# V. Surya Kumari And Another Vs Mutialla Rama Krushna And Others

## CMP No. 483 Of 2024

**Court:** Orissa High Court

**Date of Decision:** July 2, 2024

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

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

**Bench:** Single Bench

**Advocate:** Rama Chandra Rath

**Final Decision:** Dismissed

## Judgement

Ã, K.R. Mohapatra, JÃ,

1.Ã, Ã, This matter is taken up through hybrid mode.

2. Order dated 24th April, 2024 (Annexure-5) passed by learned Senior Civil Judge (WC), Bargarh in C.S. No.146 of 2011 is under challenge in this

CMP, whereby an application filed by the Plaintiffs-Petitioners under Order VI Rule 17 CPC for amendment of the plaint, has been rejected.

3. Mr. Rath, learned counsel for the Plaintiffs-Petitioners submits that the suit was filed for declaration of 1/3rd share over suit Schedule-A,B,C

property along with house standing thereon to each of the Plaintiff and to make separate allotment of shares as well as declaration of right of Plaintiff

No.2 over Ã¢â‚¬ËœGÃ¢â‚¬â„¢ Schedule land along with other relief. During cross-examination of D.W.1 by the Plaintiffs, an objection was raised to certain

suggestions stating that the same was not specifically pleaded in the plaint.

4. It is submitted that at Paragraph-5 of the plaint, the Plaintiffs stated that the Defendant No.1 has already sold his share in the suit land and had

purchased some properties. The Defendant No.1 had sold the land from the suit property beyond his share. But, no specific averment with regard to

the documents by which transactions were made was pleaded at Paragraph-5 of the plaint. Thus, for just and proper adjudication of the suit, an

application for amendment was filed by the Plaintiffs for amendment of the plaint. Learned trial Court dismissed the application under Order VI Rule

17 CPC holding that trial of the suit has already commenced and the documents sought to be incorporated by way of amendment were within the

knowledge of the Plaintiffs. It is also observed that the suit is of the year, 2011 and evidence from the side of the Plaintiffs is already closed. With the

aforesaid observation, the petition for amendment was rejected. Hence, this CMP has been filed.

5. Mr. Rath, learned counsel for the Petitioners further submits that in the petition for amendment at Annexure-3, it has been specifically stated that

the documents were not within the knowledge of the Plaintiffs and it was found in a wooden box just before one day of filing the petition for

amendment. In spite of exercise of due diligence, the Plaintiffs could not have brought specific pleading about the documents sought to be incorporated

by way of amendment before commencement of trial. This aspect was not looked into by learned trial Court while adjudicating the petition. Hence, he

prays for setting aside the impugned order under Annexure-5 and to allow the amendment sought for.

6. Taking note of the submission made by Mr. Rath, learned counsel for the Petitioners and on perusal of the record, more particularly, the petition

under Annexure-3 filed under Order VI Rule 17 CPC, it is manifest that no averment is made therein as to what step was taken by the Plaintiffs

before commencement of trial to find out those documents. Further the averment at Paragraph-4 of the petition clearly discloses that the documents

were kept in an old wooden box in the house of the Plaintiffs. In absence of any averment with regard to exercise of due diligence before

commencement of trial, an application under Order VI Rule 17 CPC could not have been entertained by learned trial Court after commencement of

trial.

7. Proviso to Order VI Rule 17 CPC limits the jurisdiction of the Court entertaining an application under Order VI Rule 17 CPC. The Court has limited

jurisdiction to entertain an application under Order VI Rule 17 CPC after commencement of trial only when the party seeking amendment satisfies the

Court that in spite of exercise of due diligence, he could not have raised the matter before commencement of trial. On perusal of the petition at

Annexure-3 filed under Order VI Rule 17 CPC, no such averment appears to have been taken. Admittedly, trial had already commenced and

evidence of the Plaintiffs was closed at the time when the petition under Order VI Rule 17 CPC was filed. Thus, in my considered view, learned trial

Court has committed no error in dismissing the petition under Order VI Rule 17 CPC.

8. In view of the above, the CMP being devoid of any merit stands dismissed.

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

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