

(1986) 11 OHC CK 0023

In the Orissa High Court

Case No : Civil Revision No. 850 of 1983

Lokanath Acharya

APPELLANT

Vs

Anam Narasimha Das and Others

RESPONDENT

Date of Decision : 11-11-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 18

Citation : (1987) 63 CLT 310

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

Bench : Single Bench

Advocate : N.C. Nayak, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Plaintiff is the Petitioner in this Civil Revision against an order refusing amendment of the plaint.

2. Case of the Petitioner is that he is a monthly tenant in respect of the suit house. Without taking recourse to the statutory remedy, the Defendants with the aid and assistance of their henchmen were attempting to throw out the Plaintiff from the house and accordingly, they should be permanently restrained. The prayer for temporary injunction was refused. Thereafter, the application for amendment of the plaint was filed alleging that on account of the refusal of temporary injunction the Defendants with association of others wrongfully interfered with the possession of the Plaintiff resulting in loss of Rs. 4,100/- to the Plaintiff. Therefore, the amendment was sought for by incorporating the aforesaid fact and relief of realisation of Rs. 4,100/-. Defendants raised objection to the amendment on the grounds that it would change the nature of the suit and would also oust the jurisdiction of the Court. These two grounds were accepted by the trial Court to reject the amendment. Hence this civil revision has been filed.

3. In view of the decision of this Court reported in Gopal Chandra Chaudhury Vs.

The Life Insurance Corporation of India, the amendment seeking relief of recovery of damages can be added by amendment of the plaint by taking note of subsequent events.

4. The refusal to allow amendment on ground of ouster of jurisdiction is also not sustainable. It has been held in the decision of this Court reported in Kurupa Naik and Others Vs. Bhagaban Naik and Others, , that in spite of the fact that the amendment would oust the pecuniary jurisdiction of the Court the same is to be allowed and the plaint is to be returned for being presented in the proper Court of law.

In Patel Construction and Co. and Another Vs. Shah Raichand Amulakh and Another, it has been held that the proper course in such matters is to allow the amendment and then to return the amended plaint for presentation to the proper Court. This decision has been rendered by considering several earlier decisions of other Courts.

5. In view of the position of law as enumerated above, the refusal to amend the plaint is material irregularity in exercise of jurisdiction. Accordingly, the order is set aside and the petition for amendment is allowed. Plaintiff is to be given scope for taking steps under Order 6, Rule 18, Code of Civil Procedure, within the time to be fixed by the trial court.

6. In the result, the civil revision is allowed. As there is no appearance on behalf of the opposite parties, there shall be no order as to costs.