

**C . S 93 / 2009**

04.07.2014            This Order arises out of a petition under Order 6 Rule 17 filed by the petitioner with a prayer to amend certain minor things in his pleadings which would not change the nature and characteristics of the suit and would be just for the decision of the case. Ld counsel for the Opposite party has also submitted his objection stating that the amendment sought for is filed at a belated stage and would cause prejudice to them. Heard.

The plaintiff has in his petition stated that he had filed the original suit for permanent injunction against the defendants as they were creating disturbance over the suit land. During pendency of the suit and taking advantage of the old age of the plaintiff the defendants encroached the suit properties as per sketch map and also extended their projected portion of the roof towards the suit property. To substantiate those facts and to insert the sketch map, the plaint needs to be corrected through amendment . The proposed amendment is formal in nature and will not change the nature and characteristics of the suit. The plaintiff has prayed to amend the cause title heading of the suit which earlier was “suit for permanent injunction “ to “suit for permanent injunction, declaration, mandatory injunction and other consequential relief valued at rs 1500”. The plaintiff has further prayed to add the fact of encroachment, increased valuation of the suit land, and a rough sketch map over the suit land.

Ld counsel for the O.P's have in their objection stated that

the amendment sought for is not formal in nature. According to the O.P's the cause of action arose on 2.12.09 but no reason was stated for delay in filing of the amendment. Hence the amendment petition needs to be rejected.

Before analyzing the petition let us now discuss the points of law involved:-

**Order 6 , Rule 17** states that :-

" The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties ;

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. "

**In 2009 (II) OLR (SC) 815** , it was held that :

" The basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are :-

(1) *Whether the amendment sought is imperative for proper and effective adjudication of the case ?*

(2) *Whether the application for amendment is bonafide or malafide ?*

(3) *The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms*

*of money ?*

*(4) Refusing amendment would in fact lead to injustice or lead to multiple litigations ?*

*(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and characteristics of the suit ?*

*(6) As a general rule , the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application ? "*

**In 1990 (I) SCC 166**, it was held that :-

*" All amendments ought to be allowed which satisfy the two conditions :-*

*(a) not working injustice to the other side and*

*(b) of being necessary for the purpose of determining the real questions in controversy between the parties .*

**In 2001 (I) OLR (SC) 475** it was held that:

*"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleading in such manner and on such terms as may be just. The power to allow amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. "*

Regard being had to the above facts in question, point of law , citations and above thorough discussions , I am of the opinion that the amendment sought for would not change the nature and characteristics of the suit but on the other hand would be for the just decision of the case and would not cause prejudice to the Opposite Parties. Morerover none of the parties have

adduced any witness in this case, hence no prejudice would be caused to either parties if the petition is allowed .

Hence in view of the above findings, the prayer of the petitioner under Order 6 Rule 17 for amendment is allowed . The petitioner is directed to file his amended pleading within 7 days, i.e, 12 .07 . 2014.

Dictated ,

***(Abhilash Senapati)***

**Civil Judge, Khurda,**

**05 .07. 2014 .**