

(2015) 02 OHC CK 0073
In the Orissa High Court
Case No : C.M.P. No. 1575 of 2014

Sarbeswar Das and Others	Vs	APPELLANT
Batakishore Das		RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 9 Rule 13
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2015) 1 OLR 969

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Trilochan Panigrahi, Dinabandhu Nayak and S.K. Biswal, for the Appellant; Amit Prasad Bose, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sanju Panda, J—Heard learned counsel for the petitioners and learned counsel for the opposite party.

2. Petitioners in this petition have challenged the order dated 16.10.2014 passed by learned Civil Judge (Sr. Divn.), Puri in C.S. No. 415 of 2013 rejecting an application filed under Order, 6 Rule, 17 of the Code of Civil Procedure for amendment of the plaint.

3. Petitioners are plaintiffs before the Court below.

4. By way of proposed amendment the plaintiffs intended to incorporate the earlier T.S. No. 291 of 1993 filed by the present defendant which was decreed ex parte and an application was filed in December, 2013 under Order 9, Rule, 13 of the C.P.C. to set aside the ex parte judgment and decree after filing of the present suit. After receiving the written statement from the defendant the plaintiffs came to know about all those things and taken steps for which the further clarification/elucidation of facts is necessary. Accordingly the application was filed. Defendant has filed his objection stating that these facts he has

already disclosed in the written statement as such the proposed amendment is not necessary. The Court below rejected the application of the petitioners considering the plea taken by the defendant.

5. Learned counsel for the plaintiff-petitioners submits that the suit was filed for declaration that the plaintiffs have right of easement to use the suit passage to ingress and egress to their house through the public road and for permanent injunction as the defendant tried to obstruct such possession of the plaintiffs. In the plaint itself the plaintiffs have disclosed regarding a proceeding under Section 144 Cr.P.C. initiated in the year 1993 which was dropped subsequently with a finding that plaintiff has used the passage. The defendant has not challenged the said finding in the higher forum. The defendant in his written statement at paragraph 12(F) disclosed regarding the filing of the earlier suit and ex parte decree passed therein. After receiving such copy of the written statement the application for amendment of the plaint filed. As it is necessary for effective adjudication of the dispute, plaintiffs have filed the application. The land is used as passage therefore the proposed amendment is for further elucidation/clarification to add the facts which are already on record.

6. The Apex Court in the case of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 held that the Courts have very wide discretion in the matter of amendment of pleadings but Court's powers must be exercised judiciously and with great care. The decision on an application made under Order, 6 Rule 17 of C.P.C. is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. While deciding applications for amendments the Courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments. The first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the Court's discretion in grant or refusal of the amendment: The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any Court grants actual costs to the opposite side.

7. It is not disputed that earlier suit was filed by the defendant for eviction. The parties will adduce their further evidence in respect of their claim over the suit property in the suit itself. The proposed amendment is necessary for effective adjudication of the dispute between the parties to explain the inaction of the plaintiffs to contest the earlier suit due to lack of knowledge regarding pending of the said suit and consequences, which are disclosed only after receiving the copy of the written statement.

8. On analysis of above facts and circumstances and considering the above settled position this Court sets aside the impugned order. The application for amendment of the plaint is allowed subject to payment of cost of Rs. 5,000/- (five thousand) which shall be paid by the petitioners to the defendant within a period of four weeks from today and file the consolidated copy of the plaint incorporating the proposed amendment within such period. The above exercise shall be completed on production of a certified copy of this order. Since pleadings are completed the trial Court is directed to dispose of the suit as expeditiously as possible preferably by end of August, 2015. Parties shall cooperate with the trial Court for early disposal of the suit.

9. With the above observation the C.M.P. is disposed of.