

Orissa High Court

Dhirendra Kumar Pandey And Ors. vs Smt. Rashmani Dei on 24 June, 1985

Equivalent citations: AIR 1986 Ori 133

Author: D Mohapatra

Bench: D Mohapatra

ORDER D.P. Mohapatra, J.

1. The defendants in O. S. No. 583 of 1979-1 of the court of the Munsif, Puri, have filed this application under Section 115, Civil Procedure Code challenging the order dated 5-12-1981 of the court rejecting, their application for amendment of written statement.

The opposite party filed the above mentioned suit against the petitioners for declaration of title over lot Nos. 1 and 2 of the suit properties, confirmation or in the alternative for recovery of possession and for permanent injunction. The property under lot No. 1 was described in the following manner :

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District Puri, P.S. Pipli, Mouza-Jagannathpur Sthitiban Khata No. 491, Plot No. 2231, Ac. O. 30 dec. (thirty decimals) out of eastern Ac. O. 15 (fifteen decimals) with stone well up to ground level of East-West Length 20' (twenty feet) and North-South 18' (eighteen feet) in the sketch below indicating the land of the defendant No. 1 in plot No. 2230 to its east and lend of the same defendant No. 1 in plot No. 2231 to its west.

It is not necessary to describe the properties under lot No. 2 since the proposed amendment is not concerned with the said properties.

2. Before commencement of trial of the suit the petitioners filed an application under Order 6, Rule 17 Civil Procedure Code for permission to amend their written statement to the following effect. : --

"In paragraph eight of the written statement after the second sentence the following facts to be added.

That it may be stated with clarity that plot No. 2231 consists of total area of Ac. O. 26 decimals. Out of the said plot about Ac. O. 86 decimals were set apart as a public road in the decree of O. S. No. 169/1969 Class-1, Munsif, Puri where the State Government was also a party. So about Ac. O. 20 decimals were left with the vendor Ramanarayan Khuntia to be sold from out of that plot. The recitals in the documents of sale that Ac. O. 15 decimals were sold to each party namely plaintiff and defendant No. 1 out of plot No. 2231 was erroneous. Instead it should have been Ac. O. 10 decimals each."

The opposite party objected to the application filed by the petitioners on the grounds that the proposed amendment is vexatious, it is designed to delay the proceeding: it is barred by principles of res judicata and estoppel, and it lacks bona fides.

3. The trial court, on consideration, rejected the petition for amendment. The order of the court below, is challenged as being vitiated due to illegal exercise of jurisdiction and/or exercise of jurisdiction with material irregularity.

4. The proposed amendment quoted above would show that all that the petitioners wanted was correction of the erroneous description of the property in lot No. 1 and the areas in plot No. 2231. As such the proposed amendment cannot be said to occasion a change of the nature and character of the suit. Though the opposite party stated in her objection that the attempt of the petitioners to amend the written statement tacked bona fides no material was produced by her nor any finding arrived at by the court below that the attempt was vitiated by mala fides. The court below has also not found that the circumstances of the case are such that any calculable or gross injustice would be caused to the plaintiff-opposite party, if the amendment is allowed. A perusal of the impugned order shows that the trial court has attempted to ascertain whether the facts sought to be introduced by the proposed amendment are correct or not. It appears that the court was under an impression that unless the proposed amendment is sound on merits it cannot be allowed. This is an erroneous approach. Allowing an amendment of pleadings does not mean that the averments introduced by such amendments stand proved. That can be ascertained only at the trial of the suit after evidence is led by both the parties. Therefore, at the stage of consideration of an application for amendment of the pleading the court is not to consider the merits of the proposed amendment excepting for the limited purpose of satisfying itself that it is not frivolous, vexatious mala fide in character and is intended to over-reach the court. It has been held in numerous decisions that provisions under Order 6, Rule 17, Civil Procedure Code vest wide discretion in courts to allow all amendments relevant and necessary for proper adjudication of the case and for the ends of justice. Unless the court comes to a conclusion that allowing the amendment would occasion gross injustice to the other side or it would encourage a mala fide attempt by the applicant, the amendment should be allowed. At the cost of the repetition it may be stated that even if amendment of the pleading is allowed the party concerned may fail to establish the same at the trial and the stand taken by him, may be rejected by the court. But the court cannot pre-judge the merits of the proposed 'amendment at the stage of considering the application under Order 6, Rule 17.

Civil Procedure Code, excepting for the limited purposes indicated above. The view taken by me finds support from the decision of the Delhi High Court in the case of Mangal Das Sant Ram Gauba v. Union of India vide AIR 1973 Delhi 96.

5. Applying the principle indicated above to the facts and circumstances of the present case, it has to be held that the court below erred in considering the merits of the proposed amendment in details and rejecting the application on the ground that the averments sought to be introduced by amendment are incorrect.

6. Accordingly, the revision petition is allowed, the impugned order rejecting the application of the petitioners under Order 6 Rule 17, Civil Procedure Code for amendment of the written statement is set aside and the application for amendment is accepted. Both the parties will bear their respective costs of this proceeding.