

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.705 of 2016**

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Qamrul Hoda & Anr

.... Appellant/s

Versus

S K Amanulla & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravindra Kr Sinha No.2

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

2 26-09-2016

Heard leaned Senior counsel, Mr. Ganpati Trivedi,

appearing for the petitioners.

2. Perused the order dated 19.05.2016/24.05.2016 passed by the Sub-Judge-V, Bettiah, West Champaran in Final Decree Case No. 02 of 2001, whereby the court below has allowed the amendment application filed by the respondents in Order 6 Rule 17 C.P.C.

3. It appears that Partition Suit No. 131 of 1965 was filed by the plaintiffs-respondents. The said suit was decreed preliminarily. In the final decree proceeding, defendant No.4 filed application under Order 6 Rule 17 C.P.C. prayed for amendment in the final decree petition regarding the quantum of share claimed. This application has been annexed as Annexure-1 to this civil miscellaneous application. The court below considered the facts and circumstances and thereafter considering the various decisions allowed the said application.

4. Learned Senior counsel, Mr. Ganpati Trivedi, for the petitioners submitted that in the preliminary decree, no share was allotted in favour of Bibi Taslima recording finding that she died after the death of her father. Against the said preliminary decree, an appeal is pending before the lower appellate court being F.A. No. 847 of 1971. The finding that she died after the death of her father is under challenge before the appellate court. Therefore, her heirs could not have been added as party or could not have been allotted any share so as to increase or decrease in the share in the final decree proceeding.

5. So far the submission of the learned Senior counsel for the petitioner is concerned, it may be mentioned here that it relates to the merit of the amendment sought for. The Hon'ble Supreme Court in **2006 (4) SCC 385** and also **2008 (17) SCC 671** has held that while considering the amendment application as to whether it would be allowed or not, the Court cannot decide the same on merit. The question of merit can be gone into at the time of final hearing of the case. In such circumstances, in my opinion, this is not a case for interference in exercise of supervisory jurisdiction, as such, it is dismissed.

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(Mungeshwar Sahoo, J)