
(2010) 03 OHC CK 0011
In the Orissa High Court

Gopal Chandra Saha and Another	Vs	APPELLANT
Abhiram Das and Others		RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

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

Citation : (2010) 4 CivCC 584 : (2010) 2 OLR 65

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—Heard learned Counsel for the parties.

2. The petitioners have challenged the order dated 12.10.2004 passed by the learned Civil Judge (Jr. Division) Balasore in O.S. No. 168 of 2001 wherein it rejected the petition filed under Order 6 Rule 17 of C.P.C. by the petitioners.

3. The petitioners are the plaintiffs in the aforesaid suit. The suit was filed for declaration of title in respect of "kha" schedule land and other ancillary reliefs. The defendants averred in their written statement that the suit land was not described in detail and that the suit was bad for non-joinder of parties. So the plaintiffs filed the aforesaid petition to amend the "Kha" schedule property by describing it in detail and to add some parties and also to change the alphabets of the title of some of the parties. The trial Court rejected the petition holding that by way of amendment the plaintiffs are trying to disown their admission and if the amendment is allowed, it would introduce a new case. Being aggrieved with the said order, the plaintiffs have filed the writ petition.

4. Learned Counsel appearing for the petitioners submits that when the opp. party-defendants in their W.S. took the plea of non-joinder of necessary party and non-description of suit property in detail, they sought to comply the same by way of amendment describing the suit property in detail and adding some other defendants, whose presence is necessary for effectual disposal of the suit. They

also sought for changing an alphabet in the surname of some parties. So, the trial Court ought to have allowed the amendment petition.

5. Learned Counsel appearing for the contesting opp. parties, on the other hand contends that the suit was filed in the year 1996 and the amendment petition was filed in the year 2004. So, there is inordinate delay in filing the amendment petition. He further submits that earlier the petitioners claimed the middle portion of C.S. plot No. 155 and by way of amendment they sought to claim M.S. Plot No. 712 lying on the western portion of C.S. Plot No. 155 which cannot be allowed, as it would amount to disowning the admission.

6. Even though the suit was filed in the year 1996, Written Statement was filed in 2001 i.e. about five years after filing of the suit. In the Written Statement the opp. parties-Defendants took the plea of non-joinder of necessary party and non-description of the suit property in detail. So, after examining the records the petitioners filed the amendment petition in the year 2004. No doubt there is delay in filing the petition under Order 6 Rule 17 C.P.C. But mere delay cannot thwart the justice if justice requires otherwise. Landed properties are involved in the suit. So in my view merely because there was delay in filing the amendment petition, particularly wher. opp. parties filed written statement at a equally belated stage cannot be a ground to reject the amendment petition. Seeking amendment of description of land involved in the suit cannot be considered as withdrawal of admission. Change of an alphabet in the surname of some parties in no way would prejudice the opp. parties. The amendments sought for are required to determine the real question in controversy between the parties in the suit. So, the amendment sought for deserves to be allowed. At the same time the defendants-opp. parties should not suffer any loss for no fault of their own.

7. In the result the writ petition is allowed, the impugned order is set aside and consequentially the amendments sought for are allowed subject to payment of cost of Rs. 3000/- (three thousand) to be paid by the petitioners to the contesting opp. parties within a period of three weeks hence.

8. Accordingly the writ petition stand disposed of.

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