

(1985) 11 OHC CK 0009

In the Orissa High Court

Case No : Civil Revision No. 445 of 1985

Abdul Hannan Khan and Others

APPELLANT

Vs

Chandra Sekhar Patra and Others

RESPONDENT

Date of Decision : 18-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 6 Rule 17

Citation : AIR 1986 Ori 236

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : P. Kar and D.K. Sahoo, for the Appellant; R.N. Sinha, S.N. Sinha, P.K. Routray, P. Mohanty and L.N. Senapati, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—In this application for revision, plaintiffs challenge the order of the trial court refusing to permit amendment of the plaint. The suit was filed on 18-2-1981 for restraining the defendants from interfering with the possession of the plaintiffs in respect of Plot No. 1786 measuring 40% decimals. Defendants in their written statement filed on 29-6-1981 claimed that they are in possession having title to the property in dispute. On 13-10-1982, plaintiffs filed an application for amendment of the plaint which was taken up on 7-11-1984 and was allowed. The plaintiffs did not take steps required under Order 6, Rule 18 C.P.C. However, the trial court directed the office to amend the plaint. After taking some adjournments, defendants filed the additional written statement on 4-4-1985. Immediately thereafter, plaintiffs filed the petition for amendment of the plaint on 29-4-1985. On 17-6-1985, defendants filed objection to the petition for amendment and the hearing of the matter was fixed to 25-6-1985 when plaintiffs sought for amendment of the petition for amendment. The defendants filed the objection to this petition also. On 1-7-1985, plaintiffs filed another petition for amendment of the petition for amendment. The said petition was not signed as disclosed from the order sheet. However, the case was posted to

5-7-1985 for filing of the objection and hearing of the petition. On that day neither party was present as disclosed from the order dt. 5-7-1985 and the Court fixed the case to 6-7-1985 for orders. The order not being ready, case was posted to 12-7-1985 for orders on which day the impugned order was passed.

2. The aforesaid facts disclose the casual manner in which the proceeding of the suit has been conducted. In case there would have been some care and caution, the proceeding would not have been dragged so far. The day-to-day proceeding discloses an antithesis to the public policy of early disposal of the suits. The casual manner in which amendments have been sought for reflects the negligence of the plaintiffs. The adjournments sought for by the defendants lead to the same inference. The adjournment granted by the Court on mere asking for it gives a sad picture of the anxiety of the Court to try and dispose of the case early. No importance has been given by the trial court to the observation of this Court for disposal of the suit by end of November, 1984 although the orders disclose that the Presiding Officer was conscious of the same. I am not able to appreciate why the applications relating to amendment were not rejected when the plaintiffs were not present to move the petition on 5-7-1985. Court is not bound to pass order on mere filing of a petition when the party is not vigilant to guard against his own interest being affected.

3. The plaintiffs, however, should not be penalised for their past inactions when the trial court has considered the applications on merit. The only ground on which the applications have been rejected is that the suit was for permanent injunction and now it is being converted to one for title and possession. The trial court ought to have considered that on the question of the written statement the title was to be gone into incidentally. Equally, the question of possession was required to be gone into by the Court. The subject matter of dispute does not change. No new parties are to be added. There is no question of any right accrued by the defendants being defeated by the amendment being allowed. The same broad issues as involved earlier to the amendment will be answered. In such circumstances, the amendment ought not to have been refused in the interest of proper adjudication.

4. The defendants are greatly prejudiced with the delay in disposal of the suit. They may have to file additional written statement. However, the prejudice to the defendants can be mitigated in case they get costs which I assess at Rs. 250/- (two hundred and fifty). On payment of this amount by the plaintiffs to the defendants in this Court on or before the 4th Dec. 1985, all the three applications for amendment shall stand allowed. On failure to pay the costs to the opposite parties within the time stipulated, the applications shall stand dismissed without further reference to Court. In case the costs are paid within the time stipulated, plaintiffs shall be permitted to amend the plaint as required under Order 5, Rule 18 C.P.C. within 18-12-1985 and no further time shall be granted for the purpose and consequences of the said rule shall follow. In case the plaintiffs amend the plaint as required under Order 6, Rule 15 C.P.C.

defendants shall be permitted to file their additional written statement on or before 15-1-1986. After hearing the parties, the issues shall be settled afresh and taking all procedural steps expeditiously, the trial court shall do well in disposing of the suit before the summer vacation ensues in the year 1986.

5. Subject to the aforesaid conditions and directions the Civil Revision is allowed. No costs.