

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1284 OF 2022

Prakash Chandra Mohanty and others Petitioners

Mr. Bhagaban Mohanty, Advocate

-versus-

Premalata Mohanty and others Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

20.12.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 26th July, 2022 (Annexure-5) passed by learned Senior Civil Judge (LR & LTV), Jajpur in C.S. No.118 of 2004, whereby he allowed the application for amendment of the plaint after closure of the evidence and when the suit is posted for argument.
3. Mr. Mohanty, learned counsel for the Petitioners submits that initially the suit was filed for declaration of right, title and interest. After closure of the evidence and when the Court was in the midst of argument, an application under Order VI Rule 17 C.P.C. was filed by the Plaintiff-Opposite Party No.1 seeking for exhaustive amendment of the plaint and also for incorporating several other reliefs. Learned trial Court without taking into consideration the proviso to Order VI Rule 17 C.P.C. has allowed the same. By allowing such amendment, learned trial Court not only committed flagrant miscarriage of justice, but also the same has caused serious prejudice to the

present Petitioners-Defendant Nos.1(a) to 1(e). Although objection was raised bringing to the notice of the Court proviso to Order VI Rule 17 C.P.C., but learned trial Court relying upon the case law in ***Mumtaz Begum –v- Surendra Kumar Sahu and others***, reported in 2019 (II) CLR-886, allowed the petition for amendment. Hence, he prays for setting aside the impugned under Annexure-5 and to conclude the argument of the suit forthwith.

4. Taking into consideration the submission made by learned counsel for the Petitioner and keeping in mind that the suit is of the year, 2004, this Court feels that issuance of notice to the Opposite Parties may cause further delay in disposal of the suit. Hence, this Court proceeds to dispose of CMP with the following order:

5. On perusal of the petition under Order VI Rule 17 C.P.C. as at Annexure-3, it appears that this Court finds no material to come to a conclusion that in spite of due diligence, the Plaintiff-Opposite Party No.1 could not have brought the proposed amendment to the notice of the Court before commencement of trial. This material aspect although raised was not taken into consideration by learned trial Court while adjudicating the petition under Order VI Rule 17 C.P.C. Hence, the petition under Order VI Rule 17 C.P.C. requires fresh consideration. Accordingly, this Court while setting aside the impugned order under Annexure-5 remits the matter back to the learned trial Court for fresh adjudication of the petition under Order VI Rule 17 C.P.C., giving opportunity of hearing to the

parties concerned keeping in mind the observation made herein above.

6. Since the CMP is disposed of without issuing notice to the Opposite Parties, they are at liberty to move this Court for variation of the order, if they feel aggrieved.

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

bks

(K.R. Mohapatra)
Judge

