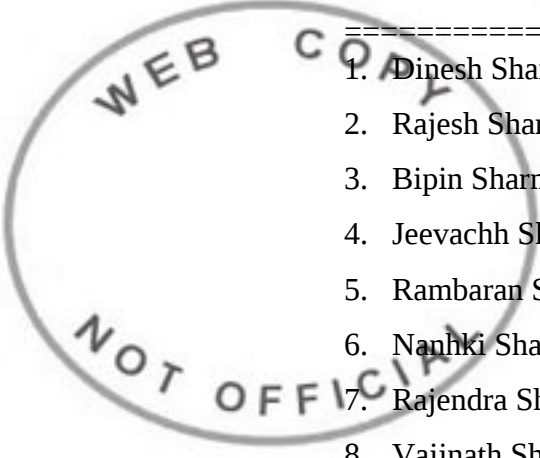


## IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11355 of 2014

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1. Dinesh Sharma
  2. Rajesh Sharma
  3. Bipin Sharma all sons of Late Prabhu Sharma
  4. Jeevachh Sharma s/o Late Vasudev Sharma
  5. Rambaran Sharma
  6. Nanhki Sharma Both sons of Late Basudev Sharma
  7. Rajendra Sharma s/o Late Munni Lal Sharma
  8. Vaijnath Sharma son of Late Buchan Sharma
  9. Bechan Sharma
  10. Binod Sharma Both sons of Ram Khelawan Sharma
  11. Vindeshwar Sharma son of Late Gulabchand Sharma
  12. Chandeshwar Sharma
  13. Upendra Sharma Both sons of Late Sukhdev Sharma All residents of village - Shilalpatti, P.O. and District - Samastipur

.... .... Petitioner/s

Versus

1. Lalita Devi w/o Late Kameshwar Prasad Singh
2. Priya Ranjan
3. Ravi Ranjan Both sons of Late Kameshwar Pd. Singh
4. Poonam Kumari daughter of Late Kameshwar Pd. Singh
5. Shushila Kumari daughter of Late Kameshwar Pd. Singh
6. Indu Kumari D/o Late Mangal Prasad Singh
7. Pummi Kumari D/o Late Kameshwar Prasad Singh All residents of village - Basalpur, P.S. AND District - Muzaffarpur at present Shilalpatti, P.O. Rupauli, Via - Ujiyarpur, P.S. AND District - Samastipur
8. Manju Devi
9. Rinki Devi Both daughter of Late Prabhu Sharma
10. Tuntun Sharma
11. Navin Sharma all sons of Late Ram Balak Sharma
12. Munni Devi daughter of Late Ram Balak Sharma
13. Manoj Sharma s/o Late Baldev Sharma
14. Ramnath Sharma son of Late Buchan Sharma

15. Bishnath Sharma son of Late Gulabchand Sharma All residents of village -  
Shilalpatti, P.O. and District - Samastipur

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Aditya Prakash Sahay

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE V. NATH**

ORAL JUDGMENT

**Date: 04-08-2016**

Heard Mr. Sahay, learned counsel for the petitioners.

Assailing the legal sustainability of the impugned order by which the learned court below has allowed the prayer for amendment in the written statement by the defendant-respondents, the plaintiff-petitioners have filed this application under Article 227 of the Constitution of India.

The suit has been filed for declaration of title and possession over the suit land. It appears from the records that during the pendency of the suit a petition was filed by one Shanti Devi and her son Ranjan Kumar for getting themselves impleaded as intervenor-defendants in the suit under Order 1 Rule 10 (2) C.P.C. The learned court below however rejected the said petition. Later on, the contesting defendants in the suit filed the petition for amendment in the written statement raising the plea of non-joinder of the party. By the impugned order, the learned court below has allowed the prayer for amendment. The plaintiff-petitioners filed a petition on

10.01.2014 for recall of the said order before the learned court below which has also been turned down by order dated 14.02.2014. The plaintiff-petitioners thereafter have approached this Court by invoking the jurisdiction under Article 227 of the Constitution of India for interdicting those two orders.

Mr. Sahay, learned counsel for the petitioners has firstly submitted that the amendment has been preferred belatedly and therefore the same should not have been allowed. It has been next contended that in any view of the matter, the amendment definitely involved de novo trial of the suit and according to the settled principles where the amendment will result in de novo trial, the same should not be allowed. It has also been submitted that the learned court below has recorded no satisfaction of the fact that the proposed amendment was necessary for determining the real dispute between the parties and therefore also the impugned order suffers from material irregularity. It has been finally contended by relying upon the earlier order rejecting the prayer for their impleadment as parties in the suit by Shanti Devi and her son that the defendants cannot be allowed to raise the same plea once after the prayer for impleadment of those persons has been turned down.

After considering the submissions and the perusal of the materials on record including the impugned order, it is manifest that

in the written statement the defendants have already raised the plea of non-joinder of necessary parties in the suit. The amendment which has been sought for and allowed apparently relates to the elaboration of the plea already raised as a ground for the dismissal of the suit for non-joinder of the necessary parties. This plea of non-joinder of the necessary parties is clearly distinguished from the plea relating to the matter in dispute between the parties. In this backdrop, the learned court below by allowing the prayer for amendment of the defendants and thereafter refusing the prayer of the plaintiff-petitioners for recall of the said order does not appear to have acted with material irregularity in passing the impugned order. This Court thus is not inclined to interfere with the impugned order by invoking jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed. However, the petitioners shall be at liberty to raise the relevant objection, if such occasion arises, under the provisions of Section 105 (1) C.P.C.

**(V. Nath, J)**

Devendra/-

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