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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.829 of 2016
[CNR No.- ODHC010276892016]

An application under Article 227 of the Constitution of India, 1950.

1. Dibya Keshari Deo	….	**Petitioners**
2. Surya Pratap Deo		**(Plaintiffs)**

-versus-

1. State of Odisha		
2. The Collector, Cuttack	….	**Opposite Parties**
3. Cuttack Municipal Corporation, Cuttack (deleted)		**(Defendants)**

Advocates who appeared in this case through Hybrid Mode:

For Petitioners : Ms. Supriya Patra, Advocate
(for Petitioner No.1)
Petitioner No. 2 (In Person)

For Opposite Parties : Mr. Bibekananda Nayak, AGA
(for O.P. Nos.1 and 2)
Mr. Pratap Kumar Behera, Advocate,
on behalf of Mr. D. Nayak, Advocate
(for O.P. No.3)

CORAM:
HON'BLE MISS JUSTICE SAVITRI RATHO

JUDGMENT

……
Date of Hearing: 06.08.2026 Date of Judgment: 31.10.2026
……

Savitri Ratho, J. This CMP has been filed by the Plaintiffs challenging the order dated 09.05.2016 passed by the Learned Civil Judge (Senior Division), 2nd Addl. Court, Cuttack in C.S. No. 273 of

2000, partly rejecting the application filed under Order- 6 Rule-17 of C.P.C filed by them to amend the plaint.

BRIEF FACTS OF THE CASE

2. Civil Suit No. 273 of 2000 had been filed by Late Ram Chandra Deo and Late Prabira Keshari Deo, predecessors of the Petitioners in the Court of the learned 1st Additional Civil Judge (Sr. Division), Cuttack praying for the following reliefs;

> "*a). Her title to the property described in Schedule-'A' below be declared and her possession thereof be confirmed. In case the Plaintiff is found to have been dispossessed from any part of the suit property she be restored to possession through Court.*
>
> *b). The Defendants, their men and agents be restrained by a decree of permanent injunction from coming upon the suit property and committing any act of violence so as to affect the land and building and from interfering with the plaintiff's possession thereof in any manner whatsoever in future.*
>
> *c). Costs of the suit be decreed in favour of the Plaintiff and against the Defendants.*
>
> *d). The Plaintiff be given such other relief or reliefs as she may be found entitled to in the facts and circumstances of the case."*

BACKGROUND OF THE CASE

3. The case of the Plaintiffs was that the suit land originally formed part of Sabik Plot Nos. 3133 and 3134 of Mouza-Bisinabar

belonging to the Mulia family, which were subsequently amalgamated as C.S. Plot No. 2195. Due to an error in the C.S. settlement, a portion of the original land was wrongly included in Government Plot No. 2196. In the family partition of 1966, Bidyadhar Mulia was allotted a portion of C.S. Plot No. 2195 and continued to possess the adjoining portion of Plot No. 2196. In 1967, Bidyadhar Mulia transferred possession of Ac.0.065 decimals (Ac.0.025 decimals from Plot No. 2195 and Ac.0.040 decimals from Plot No. 2196) to the Plaintiff for consideration, with a promise to execute a registered sale deed after correction of the settlement records. Since then, the Plaintiff has remained in open, continuous and uninterrupted possession, asserting title over the entire land. While the portion in Plot No. 2195 has since been recorded in the Plaintiff's name during Hal Settlement, the remaining portion corresponding to Hal Plot No. 1734 continues to be affected by the earlier settlement error.

4. Notice was issued to the Defendants who had filed their written statements denying the plaint averments and challenging the maintainability of the suit.

5. After trial had commenced and Plaintiffs had examined P.W.1, and the matter was posted for further evidence on behalf of the

plaintiffs, an application under Order 6, Rule 17 of the CPC for amendment of the plaint to correct the errors relating to descriptions, survey numbers, khata details, land measurements, and to insert additional facts regarding the correspondence between Hal Plot No. 1734 and Sabik Plot No. 2196, the possession of Bidyadhara Mulia, the findings of the Settlement Authorities, and the subsequent transfer of the property in favour of the original plaintiff. It was stated in the application that it found that there were certain clerical, typographical errors and some material facts had been inadvertently omitted and they were necessary to be incorporated to clarify the facts already pleaded.

6. Objection was filed by the Defendants stating that if the amendment is allowed, the lacuna elicited in cross-examination of the Plaintiffs would be filled up thereby prejudicing the interest of the State. It is also stated that the petition had been filed to prolong the disposal of the suit and should be dismissed.

IMPUGNED ORDER

7. On 09.05.2026, the learned trial Court partly allowed the application for amendment. The trial Court observed that t trial had commenced and although the proviso(2) of Order 6 Rule 17 of the CPC

was not applicable to the suit as it had been filed prior to the 2002 amendment but the purposed amendment was within the knowledge of Plaintiffs and no explanation given for not mentioning it earlier in the plaint and on perusal of the order sheet it was apparent to the Court that the intention of the Plaintiffs in praying for the amendment was to linger the case. Prayer to insert in Paragraph-3 regarding possession of Bidyadhar Mulia over Sabik Plot No 2196 was irrelevant and not necessary for the purpose of the case. The learned trial partly allowed the application and directed to amend the plaint except paragraph 4 of the proposed amendment. The Operative portion of the order is extracted below :

> *....."It is argued by learned counsel for the plaintiff that if the para-4 of the proposed amendment will not be included in the plaint then the plaintiff will suffer irreparable loss. He further submitted the certified copy of yadast in support of proposed amendment petition. In the present suit, the trial has already been commenced though proviso (2) of order 6 rule 17 C.P.C. is not applicable to the suit prior to the amendment of 2002 but the court finds that the same was within the knowledge of the plaintiff. On perusal of the order sheet. It is clear that the intention of the plaintiff is to linger the case. Though delay itself is not a ground to refuse the amendment the*

court can permit the amendment if the interest of justice is required. From the proposed amendment petition it reveals that plaintiff wants to insert in para-3 regarding possession of Bidyadhar Mulia over Sabik plot no. 2196.Perused the previous plaint which is similar to the proposed amendment. In the opinion of the court the said para is irrelevant or not necessary for the purpose of this case. Plaintiff in support of his amendment petition file an yaddast copy to prove the possession of Bidyadhar Mulia over the suit land. It is pertinent to mention here that the plaintiff has already cross-examine he never raised any question regarding to the possession lover the suit land. It can be prove by adducing documentary evidence. Considering the above facts and circumstances, partly allowed the plaintiff is directed to amend the plaint except para no. 4 of the proposed amendment subject to payment of cost of Rs.500/- paid to the Civil bar, Cuttack. Put up on 16.5.2016 for filing of consolidated copy of plaint and payment of cost. No further opportunities will be given. If the plaintiff will not carried out the order of the court the same will be automatically recalled."

SUBMISSIONS

8. I have heard Ms. Supriya Patra, learned counsel for the Petitioner No.1 and Mr. Surya Pratap Deo- Petitioner No.2 appearing in person, Mr. Bibekananda Nayak learned counsel for Opposite Party

Nos. 1 & 2 and Mr. P.K Behera learned counsel for Opposite Party No.3.

9. Ms. Supriya Patra, learned counsel for the Petitioner No.1 and Mr. Surya Pratap Deo-Petitioner No.2 appearing in person submitted that the amendment which was rejected is formal in nature and will not cause any prejudice to the Defendants as the plaint already contained averments regarding availability of the yadast and the proposed amendment at Paragraph-4 was an addition in order to bring the yadast on record. They also submitted that the restriction relating to amendment of plaint s after commencement of the trial will not be attracted in the present case the Suit is of the year 2000 which is before the 2002 amendment to Order 6, Rule 17 of the CPC. In support of their submissions, Ms. Deo, learned counsel relies on the decision of Supreme Court in the case of ***Sugandhi (Dead) by Lrs. & Anr. Vs. P. Rajkumar Represented by his Power Agent Imam Oil (Civil Appeal No. 3427 of 2020 arising out of S.L.P.(C) No. 16491 of 2019), decided on 13th October 2020.***

10. Mr. B. Nayak, learned Additional Government Advocate submitted that after filing of the plaint, the plaintiffs have not taken any steps to adduce evidence in support of the amendment sought for. The

document relied on in the proposed amendment was very much available at the time of filing of the plaint. Defendants No.1 and 2 had filed their joint written statement denying the plaint averments and challenging the maintainability of the suit. After the trial had commenced and examination of the witnesses from the side of the Plaintiffs was going on, the application under Order 6 Rule 17 of the CPC was filed by the Plaintiffs for amendment of the plaint, which has been rightly rejected as the plaintiffs could not show that inspite of exercise of due diligence the application could not be filed earlier. There is therefore no illegality in the impugned order for which the present CMP is devoid of merit and is liable to be dismissed. He relied on the following decisions in support of his submissions :-

i) ***Vasant Balu Patil and Others vs. Mohan Hirachand Shah and Others: (2016) 1 SCC 530 (Paragraph-16) and***

ii) ***Binodini Sadual vs. Ranjit Kumar Mohanty & Others: (2017) 2 ILR (Cuttack) 1147 : 2017 Supreme Orissa 743.***

11. Mr. P.K. Behera, learned counsel appearing on behalf of Opposite Party No.3 drew attention of the Court to the cause title of consolidated plaint and submitted that only the State of Odisha and the

Collector, Cuttack were the defendants in the suit and hence Opposite Party No.3 should and could not have been added as an Opposite Party in this CMP without leave of the Court.

12. This is a defect in the CMP, which should have been pointed out by the Stamp Reporter. Opposite Party No.3 is therefore deleted.

STATUTORY PROVISIONS

13. Order 6, Rule 17 of the CPC as it stood before the amendment of 2002 is extracted below:-

Code of Civil Procedure

Order 6 Rule 17

> *"17. **Amendment of pleadings**. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> The proviso introduced in 2002 is extracted below:-
>
> *"Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due*

diligence, the party could not have raised the matter before the commencement of trial."

JUDICIAL PRONOUNCEMENTS

14.1 In the case of ***Salem Advocate Bar Association vs Union of India, 2005 (6) SCC 344*** the Supreme Court has held that:

> *"26. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."*

14.2 In the case of ***Sugandhi*** (Supra), the Supreme Court has held as follows: -

"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

14.3 In the case of ***Rajkumar Gurawara (Dead) Thr. Lrs vs M/S. S.K.Sarwagi & Co. Pvt. Ltd***. reported in ***2008 (14) SCC 364*** the Supreme Court has held that:

"13. To put it clear, Order VI Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As

rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso.

17. We have already explained the implication of proviso to Rule 17. Though even after commencement of the trial, parties to the proceeding are entitled to seek amendment, in the light of the factual details such as clear information in the reply notice prior to the filing of the suit and specific plea in the written statement of D-1 which contained details of government orders leasing out the suit property in favour of D-2, the action of the plaintiff at the stage of argument can not be permitted. Admittedly, the plaintiff failed to adhere to the said recourse at the appropriate time."

14.4 In the case of ***Binodini Sadual*** (Supra), this Court has held as follows:

"…This Court observes that the attempt of amendment after two decades of the cause of action

cannot be taken as a mere delay and latches on the other hand looking to the counter statement in the written statement filed in 1999, it appears, there is clear indication challenging the right, title and interest of the plaintiff from the threshold and this is a case of serious lapse on the part of the plaintiff thus it is a case where plaintiff shall be debarred from bringing a suit for declaration of right, title and interest at this stage even. For the pleadings in the plaint and the counter statement in the written statement filed in 1998 and 1999 respectively bring the dispute on the claim for right, title and interest involving the suit. property, this case cannot be a case of cause of action taking place on filing of additional written statement.

11. For the observations herein above and taking into consideration the decision of the Hon'ble apex Court, vide (2016) 15 SCC 530, this Court has no hesitation in interfering in the impugned order, vide Annexure-3 and thus the order, vide Annexure-3 is set aside. Amendment application stands rejected. So far the order, vide Annexure-4, for the observation herein above and since the proceeding involved therein was not maintainable, the order, vide Annexure-4 needs no interference."

14.5 In the case of ***Vasant Balu Patil*** (Supra), the Supreme Court has held as follows:

> *"16. So far as the plea of limitation is concerned there can be no manner of doubt that the amendment of the plaint(s) to incorporate the relief of declaration of title has necessarily to relate back to the date of filing of the suit. Once the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs."*

14.6 In the case of ***State of Madhya Pradesh vs. Union of India: (2011) 12 SCC 268***, the Supreme Court has held as follows:-

> *"8. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations."*

14.7 Recently, in the case of ***Haramani Sahoo and others vs Lalita Nayak and others*** **:** ***2026 INSC 1112*****,** the Supreme Court after referring to a number of its earlier decision the principles and guidelines framed therein referred to the facts of the case and held as follows :-

> *"14.1 The real inquiry is whether the amendment introduces a distinct and independent controversy having no connection with the original cause of action, or whether it merely brings on record additional facts and consequential reliefs having a direct nexus with the existing controversy. On the facts of the present case, the proposed amendment falls within the latter category. The subject matter of the proposed amendment and the original suit substantially overlap, and the adjudication of the proposed issue would have a direct bearing upon the title and possession claimed in respect of the suit property.*
>
> ***15.*** *The respondents have however urged that the proposed challenge to the final decree passed in T.S. No.105 of 1998 is barred by limitation and by Order XXIII Rule 3A of the CPC. At this stage, we are concerned with the permissibility of the amendment and not with the ultimate merits or maintainability of the reliefs sought to be introduced. The objections raised by the respondents cannot therefore be finally adjudicated upon while*

deciding the application for amendment, unless the proposed claim is ex facie barred in law.

16. *As regards limitation, it is well settled that a claim which is clearly barred by limitation, particularly where its introduction would defeat an accrued right of the opposite party, is a relevant consideration in the exercise of discretion under Order VI Rule 17. At the same time, where the question of limitation is itself arguable and depends upon disputed facts, including the date or manner in which the plaintiff acquired knowledge of the relevant document or transaction, the amendment need not necessarily be rejected at the threshold."*

ANALYSIS

15. From a reading of the provisions of Order 6 Rule 17 of the CPC and the decisions referred to above, it is apparent that-

(a) pleadings can be amended any stage on such terms as may be just;

(b) the amendment sought for, must be necessary to determine the real question of controversy between the parties;

(c) if trial has commenced, then the Court must be satisfied that in spite of "due diligence" the party

seeking amendment could not do so before the trial started.

16. It is well settled that Order 6 Rule 17 of the CPC permits amendment of pleadings "at any stage" and should be considered liberally. But in cases of suits instituted after introduction of the proviso to Order 6, Rule 17 of the CPC in 2002 by way of amendment, the party seeking amendment has to satisfy the Court that inspite of exercise of due diligence, the application could not be filed before the trial commenced.

17. In the present case trial had commenced when the application for amendment was filed, But the suit has been filed in the year 2000, i.e. before introduction of the proviso. Therefore, the restriction in the proviso to the effect that once trial commences, the applicant is to prove "due diligence"- i.e., that despite his best efforts, steps for amendment could not be taken earlier, is not attracted.

18. A reading of the plaint and the amendment application reveals that apart from correction of typographical errors which have been allowed by the learned trial Court , the plaintiffs sought to be incorporated by way of Paragraph-4 to introduce additional pleadings regarding the possession of Bidyadhar Mulia over Sabik Plot

No.2196, the corresponding settlement entries, the Yadast and other facts intended to strengthen the Plaintiffs' claim of title and possession, which is not a new plea.

19. One of the reasons for rejecting the proposed amendment was that it would delay disposal of the suit. The suit is pending since 2020 and further proceedings had been stayed by this Court in the since 2016. This could have been avoided if the amendment had been allowed.

20. The objection of the defendants that such amendment was barred by limitation can be considered by the learned trial court during trial. The defendants are at liberty to raise the question of limitation before the learned trial court, regarding the averments / facts which have been brought in by way of amendment.

CONCLUSION

21. In view of the above discussions, this Court is of the view that the proposed amendment in paragraph-4 should be allowed, but subject to payment of further cost of Rs.3000/- (in addition to the cost of Rs.500/- already imposed by the learned trial Court) within a period of two weeks from today.

22. If the cost is not deposited by 13.11.2026, this order will not be given effect to.

23. Interim order passed in Misc. Case No. 830 of 2016 stands vacated. Misc. Case stands disposed of.

24. As the suit is of the year 2000, the learned trial Court shall take steps to dispose of the suit expeditiously and for that purpose not grant unnecessary adjournments to any party.

25. The CMP is accordingly allowed.

26. Copy of this judgment be communicated to the learned trial Court by the Registry.

(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated, the 31st October, 2026/*Madhusmita/ Sukanta*

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Signed by: SUKANTA KUMAR BEHERA
Reason: Authentication
Location: Orissa High Court, Cuttack
Date: 05-Nov-2026 22:15:21