

Pabitra Adhikary And Another Vs Sunil Dhali And Another

Court: Orissa High Court

Date of Decision: Nov. 7, 2023

Acts Referred: Code of Civil Procedure, 1908 " Order 6 Rule 17

Hon'ble Judges: K.R. Mohapatra, J

Bench: Single Bench

Advocate: Maheswar Mohanty

Final Decision: Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.

2. The Petitioners in this CMP seek to assail the order dated 15th May, 2023 (Annexure-6) passed by learned Senior Civil Judge, Malkangiri in C.S.

No.42 of 2022, whereby an application filed by the Plaintiffs-Opposite Parties under Order VI Rule 17 C.P.C. has been allowed.

3. The sole contention of Mr. Mohanty, learned counsel for the Petitioners is that the Plaintiffs-Opposite Parties amongst other sought for amendment

to seek the relief of setting aside the sale deed dated 19th April, 1995, which is barred by limitation. Although a written objection was filed stating that

proposed amendment is barred by limitation and the same should not be allowed, but learned trial Court ignoring the same passed the impugned order.

Hence, this CMP has been filed.

4. Upon hearing learned counsel for the Petitioners and on perusal of the record, it appears that after filing of the written statement and before

settlement of the issues, the Plaintiffs- Opposite Parties filed an application under Order VI Rule 17 C.P.C. to incorporate certain amendments to the

pleadings. One of the prayers sought to be incorporated by amendment was in respect of the validity of the sale deed dated 19th April, 1995. In view

of the ratio decided in the case of Life Insurance Corporation of India "v- Sanjeev Builders Pvt. Limited and another ,reported in 2022 SCC

Online SC 1128, when an objection with regard to limitation is raised for the proposed amendment, an issue to that effect can be framed by learned

trial Court and adjudicated the same. In view of the above, objection raised by Defendants-Petitioners with regard to amendment so far as the sale

deed dated 19th April, 1995 is concerned, learned trial Court may frame an issue with regard to limitation, if any objection is raised in the additional

written statement in that respect.

5. It is submitted by Mr. Mohanty, learned counsel for the Petitioners that no additional written statement has yet been filed by the Defendants-

Petitioners.

6. Accordingly, the CMP is disposed of without interfering with the impugned order under Annexure-6 with an observation that the Petitioners, if so

advised, may file additional written statement to the consolidated plaint within a period of two weeks hence and may take a ground on limitation. In

that event, learned trial Court shall frame an issue on limitation and proceed with the matter in accordance with law.

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

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