

(2024) 05 OHC CK 0036
In the Orissa High Court
Case No : CMP No.1541 Of 2023

Bichitra Mohanty

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2024) 05 OHC CK 0036

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : Asit Kumar Jena

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 20th January, 2023 (Annexure-1) passed in CS No.323 of 2018 is under challenge in this CMP, whereby learned Civil Judge (Senior Division), Kujanga rejected an application filed by the Plaintiff-Petitioner under Order VI Rule 17 CPC for amendment of the plaint.
3. Mr. Jena, learned counsel for the Petitioner submits that the suit has been filed for injunction simplicitor. In view of the averments made in the written statement, it became expedient to amend the plaint to incorporate the prayer for declaration of right, title and interest over the suit property. Accordingly, an application for amendment was filed to incorporate foundational pleading as well as prayer for declaration of right, title and interest over the suit property through adverse possession. The said application was rejected only on the ground that trial of the suit has already been commenced.
4. It is his submission that when the amendment is necessary for just adjudication of the suit, the Court has the jurisdiction to consider the same ever

after commencement of the trial. Learned trial Court has not at all delved into the merit of the amendment sought for while adjudicating the matter. Hence, he prays for setting aside the impugned order and to allow the amendment sought for by the Petitioner for just adjudication of the subject matter of dispute involved in the suit.

5. Taking note of the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the petition for amendment was filed after commencement of the trial. The suit was filed in the year 2018 with a prayer for injunction simplicitor. By virtue of the amendment, the Petitioner sought to incorporate the foundational pleadings as well as prayer for declaration of right, title and interest and possession over the suit property. The Proviso to Order VI Rule 17 CPC makes it abundantly clear that a petition for amendment of the plaint may be entertained after commencement of the trial only in the case the party seeking amendment establishes that in spite of exercise of due diligence, it could not have raised the matter before commencement of the trial. The Proviso to Order VI Rule 17 CPC starts with a non-obstante clause to the effect that "provided that no application for amendment shall be allowed after the trial has commenced.....".

6. Thus, it is clear that the Court entertaining an application under Order VI Rule 17 CPC has a limited jurisdiction to exercise its discretion for entertaining a petition for amendment after commencement of the trial. Only in the cases where the Petitioner seeking for amendment establishes that it could not have raised the matter sought to incorporate by way of amendment before commencement of the trial, the Court may entertain such an application.

7. In the instant case, no such ground has been made out. It is, however, submitted by learned counsel for the Petitioner that no objection to the petition for amendment was filed. Only for the reason that no objection was filed, a petition for amendment should not be allowed. Since the trial of the suit has already commenced and the Petitioner has failed to satisfy the Court that in spite of due diligence, it could not have raised the matter before commencement of the trial, this Court feels that learned trial Court has committed no error in rejecting the petition for amendment. On perusal of the materials available on record, it appears that the proposed amendment could have been sought to be incorporated before commencement of the trial.

8. In that view of the matter, this Court finds no merit in the case of the Petitioner.

9. Accordingly, the CMP, being devoid of any merit, stands dismissed.

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

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