

(2008) 08 OHC CK 0005
In the Orissa High Court
Case No : Writ Petition (C) No. 2022 of 2004

Shri Kailash Chandra Pradhan

APPELLANT

Vs

Sarpanch Charadapali Gram Panchayat and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

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

Citation : (2008) CLT 797 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Budhadev Routray, D.K. Mohapatra, P.K. Dash, B.B. Routray, Sahoo, D. Mohapatra and D. Routray, for the Appellant; Surendra Ku. Gartia, J. Chhotray and S.B. Das, A.S.C., for the Respondent

Judgement

Sanju Panda, J.—In this writ application challenge has been made to the order dated 12.08.1996 passed by the learned Additional District Judge, Bargarh in Title Appeal No. 18/11/28 of 1993/94 rejecting an application filed by the Petitioner under Order 6, Rule 17 of the Code of Civil Procedure.

2. The facts of the case are as follows:

The Petitioner as Plaintiff filed Title Suit No. 77 of 1990 before the Sub Judge, Padampur for declaration of right, title and interest over the suit schedule Kata, confirmation of possession and permanent injunction against the Defendants restraining them from interfering in any manner in the peaceful possession of the Plaintiff over the suit land and alternatively, in case it is found that the Plaintiff is not entitled to get reliefs, a decree for declaration that the Plaintiff is entitled to get adequate compensation for the said Kata and the Defendants have no right to disturb in his possession till the compensation is paid. The suit was filed against the Sarpanch, Chardapali Gram Panchayat, the Chairman Panchayat Samittee, the Sub-Collector, Padampur, the Tahasildar, Paikmal, the Collector, Samablpur, and Defendant Nos. 6 to 8, who undertook earthwork through the Gram Panchayat for improvement of the Kata which created reasonable

apprehension in the mind of the Plaintiff regarding his title and possession over the suit Kata. The suit was dismissed vide judgment dated 3.4.1992. Against the said judgment the Plaintiff filed the appeal and during the pendency of the appeal, he filed an application under Order 6, Rule 17 of the CPC for amendment of the plaint. In the proposed amendment, the Plaintiff wanted to incorporate the facts he and his predecessors were using the water of the Kata for the purpose of irrigation of their land and the said irrigation facilities is a continuous process even existed after Major Settlement. As such, he was entitled to protect the right of irrigation from the suit Kata by an order of perpetual injunction, which the Defendants had no right to obstruct. That apart, he and his ancestors were also exercising their right of pisciculture in the suit Kata. Neither such right of the Plaintiff had been abolished nor had any compensation been awarded to him for that. Therefore, he was entitled to the right of pisciculture till such right was taken away by any order of the Government and he wanted to omit a portion of prayer No. (iii), i.e., "in the peaceful possession of the Plaintiff over the suit KATA by incorporating "in the right of irrigation and pisciculture in respect to suit KATA after the words "in any manner" To the aforesaid, amendment the Defendants filed their objection stating therein that the proposed amendment would change the nature and character of the suit and the amendment sought is not necessary for just decision of the real dispute in the suit. The learned Addl. District Judge considered the amendment application and the objection to the same filed by the parties and rejected the said application vide his order dated 12.8.1996 on the finding that the amendment is not at all necessary for the just decision of the suit in appeal.

3. Learned Counsel for the Petitioner submitted that by way of the amendment, they had further given details of the facts which were already on the record and an amendment can be allowed at any stage. Therefore, the order passed by the learned Addl. District Judge is illegal and he should have allowed the amendment which is necessary for just decision of the dispute between the parties.

4. Learned Counsel for the opposite parties, however, submitted that as the amendment was not necessary for proper adjudication of the suit and the same was filed at a belated stage, the same should not be allowed.

5. The record reveals that the learned Addl. District Judge considered the amendment application before hearing of the appeal. Law is well settled that when an amendment application is filed in the appellate court, the court should examine whether such amendment is necessary for just decision of the case and that is at the stage of hearing of the appeal not prior to that. After commencement of the hearing of the appeal when the court apprises itself of the facts and circumstances of the case, at that stage only the appellate court will be in a position to consider the requirement whether the amendment is necessary for real adjudication of the dispute. The present case does not disclose that appellate court by the time of disposal of the application filed under Order 6, Rule 17 of the CPC apprised itself of the facts of the case. Therefore, before

hearing the case on merits, the court could not be in a position to decide whether such amendment was necessary or on examination of the materials on record if, at that stage, it comes to a finding that without the amendment it is not possible for the court to decide the dispute then the same can be allowed.

6. Therefore, this Court sets aside the impugned order dated 12.08.1996 passed by the learned Additional District Judge, Bargarh in Title Appeal No. 18/11/28 of 1993/94 and directs the court below to consider the application at the time of hearing of the appeal.

7. The writ application is accordingly disposed of. No costs.