he is also not competent to claim any sort of right, title, interest and possession in the suit lands.”

Said application for amendment was allowed. Hence, this CMP has been filed assailing the same.

4. Mr. Acharya, learned counsel for the Petitioner further submits that allowing the amendment just before commencement of trial will certainly prejudice the Defendant No.43-Petitioner as it will further delay in disposal of the suit. By virtue of the amendment, the Plaintiffs seek to assail the status of Defendant No.43 as the nearest relative of the original Plaintiff. Thus, the amendment will certainly expand the scope of the suit. Hence, it is not permissible in the eyes of law. He, therefore, prays for setting aside the impugned order.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the proposed amendment is with regard to explanation of the Plaintiffs about their status vis-à-vis the status of Defendant No.43 (present Petitioner).

Thus, the same is required to be adjudicated in the suit itself for grant of relief. The Defendant No.43 has a right to file additional written statement to the amended plaint. Hence, it cannot be said that he will be prejudiced if the amendment is allowed. Further, the amendment was allowed before commencement of trial. Hence, there is no legal bar in considering the application under Order VI Rule 17 C.P.C.. Thus, I find no infirmity in the impugned order.

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

7. However, it is observed that since the suit is of the year, 1996, learned trial Court should make an endeavour for early disposal of the suit giving opportunity of hearing to the parties concerned. The Defendant No.43-Petitioner, if so advised, may file his additional written statement expeditiously.

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

संक्षिप्त न्यायो

(K.R. Mohapatra)

Judge

bks