

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11729 of 2014

1. Neelam Choudhary Wife of Late Umesh Chand Choudhary

2. Kumar Ravi

3. Kumar Rishi

4. Kumar Chandan

5. Kumar Raj Kapoor

All Sons of Late Umesh Chand Choudhary resident of Mohalla- Anathalya Road,
Katihar, P.S- Katihar, District- Katihar.

.... Petitioner/s

Versus

1. Sanjay Kumar Choudhary

2. Shankar Kumar Choudhary

3. Sanjeeb Kumar Choudhary

4. Ajay Kumar Choudhary Sons of Late Satish Chand Choudhary

5. Nutan Devi Wife of Late Jyotish Chand Choudhary

6. Sanjeeb Kumar Choudhary

7. Dilip Kumar Choudhary Sons of Late Jyotish Chand Choudhary

8. Reena Choudhary

9. Renu Choudhary

10. Babli Choudhary Daughters of Late Jyotish Chand Choudhary residents of
Mohalla Gandhi Nagar, Katihar, P.S- Katihar, District- Katihar.

11. Madan Lal Choudhary Son of Late Mahendra Narayan Choudhary

12. Sheela Choudhary Wife of Late Jagdih Chand Choudhary

13. Jayant Kumar Choudhary

14. Jai Kumar Choudhary

15. Jaswant Kumar Choudhary Sons of Late Jagdish Chand Choudhary residents of
New Market Katihar, P.S- Katihar, District- Patna.

16. Sharda Devi Wife of Late Anand Kishore Choudhary

17. Arbind Kumar Choudhary

18. Arun Kumar Choudhary Sons of Late Anand Kishore Choudhary Resident of
village- Jotramroy Via Gurubazar, P.S- Barari, District- Katihar.

19. Ramesh Kumar Choudhary Son of Late Prithwi Chand Choudhary Resident of

village Jotramroy Via- Guru Bazar, P.S- Barari, District- Katihar.

20. Ranjeet Kumar Choudhary Son of Late Rajendra Prasad Choudhary Resident of Mohalla- Gandhi Nagar, Katihar, P.S AND District- Katihar.

21. Ajit Kumar Choudhary

22. Indrajeet Kumar Choudhary Sons of Late Rajendra Prasad Choudhary

23. Bijendra Prasad Choudhary

24. Jitendra Prasad Choudhary Sons of Late Sant Sharan Prasad Choudhary Resident of village Kundi Ghat, P.O- Jotramroy Via Guru Bazar, P.S- Barari, District- Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-08-2016

Heard learned counsel for the parties.

The plaintiffs in the suit are the petitioners in this application filed under Article 227 of the Constitution of India assailing the order passed in the suit whereby and whereunder the learned court below has refused the prayer for amendment in the plaint

The Title Suit No. 158 of 2004 was filed by the plaintiffs-petitioners for partition with regard to the joint family property as mentioned in the schedule of the plaint. The contesting defendants appeared and filed their written statement on 10.04.2006. Both the parties led their evidence and the argument on

behalf of the defendants was also over. At this stage, the plaintiffs filed the petition seeking amendment pertaining to explanation with regard to the issue of defect of parties. The learned court below by the impugned order has turned down the prayer for amendment.

After considering the submissions and the materials on record including the impugned order, it is evident that the contesting defendants had already raised objection with regard to the defect of parties in the suit in their written statement filed on 10.04.2006. It does not appear that any step thereafter was taken by the plaintiffs in that regard. To the contrary both parties lead their evidence and after completion of evidence argument on behalf of the defendants was also over. The learned court below has rightly come to the conclusion that the amendment as prayed for could not be allowed at that stage as the same would amount to taking away the legal right which had accrued in favour of the defendants. Even otherwise also the amendment as sought for by the plaintiffs, if allowed, would necessarily lead to *de novo* trial on additional issue of fact. The want of due diligence on the part of the plaintiffs in not seeking amendment at the earlier stage is explicit enough. In this background, this Court is not inclined to interfere with the impugned order invoking its jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

