



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.187 of 2026

Smt. Sarala Nayak and others

Petitioners

Represented by Adv. -
Gopal Prasad Jena

-versus-

Smt. Kunjalata Pati and others

Opposite Parties

Represented by Adv. -

CORAM:

**THE HON'BLE MR. JUSTICE ADITYA KUMAR
MOHAPATRA**

ORDER

24.02.2026

Order No.

01. 1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioners. Perused the CMP application as well as the prayer made therein.
3. By filing the present application under Article 227 of the Constitution of India, the plaintiff in C.S. No.30 of 2005 pending in the court of learned Civil Judge Sr. Division, Nilgiri has approached this Court challenging order dated 17.05.2025 at Annexure-10 to the present application, whereby the learned trial Court has rejected the application of the Petitioners filed under Order 6 Rule 17 of the CPC seeking amendment of the plaint on the grounds stated on such application.



4. Learned counsel for the Petitioners at the outset contended that the Petitioners as plaintiff filed the suit for specific performance of contract. He further emphatically argued that the trial of the suit has not commenced yet as because after filing of the suit the matter was carried to this Court and by order of this Court, the further proceeding of the suit remained stayed for several years. Finally, when the matter was relegated back to the trial Court, the Corona-19 pandemic intervened and as a result of which the trial has not commenced yet. During the pendency of the suit an application was filed on 16.04.2025 at the instance of the plaintiff-Petitioners under Order 6 Rule 17 of the CPC seeking amendment to the plaint on the ground that the suit scheduled properties have been partition among the co-sharers by virtue of a decree passed in C.S. No.44 of 2005. Since the amendment sought for is required for a just decision of the case, such application was filed at the instance of the plaintiff seeking amendment of the plaint. However, the learned trial Court has rejected the prayer for amendment only on the ground that the suit is pending for 18 years and that the proposed amendment not at all required for a just adjudication of the suit and that if the amendment is allowed the same will change the nature and character of the suit.

5. Upon perusal of the impugned order dated 17.05.2025 at Annexure-10, this Court observes that the application of the Petitioner for amendment of the suit has been rejected by the learned trial Court on the grounds stated therein. The learned trial Court rejected the prayer of the Petitioners for amendment basically on the ground that the application for amendment was filed at a belated



stage, such amendments are not required for a just adjudication of the suit and that if such amendments are allowed, the same will change the nature and character of the suit.

6. On a careful consideration of the factual background of the present case as well as the submission made by the learned counsel for the plaintiff-Petitioners, this Court found that during pendency of the present suit the suit properties were partition by virtue of a decree of the Civil Court. Therefore, the plaintiff-Petitioners could not have pleaded the same in his plaint at the time of filing of the suit. No doubt, there is a long delay in disposal of the suit, however, the same was due to various factors including the interim order passed by this Court for which the suit remain stayed for several years. Moreover, this Court is of the considered view that delay alone cannot defeat justice and take away the valuable right of the Petitioners to amend the pleading.

7. This Court is also conscious of the fact that after amendment of the CPC in the year 2002 the scope and jurisdiction of the Court under Order 6 Rule 17 of the CPC has been restricted and that before allowing such amendment the Court has to apply the due diligence test. Here in the instance case, it is stated by the learned counsel for the Petitioner the trial has not commenced yet. Thus, this Court is of the prima facie view that the proviso requiring for due diligence test under Order 6 Rule 17 of the CPC would not be applicable to the facts of the present case. Moreover, a fair adjudication requires that ample opportunity be provided to both sides to file their pleadings before the trial commences in the suit.



8. While amending the CPC in the year 2002 the Legislatures have understood the relevance and significance of the provision in the nature under Order 6 Rule 17 of the CPC empowering the parties to carry amendment in their respective pleadings. Such provision was never deleted by way of amendment at a belated stage in the year 2002 and that the same was incorporation in the statute consciously. It is also a settled position of law that if any prayer is made before the learned trial Court at a belated stage which is likely to cause some prejudice to the other side, the learned trial Court is first required to examine the relevance of such prayer before the trial Court and in the event the learned trial Court comes to a conclusion that some prejudice is likely to be caused to the other side in the event such prayer is allowed at a belated stage, then the same can very well be compensated by imposing cost on the party who has approached the Court at a belated stage.

9. Merely, approaching the Court, at a belated stage alone itself, cannot take away the rights of the parties who have approached the Court seeking a relief under the statutory provision. The learned trial Court is required to examine as to whether the amendment sought for by the plaintiff is just proper and the same is required for a just adjudication of the suit pending before it. The learned trial Court is also required to examine as to whether refusal to permit amendment to the plaint would cause prejudice to the plaintiff or not. It is also the duty of the trial Court to apply the due diligence test as provided in the proviso to Order 6 Rule 17 of the CPC after amendment in the year 2002.

10. Keeping in view the aforesaid settled principle of law, this



Court examine the impugned order dated 17.05.2025 passed in C.S. No.30 of 2005 by the learned trial Court. On such examination, it is found that the learned trial Court has not indicated as to how the Opposite Parties will be prejudiced in the event the amendment is allowed. Moreover, it has also not been clearly indicated as to why the amendment sought for is not relevant for a just adjudication of the suit. In view of the aforesaid anomaly, this Court is of the view that the matter requires reconsideration by the learned trial Court. Accordingly, the impugned order dated 17.05.2025 is hereby set aside.

11. Further, the matter is relegated back to the learned trial Court for reconsideration. Taking into consideration the fact that the suit is pending since 2005, the Petitioner shall approach the learned trial Court along with a certified copy of today's order within two weeks from today. In such eventuality, the learned trial Court after providing opportunity to both sides shall make every endeavor to dispose of the application under Order 6 Rule 17 of the CPC within four weeks thereafter. Further, considering the fact that the suit is of the year 2005, every endeavor shall be made by the learned trial Court to expedite the trial and conclude the same as expeditiously as possible. The parties to the suit are directed to cooperate with the learned trial Court for an early disposal of the suit and they shall not ask for any unnecessary adjournments in the present suit.

12. Since this order is being passed at the stage of admission without hearing the opposite parties, liberty is granted to the opposite parties to seek for variation or modification of this order in the event it is found that the Petitioners have suppressed any



material fact before this Court.

13. With the aforesaid observation/direction, the CMP application stands disposed of.

(Aditya Kumar Mohapatra)
Judge

S.K. Rout