

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.500 of 2016

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1. Jasiya Wife of Laxman Mahto & Daughter of : Late Dhana Mahto Resident of Village:- Tarwa Magarpal, P.O. and P.S. Sonapur, District Saran.
 2. Muniya Devi Wife of Prabhu Mahto & Daughter of : late Dhana Mahto Resident of Village: Kadipur, P.O. and P.S. Doriganj, District Saran.
 3. Teju Mahto Son of late: Sheo Ratan Mahto Resident of Village: Shikarpur P.O and P.S Sonapur, District Saran.
 4. Budhiya Devi@Budhiya Kuer Wife of Ram Awatar Mahto and Daughter of Sheo Ratan mahto Resident of Village: Khawaspur, P.O. and P.S Garkha District Saran.

.... Appellant/s

Versus

1. Hulasiya Devi Wife of Sheo Prasad Mahto & Daughter of late Dhana Mahto
2. Amar mahto Son of Sheo Nath mahto Both Residents of Village: Phulwariya P.O. and P.S. Garkha District Saran.
3. Sukhdeo Mahto son of Mithu mahto
4. Dharma Nath Mahto Son of Late Hira Mahto Resident of Village: Jagdishpur, P.O and P.S. Doriganj, District Saran.
5. Lalti devi Daughter of Yashoda Devi and wife of Bahoran Mahto
6. Kanti Devi Daughter of Yashoda Devi and Wife of Mohan Mahto
7. Suhago Devi Daughter of Yashoda Devi and wife of Banke lal Respondents nos. 5 to 7 residents of Mohalla; Bari Pahari Agamkuan, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nagendra Rai
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 07-12-2017

Heard the learned counsel for the petitioners. Nobody appears on behalf of the respondents, in spite of service of notice.

The petitioners/ defendants Nos. 1 and 5 have filed this petition against the order dated 01.04.2016 passed by learned Sub-Judge-IX, Chapra in Title Suit No. 167 of 2007 whereby the learned Sub-Judge dismissed the petition of the petitioners for amendment in schedule of the written statement as well as for incorporating the words that there was



partition between the ancestors of the plaintiff and defendants, namely, Dhana Mahto and Sheo Ratan Mahto in the year 1960 itself.

The plaintiff filed the suit for partition of the property described in the schedule of the plaint. During the hearing of the suit, the petitioners/ defendants No.1 and 5 filed a petition under Order VI Rule 17 of the Code of Civil Procedure to make amendment that there was a partition between the ancestors of plaintiff and defendants, Dhana Mahto and Sheo Ratan Mahto, in the year 1960. The defendants wanted to insert the words Khatiani and Kharidigi in 5th line of paragraph 17 of the written statement and also wanted to insert some lands of Khata No. 442 and 11 but the petition was dismissed holding that by allowing amendment a new case shall be introduced.

The learned counsel for the petitioners submits that the defendants have stated in written statement that there was partition between the ancestors of family of the defendants and only they want to insert the year of partition and also to incorporate certain lands purchased by their ancestors in the subject matter of the suit. The amendment will not change the nature of suit. It is further submitted that amendment sought for should not be rejected on the ground of mere delay in filing the amendment petition. The amendment is brought only to decide the real issue between the parties and if the plaintiff left out certain lands for partition and the defendants want to incorporate those lands in the schedule of the land and it would not certainly change the nature of the suit. The learned counsel for the petitioners placed reliance on the judgement of this court in the case of



Umesh Chandra Singh v. Neeraj Kumar & Ors delivered on 31.07.2017 in Civil Misc. No. 687 of 2017.

Having heard the submission of the petitioners and on perusal of the records, It appears that the defendants, by filing this Civil Misc. petition, wanted to incorporate that there was partition among Dhana Mahto and Sheo Ratan Mahto in the year 1960 itself and further amendment is for incorporating certain khatiyani purchased lands of plot No. 442 and 11. I find that the amendment sought for does not change the nature of suit but the learned Sub-Judge has erroneously rejected the petition of amendment. Accordingly, the order dated 01.04.2016 is set aside and this Civil Misc. petition is allowed. The defendants are permitted to make amendment in the written statement.

It goes without saying that the plaintiff may also, if at all required, amend his plaint in accordance with law.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.12.2017
Transmission Date	N.A.

