

(1999) 02 OHC CK 0033

In the Orissa High Court

Case No : Civil Revision No. 235 of 1998

Sarat Chandra Pattnaik and Others

APPELLANT

Vs

Bipin Bihari Sethi and Others

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

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

Citation : (1999) 02 OHC CK 0033

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Bidyadhar Mishra, Gopal Agarwal, B.C. Panda and P.K. Rout, for the Appellant; C. Dash, K.S. Sahoo and P.R. Mohapatra, for the Respondent

Judgement

P.K. Misra, J.—The Plaintiffs are the Petitioners. They had filed Title Suit No. 101 of 1994 for decree of mandatory injunction, directing the Defendants to demolish the construction of the wall and restore possession to the Plaintiffs and for permanent injunction, restraining the Defendants from interfering with the peaceful possession of the Plaintiffs after delivery of vacant possession, along with certain other ancillary reliefs. The said suit having been dismissed, the Petitioners filed Title Appeal No. 7 of 1997, which is now pending in the Court of District Judge, Khurda, Bhubaneswar. During the pendency of the appeal, they filed an application for amendment of the plaint. The proposed amendment sought to be incorporated by the Petitioners is quoted hereunder:

Add the following measurement of the suit land shown in red colour in the sketch map "northern portion of the suit land lengthwise 259" 7", Eastern portion of the suit land lengthwise 4"9" and Western portion of the suit land lengthwise 2" 8", this is marked as ABCD, i.e., AB 259" 7" BD 489" AC 2" 8".

Add the following words:

of the land shown in red colour in the sketch map" before the word possession and after the word to the Plaintiff in Sl. No. 1 of the prayer of the plaint.

The said petition for amendment having been rejected by the Appellate Court; the present Civil Revision has been filed. The prayer for amendment was rejected by the Appellate Court on the following grounds:

.. But in this case while determining issue No. 5, i. e. "whether the Plaintiffs have cause of action to file the suit ?", the learned trial Court has specifically found that since the Plaintiffs have failed to show any title or possession over the disputed portion of the land, they have no cause of action to file the suit against the Defendants and after the judgment was passed by the learned trial court, in this appellate stage the proposed amendment has been brought to fill up the lacuna and the Appellants cannot be allowed to add new descriptions of the suit land, which, in my view, is ambiguous and would also change the nature and character of the suit and would introduce a new case and will be highly prejudicial to the other side and cannot be allowed.

2. On perusal of the impugned order, it indicates that the Appellate Court seems to have rejected the petition for amendment without actually considering the effect of the proposed amendment and the order seems to have been passed in a routine and mechanical manner. Order 6, Rule 17, C.P. C. provides for amendment of pleading at any stage. While considering the question of amendment, the Courts are required to keep in view certain well settled principles. Where the amendment of the plaint or written-statement at the appellate stage necessitates a re-trial, ordinarily an appellate court may, depending upon other facts and circumstances of the case, refused the prayer for amendment. Similarly, where a totally new and inconsistent case is sought to be pleaded by way of amendment, a Court, particularly an Appellate Court, maybe justified to refuse amendment. In the present case, the Plaintiffs wanted to give the dimension of the disputed land by way of amendment. The learned Counsel for the Plaintiffs has submitted that, in fact, the Plaintiffs-appellants would not seek for any opportunity of adducing any fresh evidence and the appeal can be disposed of on the basis of evidence already adduced. The amendment sought for does not change the nature and character of the suit nor it is inconsistent in any way with the existing pleading. It is of course true that after the amendment is allowed, in normal course opportunity must be given to the Defendants to file additional written-statement and it may even be necessary for the Defendants to adduce fresh evidence which may cause certain amount of harassment to the Defendants. However, this harassment to the Defendants can be compensated by payment of cost. Having regard to the facts and circumstances of the case, nature of amendment sought - for and the undertaking of the counsel for the Petitioners that, they will not seek for adducing any fresh evidence, I think it is a fit case where the amendment should be allowed. This order of allowing the amendment is subject to the condition that a sum of Rs. 500/- shall be paid by way of cost to the counsel for the opp. parties by 15th March, 1999. It is made clear that if the cost is not paid by the 15th March, 1999, the Civil Revision as well as the prayer for amendment shall be deemed to have been rejected.

3. The counsels of both the parties shall appear before the lower appellate court on 16th March. 1999, on which date the lower appellate court being satisfied about the payment of cost, will proceed with the matter in accordance with law. An opportunity shall be given to the Defendants to file additional written statement and to adduce fresh evidence, if any. It is, however, made- clear that, no opportunity shall be given to the Plaintiffs-appellants to adduce any further evidence merely on account of the amendment of the plaint.

4. The Civil Revision is accordingly disposed of.

5. The L.C. R. be sent back immediately.

Civil Revision disposed of.