

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1401 of 2016**

=====
Mostt. Ram Bachani Kuer & Anr

.... Petitioner/s

Versus

Bhola Singh & Ors

.... Respondent/s
=====

Appearance :

For the Appellant/s : Mr. Rewti Kant Raman

For the Respondent/s : Mr.

=====
**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**
ORAL ORDER

2 20-12-2016 Heard the learned counsel, Mr. Mahesh Prasad No.2 for
the petitioners.

Perused the impugned order dated 18.05.2016 passed by
Sub Judge 11th, Sasaram in Title Suit No.226 of 2002 whereby the
learned Court below has allowed the amendment application filed
by the plaintiff No.7.

The grievance of the petitioners is that by the
amendment application, the self-acquired properties of these
plaintiffs-petitioners have been included in the suit for partition.
The learned counsel submitted that in the plaint itself, there is
pleading to the effect that the parties have acquired their properties
out of their own fund as they are residing separately since long.
The Court below by the impugned order has allowed the
application without assigning any reason.

It may be mentioned here that the petitioners are also



plaintiffs in the suit. One of the plaintiffs has filed the application stating that the property which is joint family property has been left out for inclusion in the schedule of the plaint and, therefore, prayed for amendment. The petitioners are challenging the said order on the ground that only one plaintiff has filed the application and that the suit property is self-acquired property.

So far filing of the amendment application by one of the plaintiffs is concerned, there is no provision which provides that if application for amendment is filed by only one of the plaintiffs, it will not be considered and allowed and it should be rejected by the Court below. It may be mentioned here that all the parties in this partition suit are in the position of a plaintiff and only one person can also maintain a partition suit. Now, therefore, this dispute which is being raised by the petitioners is inter se dispute between the plaintiffs.

So far the question as to whether the suit property which is included by way of amendment in the schedule of the plaint is concerned, it relates to the merit of the claim of the parties. According to the plaintiff No.7, it is the joint family property and according to these petitioners, it is the self-acquired property of the petitioner. This question is on merit of amendment application which cannot be decided while considering an application under



Order VI Rule 17 of the C.P.C. Reference may be made in this respect to the decision of the Supreme Court, (2006) 4 Supreme Court Cases 385 and (2008) 17 Supreme Court Cases 671.

So far amendment sought for by the plaintiff-respondent No.6 herein is concerned, admittedly, it is a pre-trial amendment sought for as the issues have not been framed in this partition suit.

Thus, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--

