

(2006) 04 OHC CK 0033
In the Orissa High Court
Case No : Writ Petition (C) No. 3321 of 2006

Tetengu Rautia

APPELLANT

Vs

Hagru Rautia

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11

Citation : (2006) 3 CivCC 292 : (2006) 101 CLT 561 : (2006) 1 OLR 653

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Judgement

N. Prusty, J.—This writ petition has been filed by the defendant challenging the order dated 28.1.2004 passed by the Learned Civil Judge (Senior Division), Sundargarh in Title suit No. 11 of 2002 allowing the prayer of the Plaintiff for amendment of the plaint as well as the later order in rejecting the prayer made by the defendant in his petition under Order 7, Rule 11(a) of the C.P. Code for rejection of the plaint, which was also confirmed by the Learned 1st. Ad hoc Additional District Judge, Sundargarh in Civil Revision No. 2/2 of 2004 vide order dated 12.12.2005.

2. Learned Counsel for the petitioner submits that this amendment petition has been filed in a suit for partition two years after the plaint was presented. The Plaintiff has only prayed for partition of the "A" Schedule Property which is being possessed by the defendant, but the portion of property which is under his possession as per the earlier in the mutual deed for partition, i.e., "B" Schedule Property has not been brought within the purview of the prayer for partition made in the plaint. The plaint, it self, is liable to be rejected since there was no cause of action for filing the suit.

3. It is well settled that for better adjudication of the suit by the Competent Court, the parties are at liberty to approach the Court at any stage of the proceeding by way of filing an application for amendment of the pleadings under Order 6, Rule 17 of the C.P. Code and in case the plaintiff's prayer is allowed,

the defendant shall be given liberty to file his additional written statement to the amended plaint. The defendant is always at liberty to state all his grievance to the plaint in his written statement. He can indicate that so far as the "B" schedule properties are concerned, since the plaintiff himself is in possession has not prayed for partition of the said land and has only prayed for partition of "A" Schedule property, which is under the possession of the defendant. The defendant can indicate the exact position with regard to the Schedule "B" property vis-a-vis "A" schedule property. If the defendant-petitioner is so advised, he is also at liberty to file his additional written statement to the amended plaint claiming partition of the "B" schedule property, since "B" schedule property also belongs to the joint family, which is being enjoyed by the Plaintiff in amicable family partition. It need not reiterated that in a suit for partition both the plaintiff and defendant stand on same footing.

4. The orders of both the Learned Courts as well as a bare reading of the plaint clearly indicates that there was cause of action for filing the suit by the plaintiff for partition, even though both the plaintiff and defendants were possessing the land separately by amicable arrangement, which can never be termed as partition by metes and bounds. Hence there was cause of action for filing the suit for partition by metes and bounds.

5. In view of the above, I do not find any illegality, irregularity or manifest error of law in both the impugned orders and as such, I am not inclined to entertain this writ petition.

6. The writ petition is disposed of with the aforesaid observation.

Urgent certified copy of this order may be granted on proper application.