

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 4 of 2023

Sulochana Parida and others ***Petitioners***
Mr. Bhaskar Chandra Panda, Advocate

-versus-

Kamini Parida and others ***Opp. Parties***
Mr. Monmoy Basu, Advocate
(For Opposite Party Nos.1 to 4 and 7)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
24.07.2023

Order No.

6. 1. This matter is taken up through hybrid mode.
2. Mr. Basu, learned counsel appearing for Opposite Party Nos.1 and 7 also files Vakalatnama on behalf of Opposite Party Nos. 2 to 4 in Court, which is taken on record. He also files an affidavit of Opposite Party No.7 stating that Opposite Party No.11-Mamata Parida has died issueless since 2021 and hence no substitution vide Opposite Party No.11 is necessary in this case.
3. Mr. Panda, learned counsel for the Petitioners submits that the name of Opposite Party No.11 may be deleted at the risk of Opposite Party Nos.1 to 7.
4. Taking into consideration the submissions made by learned counsel for the parties, name of Opposite Party No.11-Mamata Parida be deleted from the cause title at the risk of Opposite Party Nos.1 to 4 and 7.
5. Order dated 3rd December, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), 2nd Court, Cuttack in CS No.134/58 of 2008/2003 is under challenge in this CMP, whereby an application for amendment of the plaint filed by the

Plaintiffs/Petitioners has been partly allowed. Petitioners in this CMP assail part of the order refusing amendment of the plaint.

6. Mr. Panda, learned counsel for the Petitioners submits that CS No.58 of 2003 has been filed for declaration that the partition deed executed between Shyam Sundar and Radhu Parida is outcome of fraud and also for consequential relief. During pendency of the suit, Plaintiffs/Petitioners filed an application for amendment of the plaint to incorporate some of the Defendants as parties to the suit and in consequence to change the serial number of the proforma Defendants. A prayer for incorporation of the pleading with regard to validity of RSD No.1896 dated 30th April, 1999 was also sought for. Further, a prayer to declare such sale deed as null and void was also sought for in the plaint by way of amendment. Learned trial Court, while allowing the prayer for implemation of parties and change of serial number of proforma Defendants rejected the prayer for amendment to incorporate foundational pleadings as well as prayer to declare the sale deed dated 30th April, 1999 as null and void. Hence, this CMP has been filed.

6.1 Mr. Panda, learned counsel for the Plaintiffs/Petitioners submits that learned trial Court rejected the amendment, as aforesaid on two grounds, more particularly that the amendment sought for is barred by limitation and it will take away the pecuniary jurisdiction of the Court. It is his submission that the question of limitation can be decided at the time of hearing by framing an additional issue. Validity of the sale deed dated 30th April, 1999 depends upon the adjudication with regard to validity of the partition deed, which is under challenge. Instead of filing a separate suit, Plaintiffs/Petitioners sought for amendment of the

plaint to save judicial time of the Court for adjudication of the *lis* between the parties. He further submits that only because the pecuniary jurisdiction of the Court will be taken away by virtue of amendment of the plaint, that itself cannot be a ground to refuse the prayer. He, therefore, prays for setting aside the impugned order to the extent of rejecting amendment of the plaint and to permit the Petitioners to incorporate the proposed amendment as sought for.

7. Mr. Basu, learned counsel for Opposite Party Nos.1 to 4 and 7 vehemently objects the above submission. It is his submission that the sale deed in question was well within the knowledge of the Plaintiffs on the date of filing of the suit. The Plaintiffs also did not take any step to amend the plaint at the time of impleading the purchasers of the aforesaid sale deed under Order I Rule 10 (2) CPC. When the suit was posted for hearing, such a plea has been taken to linger the proceeding. It is his submission that earlier, Plaintiffs/Petitioners had moved this Court in W.P.(C) No.659 of 2011 in which they had assailed the order refusing to stay further proceeding of the suit. Ultimately, Plaintiffs/Petitioners withdrew the said writ petition. Thus, the Plaintiffs are adopting different methods to linger the proceeding of the suit. As such, learned trial Court has committed no error in rejecting the prayer for amendment, as aforesaid.

8. Considering the submissions of learned counsel for the parties, this Court finds that hearing of the suit has not yet commenced. Of course, the suit is of the year 2003 and is pending before learned Civil Judge (Junior Division), 2nd Court, Cuttack. Only because the pecuniary jurisdiction of the Court will be taken away by the amendment of the plaint, the same cannot be the sole

ground to refuse the prayer. Since the Plaintiffs/Petitioners have prayed for declaration that the deed of partition as aforesaid to be null and void, learned trial Court should have considered the amendment to incorporate the pleadings as well as prayer with regard to validity of the RSD dated 30th April, 1999, as it is a consequence of such partition, which is under challenge. If the Petitioners/Plaintiffs are not permitted to incorporate such amendment at this stage, it may lead to multiplicity of litigations. In order to shorten the time for complete adjudication of the *lis* between the parties with regard to validity of partition as well as consequential execution of sale deed, this Court feels that learned trial Court should have allowed the amendment; which is of course subject to the question of limitation. If objection to the prayer for amendment is raised on the ground of limitation, the amendment sought for should not be thrown out at the threshold, more particularly when objection on limitation depends upon interpretation of materials on record. In such cases, question of limitation can also be decided by framing an issue to that effect.

8.1 In that view of the matter, this Court feels that the amendment sought for should have been allowed.

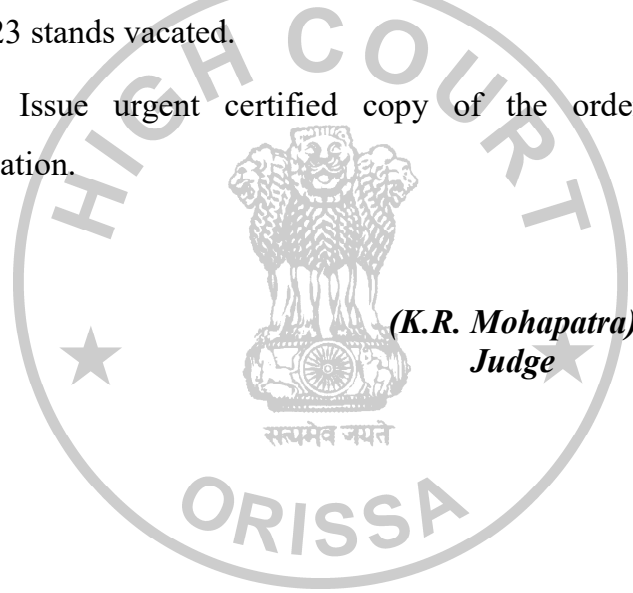
9. Accordingly, the impugned order under Annexure-1 rejecting the amendment, as aforesaid, is set aside. The petition for amendment filed by the Plaintiffs/Petitioners is allowed. Keeping in mind the suit is of the year 2003 and prayer for amendment was made in the year 2022, this Court feels that the contesting Defendants should be compensated by adequate cost.

10. Accordingly, this Court directs that consolidated plaint shall be accepted subject to payment of cost of Rs.10,000/- (rupees ten thousand only), which shall be paid to the Defendants

along with copy of the amended plaint within a period of fifteen days hence. Needless to say that the Defendants are at liberty to file additional written statement to the amended plaint within a period of two weeks thereafter. It is made clear that if the consolidated plaint is not filed along with the cost as aforesaid within the time stipulated as above, the order under Annexure-1 impugned herein shall be revived. Learned trial Court shall also make an endeavour to see that the suit is disposed of at an early date.

11. Interim order dated 11th January, 2023 passed in IA No.5 of 2023 stands vacated.

Issue urgent certified copy of the order on proper application.



s.s.satapathy