

(1990) 03 OHC CK 0039

In the Orissa High Court

Case No : Civil Revision No. 767 of 1986

Sanatan Jena (after him) Nidu Dei and Others

APPELLANT

Vs

Babji Sahu

RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 153

Citation : AIR 1990 Ori 186

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : R. Ch. Mohanty and R.K. Mohanty, for the Appellant; S.K. Padhi, S.S. Das and J.M. Das, for the Respondent

Final Decision : Allowed

Judgement

Pasayat, J.—The refusal of the original petitioner's application for amendment under Order 6, Rule 17 of the CPC (for short "the code") had brought him to this Court.

2. One Sanatan Jena as plaintiff filed T. S. No. 113 of 1985 in the court of the Munsif, Bhadrak for removal of certain encroachments over the suit property and for permanent injunction. The plaintiff-petitioner gave a particular description of property in the plaint and attached a rough sketch map indicating outlines of the suit property.

3. The defendant (opposite party in the present case) filed written statement alleging vagueness of description of the suit property, Subsequently, an application for amendment was filed by the aforesaid Sanatan Jena to correct the description of the property. The application was resisted by the opposite party on the ground that the amendment would change the nature and character of the suit. After hearing the parties, the learned Munsif by the impugned order rejected the application.

4. The original petitioner died during the pendency of the revision application in

this Court and was substituted by his legal heirs (the present petitioners) by order dated 2-12-1987. On behalf of the substituted petitioners it has been strenuously urged by Mr. R.K. Mohanty that the learned Munsif fell into error in holding that the proposed amendment would change the nature and character of the suit and/ or bring into effect a new suit land unconnected with the previously described land in the schedule. According to him, the amendment was necessitated on account of detailed verification and reference to the relevant documents and official records. Plaintiff also annexed the detailed scatch map to substitute the one which was already filed. On behalf of the opp. party, however, it has been urged that there was no infirmity in the order passed by the learned Munsif and on consideration of the relevant materials, the impugned order was passed. Since there is no illegal exercise of jurisdiction and since it has not been shown as to how failure of justice would be caused if the impugned order is allowed to stand, no interference is called for.

5. A bare perusal of the order goes to show that the same is not sustainable in law. It need not be re-emphasised that the provisions contained in Order 6, Rule 17 of the Code aim at furtherance of ends of justice. One of the major factors which should weigh with the Court while dealing with an application for amendment is to ascertain whether intention of the party seeking amendment is mala fide and/or aimed at delaying the due process of law. The circumstances should indicate that the defendant would not suffer grave injustice or would not be materially prejudiced, if the prayer for amendment is allowed. If the ends of justice is subserved by allowing the amendment, then the power to allow the amendment should be liberally exercised, subject to the rider that by amendment, nature and character of the suit is not materially affected or altered. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not fettered by any narrow or technical limitation. (See *Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*,). In the case on hand, comparison of the descriptions originally given in the schedule and as now sought to be brought in by amendment, makes it manifestly apparent that only description of the property was sought to be corrected by amendment. This Court faulted the refusal of amendment in almost an identical case. I am in agreement with the views expressed by learned brother R.C. Patnaik, J. (See *Puna Bewa and Others Vs. Dinabandhu Mangaraj and Another*,). The order of the learned Munsif is vulnerable and therefore, is set aside. However, I find that inconvenience has been caused to the defendant on account of filing of the petition for amendment and he is, therefore, entitled to costs.

6. Keeping in view the entire background. I direct the petitioners to pay a sum of Rs. 250/- (Rupees two hundred fifty) only to the opposite party as costs. The foresaid costs has to be paid within three weeks from today to any of the counsel appearing for the opposite party in this case and receipt indicating acknowledgment thereof has to be filed within that time. The amendment is allowed subject to payment of costs as aforesaid. The defendant-opposite party is free to file an additional written statement, if he so chooses, within six weeks

from today.

The civil revision is accordingly disposed of.