

**(2012) 01 OHC CK 0025**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) 27106 of 2011**

Sova Dei and another

APPELLANT

Vs

Krushna Chandra Pratap Singh and Others

RESPONDENT

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**Date of Decision :** 19-01-2012

**Acts Referred:**

Civil Procedure Code Amendment Act, 1999 — Section 16, 7  
Civil Procedure Code Amendment Act, 2002 — Section 7  
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15, Order 6 Rule 17, Order 6 Rule 18, 16(2)(b)  
General Clauses Act, 1897 — Section 6

**Citation :** (2012) 113 CLT 946

**Hon'ble Judges :** M.M. Das, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

M.M. Das, J.—This writ application has been filed challenging the Order Dated 07.09.2011 passed in T.S. No. 71 of 1982 by the Learned Civil Judge (Junior Division) First Court, Cuttack refusing a prayer for amendment made by the plaintiffs. The case has a long history & is pending since 1982. The suit was filed by the Petitioners for declaration of right, title, interest & confirmation of possession & in the alternative, for recovery of possession along with an ancillary prayer for permanent injunction in respect of the disputed property measuring Ac.0.0.91 decimals, out of which, it was alleged that Ac.0.050 decimals of land was leased out in favour of the Defendant No. 1 by the Defendant No. 2 State under the provisions of the O.G.L.S. Act.

2. This suit was originally decreed in favour of the plaintiffs. The Defendant No. 1 carried an appeal. The Learned first Appellant Court reversed the Judgment & decree of the Learned Trial Court, against which, the plaintiffs-Petitioners preferred second appeal, being Second Appeal No. 25 of 1990. This Court by Judgment dated 13.08.2008 disposed of the appeal in which, certain facts were noted, such as, the lease over Ac.0,050 decimals of land granted by the State in

favour of the Defendant No. 1, has been resumed in the meantime & the real contestant is the State.

3. This Court in the Second Appeal, after-setting aside the Judgment & decree of both the Courts below, remanded the matter to the Trial Court for de novo hearing. Thereafter, the State filed its written statement along with an application to accept the same & to set aside the order setting the State ex parte. The written statement has been accepted. At this juncture, the plaintiffs-Petitioners filed an application for amendment of the plaint, which upon being rejected, the present writ application has been filed,

4. It appears from the impugned order that the Learned Trial Court rejected the prayer for amendment on three grounds. Firstly, the application was not supported by affidavit, secondly, the amendment, if allowed, will change the nature & character of the suit & lastly, there was inordinate delay in filing the application for amendment.

5. It further appears that the Learned Trial Court, while taking the aforesaid view for rejecting the application for amendment, has not considered the provisions with regard to the repeal & savings in Section 16 (2) (b) of the CPC (Amendment) Act, 2002. Had he looked into the said provision, he could not have concluded that the application for amendment filed under Order-6 Rule - 17 C.P.C. is to be rejected being not supported by affidavit in the suit, which was filed much prior to the amendment of the CPC made even in the year 1999. The said saving clause specifically provides that :-

16. Repeal & savings - (1) xx xx xx

(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-Section (1) has taken effect, & without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (10 of-1897), -

(a) xx xx xx

(b) the provisions of rules 5, 15, 17 & 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the CPC (Amendment) Act, 1999 (46 of 1999) & by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC (Amendment) Act, 1999 of this Act;

(c) xx xx xx

6. Law is clear that the amendment brought to Rules, 5, 15, 17 & 18 of Order 6 of the Code by the Amending Act, 1999 as well as by Section 7 of the Amending Act, 2002 shall not have any application in respect of any pleading filed before commencement of the aforesaid Amending Act. Hence, in the instant case, there was no requirement to support the application for amendment by an affidavit.

7. Further, it is well settled position of law that when amendment to the pleadings is allowed, the same is related back to the date of filing of the original

pleadings, be it plaint or written statement, except in a case, where the amendment sought for is relatable to the law of limitation. Hence, in the instant case, neither the application for amendment required an affidavit in support of such application nor if the amendment stands allowed, the consolidated plaint incorporating the amendments is required to be supported by affidavit as, such amendments will relate back to the date of filing of the original plaint, when law did not require any affidavit to be filed in support of the plaint.

8. The next ground on which, the prayer for amendment has been rejected, i.e., the amendment, if allowed, will change the nature & character of the suit, cannot be accepted, in view of the fact that this Court in the Judgment passed in the Second Appeal, specifically held that the Defendant No. 1 's lease of Ac.0.050 decimals of land granted by the Defendant No. 2-State, has been resumed &, therefore, the Defendant No. 1 practically has nothing to contest in the suit. Basing on such finding, the plaintiffs wanted to segregate the suit land constituting an area of Ac.0.91 decimals into two schedules of Ac.0.41 & Ac.0.50 decimals. This in no way changes the nature & character of the suit.

9. With regard to delay, as this Court finds that the Second-Appeal was disposed of only in August, 2008 & thereafter, written statement was filed by the State in 2011, the question of delay in filing the amendment application did not arise in the facts of the present case.

10. Hence, the impugned order under Annexure-6 is set aside & the prayer for amendment made by the Petitioners-plaintiffs stands allowed. The plaintiffs shall file a consolidated plaint incorporating the amendments within a period of two weeks. Thereafter, the Defendants shall be afforded with an opportunity to file additional written statement within a period of further two weeks.

11. Since it is submitted that on an application being filed, the Defendants 3 & 4 were directed to first adduce evidence & they have adduced their witnesses, it is further directed that the Defendants may be given further opportunity to recall their witnesses & re-examine them &/or to adduce any further evidence, both oral & documentary. Since the suit is pending from the year 1982, the Learned Trial Court is directed to. take expeditious steps for final disposal of the suit & parties are directed to cooperate in the matter. The Learned Trial Court shall make all sincere efforts to finally dispose of the suit by the end of July, 2012.

The writ application accordingly stands allowed.

Urgent certified copy of this order be granted as per rules.