

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1066 OF 2022

Debendra Kumar Samantaray ***Petitioner***
Ms. Sumitra Mohanty, Advocate
-versus-

Monalisa Lenka ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
10.11.2022

Order No.

01. 1. This matter is taken up through Hybrid mode.
2. Order dated 18th October, 2022 (Annexure-1) passed in C.S. No.582 of 2012 is under challenge in this CMP, whereby learned Civil Judge (Junior Division), Bhubaneswar rejected an application filed by the Defendant-Petitioner under Order VI Rule 17 C.P.C.
3. Ms. Mohanty, learned counsel for the Petitioner submits that the suit has been filed for permanent injunction and recovery of possession. The specific plea of the Plaintiff- Opposite Party is that the suit plot is adjacent to the plot of the Defendant-Petitioner. But, in fact, a small strip of land lies in between the land of the Plaintiff and Defendant, which is owned by one Prafulla Chandra Mohanty of village Jharakata under Cuttack Sadar Police Station. Although the Defendant-Petitioner has pleaded about the same in his written statement at Paragraph-14, but details of it was not available with him. It came to the knowledge of the Defendant after commencement of the trial. It is her submission that at Paragraphs-2 & 3 of the petition under Order VI Rule 17 C.P.C., Defendant-Petitioner

has explained the circumstances under which he could not file the petition for amendment earlier. It clearly shows that in spite of due diligence, Defendant-Petitioner could not have sought for amendment, as proposed in the said petition before commencement of the hearing. This material aspect was not considered by learned trial Court while adjudicating the petition under Order VI Rule 17 C.P.C. Further, amendment sought for is necessary for proper adjudication of the case. She further submits that clarification to the pleadings can be taken by way of an amendment as held in the cases of ***Subash Ch. Das and another –v- Kanheilal Khandelwalla and others***, reported in 1989 (I) OLR 150 and the ***Nayabati and others –v- Sanghamitra Sahoo and others***, reported in 2002 (I) OLR 282. She, therefore, submits that the impugned order under Annexure-1 is not sustainable in the eyes of law and is liable to be set aside.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that at Paragraph-14 of written statement of the Defendant-Petitioner, he has stated as follows:-

“That it is further submitted here that the plaintiff is possessing more area than to her purchase as claimed and averted in this suit. In between the suit land and the land of the defendant there was a small piece of land owned by one Prafulla Chandra Mohanty of Village Jharakata under Cuttack Sadar Police Station. But the plaintiff has illegally occupied the said land by amalgamating it with the suit Plot.”

Thus, the Defendant-Petitioner had knowledge that one Prafulla Chandra Mohanty was allegedly the owner of the strip of land existing between his land and the suit property. Without ascertaining the details of said ownership, the Petitioner filed

the written statement. Thus, it appears that the Petitioner could have incorporated the plea as proposed in the petition for amendment under Order VI Rule 17 C.P.C. before commencement of the trial. If the amendment sought for at this stage is allowed, it will be a travesty to the procedure of law, as the proviso to Order VI Rule 17 C.P.C. clearly provides that a petition for amendment shall be considered after commencement of the trial, if the Party seeking amendment, in spite of due diligence, could not have sought for the same before commencement of the trial. In the instant case, it appears that the Petitioner had not exercised due diligence to ascertain the details of the ownership of said Prafulla Chandra Mohanty. The case laws cited by learned counsel for the Petitioner are relating to a stage prior to the amendment of Order VI Rule 17 C.P.C.. Hence, the ratios decided therein are of no assistance to the Petitioner.

5. In view of the discussion made above, I find no infirmity in the impugned order under Annexure-1.

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

7. Since the suit is of the year, 2012, learned trial Court shall make an endeavor to conclude the trial expeditiously. The parties are directed to cooperate with learned trial Court for expeditious disposal of the suit, if there is no legal impediment.

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

(K.R. Mohapatra)
Judge