

(2017) 07 OHC CK 0008

In the Orissa High Court

Case No : 1632 of 2016

Anadi Rout and others

APPELLANT

Vs

Dhirendra Nayak and others

RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 6 Rule 17](#)

Citation : (2017) 07 OHC CK 0008

Hon'ble Judges : Dr. A.K.Rath

Bench : SINGLE BENCH

Advocate : S.K.Samantray, S.K.Ray

Final Decision : Dismissed

Judgement

1. This petition challenges the order dated 4.10.2016 passed by the learned District Judge, Jajpur in R.F.A.No.82 of 2014, vide Annexure-4, whereby and whereunder, the learned trial court rejected the application under Order 6 Rule 17 C.P.C. for amendment of the plaint.

2. One Rukmani Rout, the predecessor in interest of the petitioners as plaintiff instituted Civil Suit No.1 of 2012 in the court of the learned Civil Judge (Jr.Division), Jajpur for permanent injunction impleading the opposite parties as defendants. The defendants filed written statement denying the assertions made in the plaint. The suit having been dismissed, the petitioners filed R.F.A.No.82 of 2014 before the learned District Judge, Jajpur. During pendency of the said appeal, they filed an application under Order 6 Rule 17 C.P.C. for amendment of the plaint stating inter alia that their mother purchased the suit land from Narayan Nayak and Brundaban Nayak by means of a registered sale deed dated 20.2.1981. The suit land has been wrongly recorded in the name of the defendants along with the name of the mother of the plaintiffs. The defendants challenged the title of the plaintiffs in their written statement. On 5.9.2016 the plaintiffs for the first time came to know the same. With this factual scenario,

they sought to incorporate the prayer for declaration of right, title and interest over the suit property and ancillary reliefs. The learned appellate court came to hold that the proposed amendment will change the nature and character of the suit. Held so, it dismissed the petition.

3. Heard Mr.Samantray, learned Advocate for the petitioners and Mr.Ray, learned Advocate for opposite parties 1 to 5.

4. Mr.Samantray, learned Advocate for the petitioners submitted that mother of the plaintiffs purchased the suit land from Narayan Nayak and Brundaban Nayak by means of a registered sale deed dated 20.2.1981. Since the defendants created disturbance, she filed suit for permanent injunction. The defendants denied the title of the plaintiffs in the written statement for which a petition for amendment has been filed seeking declaratory reliefs. There is no delay and latches on the part of the plaintiffs. The proposed amendment will not change the nature and character of the suit.

5. Per contra, Mr.Ray, learned counsel for opposite parties 1 to 5 submitted that to get over the judgment and decree of the learned trial court, application for amendment was filed. He further submitted that the general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred.

6. The C.P.C. was amended in the year 2002. Proviso to Order 6 Rule 17 C.P.C. stipulates : "17. Amendment of pleadings.- xxx xxx xxx

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."

7. The written statement was filed on 18.6.2012. Issues were framed. Both parties led evidence. Suit was dismissed. The plaintiffs filed appeal in the year 2014. The application for amendment of the plaint was filed in the appeal. The plaintiffs suffered a decree. To get over the judgment and decree, an application for amendment was filed. There is no plausible explanation as to why the same was not filed in the learned trial court. The assertion of the plaintiffs that they came to know that the defendants disputed their title in the year 2014 is not correct. The written statement was filed in the year 2012. The plaintiffs were conscious of the said fact when the written statement was filed. In view of proviso to Order 6 Rule 17 C.P.C., the learned appellate court is justified in rejecting the application under Order 6 Rule 17 C.P.C. The petition is dismissed. No costs.