

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.807 of 2016**

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Anil Kumar

.... Appellant/s

Versus

Sunil Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lala Sachindra Kumar

For the Respondent/s : Mr.

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

2 03-10-2016

Heard learned counsel, Mr. Lalal Schindra Kumar,
appearing for the petitioner.

2. Perused the impugned order dated 23.06.2016 passed
by the Sub-Judge-VI, Sitamarhi in Partition Suit No. 128 of 2007,
whereby the learned court below has allowed the amendment
application.

3. As has been submitted by the learned counsel for the
petitioner, in the suit, issues have not yet been framed, therefore, it
is a pre trial amendment. So far the submission of the learned
counsel for the petitioner that the same prayer has already been
rejected earlier is concerned, it is also admitted fact that the court
below rejected the amendment on the ground that the person in
whose name the property stands is not a party. Therefore, the
present application for amendment has been filed by the plaintiff-
respondent for adding the person i.e. Shyama Kumari as party and

then prayed for partition of the property. Now, therefore, it cannot be said that earlier rejection order will operate as *res-judicata*. So far the submission of learned counsel for the petitioner that the property belonged to the lady member of the family, who cannot be the coparcener, is concerned, it may be stated that this relates to the merit of the amendment application filed by the petitioner. This question cannot be decided at the time of hearing of the amendment application in view of the decision of Supreme Court reported in **2006 (4) SCC 385** and also **2008 (17) SCC 671**.

4. In view of the above facts and circumstances, I find no reason to interfere with impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

Brajesh/-

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(Mungeshwar Sahoo, J)