



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.619 of 2016

Kailash Chandra Samantaray **Petitioner**

Mr. S. S. K. Nayak, Advocate

-Versus-

Anirudh Samantaray and others **Opposite Parties**

Mr. Maheswar Mohanty, Advocate for O.P. Nos.1, 3 and 4

**CORAM:
HON'BLE THE CHIEF JUSTICE**

**ORDER
25.07.2025**

Order No.

04.

1. A suit instituted by the plaintiff asserting the preferential right under Section 22 of the Hindu Succession Act is defended by some of the defendants by filing the written statements except the petitioner, who was arrayed as defendant No.2 therein. It is averred in the plaint that the property originally belonged to a joint family and the defendants No.2 to 4 as well as the plaintiff were the co-sharers and/or the co-owner thereof. Subsequently, the property was amicably partitioned amongst brothers but defendant No.2-petitioner without offering the other class-1 heir sold, transferred and conveyed his allotted portion to defendant No.1. Admittedly, defendant No.1 and the other brother—defendant No.3 are contesting the said suit and the first witness of the plaintiff is being cross-examined extensively. At this juncture, the petitioner came forward with the written statement and sought leave of the Court to accept the same. The trial Court rejected the said application as the



ground assigned for acceptance of the belated written statement is not convincing.

2. Learned counsel for the petitioner submits that the right to defend is a valuable right, which should not be defeated and, therefore, the trial Court ought to have taken a lenient and pragmatic view in permitting the petitioner to defend the said suit by filing the written statement. It is further submitted that the petitioner could not collect all the relevant documents and, therefore, could not file the written statement within the statutory period of limitation provided therefor, which should have been considered by the trial Court as a sufficient ground for exercising the discretion vested upon it.

3. On the other hand, learned counsel appearing for the plaintiff-opposite party No.1 opposes the instant petition. According to him, defendant No.2 was all along aware of the said proceeding after the service of the summon in the suit and the moment it realized that the plaintiff would succeed, in order to frustrate the further progress of the suit, a belated attempt was made to accept the written statement. He further submits that the ground assigned for acceptance of the belated written statement is unbelievable and intended only to delay the progress of the said suit.

4. Indubitably, the suit is instituted by the plaintiff-opposite party asserting the preferential right emanating from Section 22 of the Hindu Succession Act as a class-1 heir in respect of the property, which was sold and transferred by the petitioner in favour of defendant No.1. It does not appear from the stand of the



petitioner that he has denied the execution and registration of the sale deed nor repudiated the same, but intended to corroborate the fact that after separation of the joint property, there is no fetter on the part of the petitioner to sell his allotted portion to any outsiders.

4.1. Undeniably, the Courts in the country have noticed by experience that because of the delay in filing the written statements and a frequent adjournment having sought by either of the parties, the disposal of the suits gets delayed and, therefore, it was felt necessary to bring amendment to fix a timeline within which, the pleadings are to be filed. On the basis of the recommendation of the Justice Malimath Committee, the amendment was carried out in two phases i.e. in 1999 and 2002. Order VIII Rule 1 of the Code of Civil Procedure underwent a sea change where a time limit within which the written statements shall be filed is incorporated. The legislatures were conscious while bring such amendment that there may be a possibility that the defendants would not be in a position to file the written statement within the stipulated period, therefore, confers the power on the Court to exercise the discretion in extending the time with an outer limit. After such amendment having brought, there has been a divergent view on the applicability of the said amended provisions, more particularly, whether it can be construed as mandatory or directory in nature. Though the Courts have held that the time stipulated by way of such amendment may not be construed as mandatory but directory in nature but the time limit so fixed should not be readily extended by regular exercise of discretion as such discretion should be exercised with reasonable care and only in exceptional and



extraordinary circumstances. A casual way of approaching the Court and seeking its blessing should not be encouraged and, therefore, the Court has ample power to refuse the litigant to get the written statement taken on file after such inordinate delay.

5. In the instant case, admittedly the written statement is sought to be filed at the stage of peremptory hearing when the first witness of the plaintiff is facing cross-examination. The written statement is intended to support the claim of defendant No.1 and, therefore, I do not find any incongruity in the decision taken by the trial Court that the grounds assigned in the said application is not convincing.

6. I thus do not find any infirmity in the impugned order. The instant petition is dismissed. No order as to costs.

7. The interim order passed earlier stands vacated.

(Harish Tandon)
Chief Justice

M. Panda

Signature Not Verified

Digitally Signed
Signed by: MRUTYUNJAYA PANDA
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 30-Jul-2025 13:11:45

