

(2024) 07 OHC CK 0045

Orissa High Court

Case No: CMP No.1632 Of 2023

Rangadhar Bibhar And Others

APPELLANT

Vs

K. Tamanna

RESPONDENT

Date of Decision: July 1, 2024

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

Bench: Single Bench

Advocate: Satya Prakash Mahapatra, Laxmi Sharma

Final Decision: Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 9th November, 2023 (Annexure-1) passed by learned Civil Judge (Senior Division), Bargarh in C.S. No.25 of 2023 is under challenge in this CMP, whereby an application filed by the Plaintiff-Opposite Party for amendment of the plaint, has been partly allowed.
3. Mr. Mahapatra, learned counsel for the Petitioners submits that by virtue of the amendment, the Plaintiff-Opposite Party sought to take away the admission made in the plaint. In Paragraph-4 of the plaint, the Plaintiff-Opposite Party stated that on 1st February, 2014, the Plaintiff allowed the Defendants as tenants under him on oral consent at a monthly rent of Rs.1,000/-
- . On behalf of all Defendants, the Defendant No.1 paid the monthly rent to the Plaintiff for one year and thereafter the Defendants-Petitioners did not pay any rent. In the petition for amendment, the Plaintiff sought to introduce that before purchasing of the suit property by him, the Defendants were inducted as tenants by the vendor. Before

alienation of the property, the vendor took oral consent of the tenants-Petitioners for alienation. Thus, the Defendants-Petitioners continued to be the tenants under the Plaintiff-Opposite Party. By virtue of the amendment, the Plaintiff sought to introduce certain new facts, which were not there in the pleadings. The Plaintiff-Opposite Party by that way intends to take away the admission already made in the plaint. Learned trial Court while adjudicating the matter, failed to appreciate the same. He, of course, submits that learned trial Court rightly refused to amend the prayer of the plaint. He, therefore, submits that the impugned order under Annexure-1 is not sustainable and is liable to be set aside.

4. Ms. Sharma, learned counsel for the Plaintiff-Opposite Party vehemently objects to the above. It is her submission that the amendment sought for at Paragraph-4 of the schedule of proposed amendment was clarificatory and explanatory in nature. In addition to the pleadings available in the plaint, the Plaintiff sought to clarify the situation. No admission made in the plaint is taken away by the proposed amendment. Thus, the impugned order should not be interfered with. She, however, submits that refusal of learned trial Court to amend the prayer portion was erroneously rejected, for which the Plaintiff-Opposite Party has filed CMP No.1518 of 2023, which is listed today along with the present CMP. She, therefore, prays for dismissal of the instant CMP.

5. Taking note of the submissions made by learned counsel for the parties and on perusal of the record, this Court finds that the amendment to the pleadings sought for by the Plaintiff-Opposite Party, more particularly, at Paragraph-4 of the schedule of proposed amendment was refused by learned trial Court. It also appears that no admission made in the plaint is taken away by amendment sought to be incorporated at Paragraphs-1 to 3 & 5, as rightly pointed out by learned trial Court. Thus, learned trial Court has committed no error in allowing the amendments so far as Paragraphs-1 to 3 & 5 of the schedule of proposed amendment are concerned. I, therefore, find no infirmity in the same.

6. Accordingly, the CMP being devoid of any merit stands dismissed.

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

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