



IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1243 of 2025

(In the matter of an application under Article 227 of the Constitution of India)

Shantilata Patel and another

....

Petitioners

-versus-

Sakuntala Patel and others

....

Opposite Parties

Advocate(s) appeared in this case:-

For Petitioners : Mr. B. Sahoo, Advocate

For Opposite Parties : Mr. A.P. Bose, Advocate
For O.P. Nos.6 & 7

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

18th December 2025

B.P. Routray, J.

1. Heard Mr. B. Sahoo, learned counsel for the Petitioners and Mr. A.P. Bose, learned counsel for the Opposite Parties 6 & 7.

2. Present C.M.P. is directed against the order dated 29.04.2025 of the learned Senior Civil Judge, Sundargarh passed in C.S. No.284 of 2013, wherein the prayer of the Plaintiffs to amend the plaint at a belated stage has been refused.



3. It is submitted by Mr. B. Sahoo, learned counsel for the Petitioners (Plaintiffs) that since another Willnama of the year 2011 has been relied on by the Defendants in their counter claim, the same is required to be pleaded by the Plaintiffs in order to sustain their claim and relief.

4. Conversely, it is submitted on behalf of Mr. A.P. Bose, learned counsel for the Opposite Parties (Defendants) that, the counter claim was filed on 22.01.2017 and thereafter the Plaintiffs as well as other Defendants have led their evidences and last witness was examined on 17th May 2023. But the Plaintiffs did not avail the opportunity to amend the plaint till then and so they cannot seek amendment of the plaint at such a belated stage in the year 2025 in order to answer the contentions regarding Willnama in the counter claim.

5. The principles with regard to the amendment as per the provisions in Order 6 Rule 17, C.P.C. have been well settled. In ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another, (2022) 16 SCC 1***, it has been held as follows:-

“71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are



satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order 6 Rule 17CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

- (a) the amendment does not result in injustice to the other side,
- (b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and
- (c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.



71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The



court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (*See Vijay Gupta v. Gaginder Kr. Gandhi.*) ”

6. In the given facts of the present case, the Plaintiffs filed the suit in the year 2013 praying for declaration of right, title and interest in respect of the suit schedule property along with declaration of the WILL of the year 1999 as null and void and further, to confirm their possession with other consequential reliefs. It is true that the contesting Defendants have raised their counter claim bringing the last Willnama of the year 2011 on record and after filing of the counter claim on 22.1.2017, the Plaintiffs without taking any step for amending their pleadings proceeded to examine the witnesses. Not only the Plaintiffs, but the Defendants also have adduced their evidence to complete the examination of the witnesses. The Plaintiffs at last on 01.03.2025 filed the petition praying for amendment of the plaint in order to bring such facts challenging validity of the Willnama of the year 2011.



7. As seen and submitted by both the parties, the issues were re-casted on 04.05.2024 inserting such additional issues wherein an issue is to the effect that, “*Whether the registered WILL No.31701102041 of 2011 executed by Jayanti Patel in favour of Defendant No.7 is valid ?*” Thus, it is not that the Plaintiffs were unaware of noticing the claim of the contesting Defendants regarding the Willnama of the year 2011. When the contesting Defendants have raised their counter claim for declaration of their right, title and interest in respect of the suit property against the Plaintiffs and the issue as stated above has been framed in order to adjudicate the counter claim of contesting Defendants, the requirement of amendment of the pleading in the plaint is hardly necessary at this stage, because the onus is now on those Defendants to establish their claim regarding validity of the WILL in their support.

8. Apart from this, the Plaintiffs in their petition for amendment have not stated any reason as to what prevented them to bring such amendment earlier and the discharge of due diligence on their part. As propounded by the Hon’ble Supreme Court in the afore-cited case, the Plaintiffs have failed to satisfy to comply the proviso to Rule 17 of Order 6, C.P.C. They have not whispered a single word in their petition



for amendment in respect of the reason for the delay caused on their part to bring such amendment at this belated stage. Therefore, the Plaintiffs cannot be allowed to amend their pleadings in that respect which would otherwise permit them to adduce further evidence and counter evidence on record. It is also admitted by the parties that no written statement has been filed by the Plaintiffs to the counter claim of the contesting Defendants.

9. In such a situation, the impugned order of the learned trial court refusing the prayer of the Plaintiffs to accept the amendment sought for is not faulted with and the same is confirmed.

10. Resultantly, the C.M.P. is dismissed.

(B.P. Routray)
Judge

B.K. Barik/Secretary