

(1986) 06 OHC CK 0034
In the Orissa High Court
Case No : Civil Revision No. 258 of 1983

Sarathia Bhoi and Others

APPELLANT

Vs

Purna Chandra Tripathy and Others

RESPONDENT

Date of Decision : 24-06-1986

Acts Referred:

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

Citation : (1986) 62 CLT 191 : (1986) 2 OLR 86

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : S.P. Misra, D. Das and S. Latif, for the Appellant; R.K. Mohapatra, B. Routray, U.C. Panda (for opp. party No. 1) and Addl. Standing Counsel (for opp. party No. 2), for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—This revision has been filed by the defendants in the Original Suit No. 256 of 1979-1 as against the order passed in the suit on 4-1-1983 allowing a prayer for amendment of the plaintiff had originally brought the suit for permanent injunction against the defendants to protect the peaceful possession of the suit properties by him. In the suit a petition had been filed under Order 39, Rule 1, C.P.C., and an ex parte order of injunction had been obtained against the defendants which was however vacated after hearing both the parties. Thereafter, the plaintiff filed a petition under Order 6, Rule 17, C.P.C, to amend the plaint on the allegation that during the pendency of the suit he had been dispossessed of the land by the defendants on 2-10-1982 and hence he wanted to amend the plaint to the effect of declaration of his title and recovery of possession and also to delete the original prayer for permanent injunction.

2. The learned Munsif allowed the petition for amendment holding that the proposed amendment is necessary for proper and effectual adjudication of dispute between the parties.

3. The order of the learned Munsif is assailed on the ground that the proposed amendment completely changes the nature of the suit and evolves upon an entirely new cause of action than that of the original plaint. It is contended that the plaintiff should have brought a fresh suit but cannot have amendment of the plaint in the nature it is sought for.

4. It is a fact that the plaintiff had originally filed the suit pleading title and possession of the property and only praying for permanent injunction as against the defendants. However, since during the pendency of the suit he was dispossessed by the defendants, he has come up with the petition for amendment to declare his title as also for recovery of possession and in the process has also sought for deletion of the prayer for permanent injunction. It is not disputed that the plaintiff could have also originally filed the suit for declaration of his title, confirmation of possession or in the alternative for recovery of possession as also for permanent injunction. It is also a fact that in a suit for permanent injunction based upon title of the plaintiff, he could have subsequently amended the plaint if his title would have been disputed, so as to seek declaration of his title and confirmation of possession or in the alternative for recovery of possession. In that view of the matter, I am of the view that the proposed amendment does not really involve a complete change in the nature and character of the suit and that in the interest of justice as also for effective adjudication of the real dispute between the parties, the amendment should be allowed. Rejection of the amendment would otherwise lead to multiplicity of suits which is against public policy.

5. Mr. Misra appearing for the petitioners however, states that in the event of allowing the amendment costs should have been awarded to the defendants. I think, the request of Mr. Misra is justified. Accordingly, the order of the learned Munsif, Puri is modified to the extent that the amendment is allowed subject to payment of Rs. 100/- as costs to the defendants within four weeks from today.

6. In the result, the civil revision is dismissed subject to the aforesaid modification. There shall be no order as to costs.