

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6572 of 2014

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Jai Narayan Mahto Son Of Late Deo Narayan Mahto Resident of Village - Anhari,
P.S. Ramgarh, Pargana - Chainpur, District – Rohtas.

.... Petitioner/s

Versus

1. Gopal Rai Son of Late Ram Raghav Rai.
2. Vijay Narayan Rai Son of Late Ram Raghav Rai.
3. Parwati Devi Daughter of Late Ram Raghav Rai.
4. Bipin Kumar Rai Son of Late Parash Nath Rai.
5. Geeta Kunwar Wife of Late Parash Nath Rai All 1 To 5 Are Residents of Village - Dumduma, P.S. Ramgarh, District – Rohtas.
6. Purusottam Rai Son Of Late Ganesh Rai Resident Of Village - Kundeshwar, P.O. Kundeshwar, District - Gazipur (U.P.).
7. Phulbasi Devi Wife of Late Ram Raghav Das Residents of Village - Dumduma, P.S. Ramgarh, District - Rohtas
8. Kedar Rai Son of Late Jagdish Rai.
9. Kuber Rai Son of Late Jagdish Rai
10. Phul Kumari Devi Daughter of Late Jagdish Rai
11. Jamuanti Devi Daughter of Late Jagdish Rai
12. Phulia Kunwar Wife of Late Ram Chandra Ahir
13. Babulal Ahir Son of Ram Chandra Ahir
14. Munilal Ahir Son of Ram Chandra Ahir
15. Kanti Devi Daughter of Ram Chandra Ahir
16. Savitri Ahir Daughter of Ram Chandra Ahir
17. Geeta Devi Daughter of Ram Chandra Ahir
18. Parash Nath Ahir Son of Late Ram Prasad Ahir All 8 To 18 Are Residents of Village Anhari, P.O. Gara, District – Rohtas.
19. Reshmi Devi Daughter of Late Jangoo Kurmi
20. Guriya Devi Daughter of Late Jangoo Kurmi
21. Jetor Kurmi Son of Late Jangoo Kurmi
22. Trilo Kurmi Son of Late Sudama Kurmi
23. Pyari Devi Daughter of Late Sudama Kurmi
24. Raj Keshri Devi Daughter of Late Sudama Kurmi

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25. Indrasni Kunwar Wife of Late Jagdama Kurmi
 26. Dina Chaudhary Son of Late Jagdama Kumri
 27. Dwarika Chaudhary Son of Late Jagdamba Kumri
 28. Vinod Choudhary Son of Late Jagdamba Kumri
 29. Janardan Choudhary Son of Late Jagdamba Kumri
 30. Gurfeken Kurmi Son of Late Jag Narayan Kurmi
 31. Mosmat Tetari Devi Wife of Late Baijnath Kurmi
 32. Sheo Prasad @ Sheo Prasan Kurmi Son of Late Jangoo Kurmi
 33. Asgar Minya Son of Late Sakoor Minya
 34. Kalamuminya Son of Late Sakoor Minya 34a. Samanti Kunwar, D/O Late Sankar Minya.
 35. Madina Minya Son of Lamoor Minya All 19 To 35 Are Residents of Village Anhari, P.S. Ramgarh, District - Rohtas
 36. Tapeshwari Devi Wife of Late Sri Kishun Mahto
 37. Tetar Devi Daughter of Late Sri Kishun Mahto
 38. Sheo Shankar Singh Son of Late Sri Kishun Mahto
 39. Sumitra Kumari Minor Daughter of Late Sri Kishun Mahton
 40. Uma Shankar Singh Minor Son Of Late Sri Kishun Mahton Both Are Minor under Guardianship of Their Mother Both Are Resident of Village - Anhari, P.O. Gara, District - Rohtas
 41. Ramawati Kunwar Wife of Late Hari Shankar Singh
 42. Ram Pravesh Singh Son of Late Hari Shankar Singh
 43. Ravi Shankar Singh Son of Late Hari Shankar Singh
 44. Lalu Singh Son of Late Hari Shankar Singh
 45. Rahul Singh Son of Late Hari Shankar Singh
 46. Sumitra Kumari Minor Daughter Of Late Sri Kishun Mahton
 47. Uma Shankar Singh Minor Son Of Late Sri Kishun Mahton Both Are Minor Under Guardianship Of Their Mother Tapeshwari Devi And Natural Guardian All 36 To 45 Are Resident Of Village - Anhari, P.O. Gara, District - Rohtas
 48. Ram Bachan Mahto Son of Late Lalmuni Mahto
 49. Ram Bilas Mahto Son of Late Lalmuni Mahto
 50. Indrasani Devi Daughter of Late Lalmuni Devi
 51. Ekadsi Kuer Wife of Late Sheo Bachan Mahto
 52. Jitendra Singh Son of Late Sheo Bachan Mahto
 53. Munna Singh Son of Late Sheo Bachan Mahto

54. Umrawati Devi Daughter Of Sheo Bachan Mahto
55. Pratima Devi Daughter Of Sheo Bachan Mahto
56. Rita Devi Daughter Of Sheo Bachan Mahto All 46 To 54 Are Resident Of Village - Anhari, P.O. Gara, District - Rohtas
57. Sonmatiya Devi Daughter Of Late Harkalia
58. Kawali Kuer Wife Of Late Ram Gopal Mahto
59. Rajesh Kumar Singh Son Of Ram Gopal Mahto
60. Awadhesh Kumar Singh Son Of Ram Gopal Mahto
61. Lilawati Kumari Minor Daughter Of Late Ram Gopal Mahto, Under Guardianship Of Her Mother Kawali Kuer And Natural Guardian All 55 To 56 Are Residents Of Village - Anhari, P.S. Ramgarh, Pargani - Chainpur, District - Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Sunita Kumari, Adv.
For the Respondent/s : Mr. Kamal Nayan Chaubey, Sr. Adv.
Mr. Ravi Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 02-02-2015

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

Calling in question the order by which the prayer for amendment in the plaint has been rejected, the plaintiff-petitioner has filed this application under Article 227 of the Constitution of India.

The factual expose' are that the plaintiff filed the title suit in the year 1974. The suit was decided and thereafter the title appeal was filed in the year 1983 and then the matter traveled up to this Court in Second Appeal No. 320 of 1995 which was



allowed and disposed of on 04.10.2012 remanding the matter back to the lower appellate court for disposal afresh in accordance with law after considering the aspect highlighted in the judgment. Thereafter, the plaintiff has filed a petition on 15.04.2013 under Order VI Rule 17 of the Code of Civil Procedure praying for amendment in the plaint. By amendment, the plaintiff has prayed to introduce the recent survey plot numbers and Chak plot numbers given in the consolidation proceeding with regard to the suit properties. The prayer for amendment has been rejected by the court below.

The learned counsel for the petitioner has submitted that the amendment which has been sought for is simple in nature and introduces only recent survey plot numbers and Chak numbers of the suit plot. It has also been canvassed that the defendants will suffer no injury, if the proposed amendments are allowed. The learned counsel has also relied upon a decision of this Court in the case of **Panna Devi Vs. Harendra Shahi @ Harendra Prasad Shahi 2014 (2) P.L.J.R. 315** in support of the contention that all such amendments which are necessary for determination of the real controversy between the parties should be allowed.

The learned counsel for the other side however, has



submitted that the amendment as prayed is not simple in nature and through this amendment the plaintiff wants to introduce new facts. It has been further canvassed that the plaintiff had an opportunity to seek amendment if the requirement was there, during the pendency of the suit or the appeal in the court below but the plaintiff did not do so. It has also been pointed out that the plaintiff has not disclosed the reasons which prevented the plaintiff from bringing the said amendment in the plaint earlier.

After considering the submissions and the facts of the case, it is limpid that the suit has been filed in the year 1974 and it has travelled up to this Court in second appeal whereby the matter has been remanded back to the court below on 04.10.2012. The learned court below has found that the plaintiff has not disclosed due diligence in not praying for the amendment at any earlier stage and has further also concluded that the present amendment has been prayed only to delay the disposal of the matter.

By amendment under Order VI Rule 17 C.P.C. a proviso has been introduced which reads as follows:-

*“17. **Amendment of pleadings**- The Court may at any stage of the proceedings allow either party to alter 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 in spite of due diligence, the party could not have raised the matter before the commencement of trial.

It is transparent that the proviso has been couched in negative and the court before allowing amendment has to reach to the satisfaction on the basis of explanation furnished by the plaintiff with regard to due diligence preventing the plaintiff from not seeking amendment earlier. In the present case, the suit filed in the year 1974 has admittedly travelled through a long several stages upto second appeal since after 1974 and it is not the case of the plaintiff that the amendment has been inserted by any subsequent event. It has also been accepted by the learned counsel for the petitioner that the recent survey khatian carving out the recent survey plot out of the cadastral survey plot numbers was published as far as back in the year 1970. There is absolutely no explanation on behalf of the plaintiff-petitioner for not preferring the amendment at any earlier stage.

For the aforesaid reasons and discussions, this

court is not persuaded to interfere with the impugned order. This application is, accordingly, dismissed.

Devendra/-

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(V. Nath, J.)

