

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.810 OF 2021

Jyoti Prakash Ojha & ors.

....

Petitioners

Mr.D.P.Mohanty, Adv.

-versus-

Mohan Ojha & ors.

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

16.3.2022

Order No.

04.

1. Heard learned counsel for the Petitioners.
2. The CMP involves a challenge to the rejection of an Application for amendment of written statement at the instance of the Defendants. The suit is of the year 2010. Written statement came to be filed on 30.11.2010.
3. A fair statement is made by the learned counsel for the Petitioners that in the meantime, trial involving the Suit is already commenced and that the application for amendment to the written statement was filed on 10.1.2022, i.e., after commencement of the trial. Bringing to the pleadings at Paragraphs-2 & 3 of the Plaint, the response of these Defendants in Paragraph-8 reading together with the proposed amendment, an attempt is made to justify the

amendment on the premises that unless the proposed amendment is allowed, the Defendants may be prevented from agitating on the issue of Deed No.7015 dated 24.11.1954. It is accordingly claimed that there was no proper consideration of the issue by the trial court and there is illegal rejection of the impugned order.

4. In spite of notice already served on a set of Plaintiffs, none appears to contest. For the opinion of this Court, once the Plaintiffs filed the Plaint together, there is common interest. So service of notice on some of the Plaintiffs, the O.Ps. makes the notice sufficient. Therefore, the matter is disposed of only hearing learned counsel for the Petitioner only.

5. Considering the contentions raised and reading through the Plaint averment in Paragraphs-2 & 3 together with the written statement pleading through Paragraph-8, this Court finds, the Defendants have already challenged the existence of Deed No.7015 dated 24.11.1954 may not be in so many words and for there is already challenge to such aspect even though there is no indication of number of deeds etc., looking to the nature of challenge in the written statement, for the opinion of this Court, the Defendants have scope to bring the deed in question. In the circumstance, this Court

finds, there is no relevancy in bringing such amendment requiring no interference in the impugned order.

6. The CMP thus stands dismissed.

(Biswanath Rath)
Judge

M.K.Rout

