

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1343 of 2016

1. Kunti Devi Wife of Late Brahma Nand Singh,
2. Surya Bhushan Singh Son of Late Braham Nand Singh, Both are resident of Village- Kothwa, P.O. and P.S.- Khagaul, District- Patna- 801105.

... .. Appellant/s

Versus

1. Shushma Sinha @ Shushma Devi Wife of Late Sachita Nand Sinha and Daughter of Late Brahma Nand Singh, resident of Village- Kothwa, P.O. and P.S.- Khagaul, District- Patna, Presently resident of Kumar Bag Road, Near Kanke Block Chauk, Arsanday, Kanke, P.O. and P.S.- Kanke, District- Ranchi, Jharkhand-834006.
 2. Shakuntala Devi wife of Anant Prasad Singh, resident of P/489, Vidyapuri, Lohia Nagar, P.S.- Patrakar Nagar, District- Patna-800020.
 3. Lila Devi Wife of Ramjit Prasad, resident of C/O Vinay Kumar Singh, resident of Village and P.O.- Yadopur Dukh Haran, P.S.- Yadopur, District- Gopalganj.
 4. Savita Sinha @ Savita Devi Wife of Late Vidya Nath Prasad, resident of Savita Sadan, Professor Colony, P.O.- Lohia Nagar, P.S.- Patrakar Nagar, District- Patna- 800020.
 5. Sushila Devi Wife of Late Kameshwar Prasad Singh, resident of E-68, P.C. Colony, P.O.- Lohia Nagar, P.S.- Kankarbagh, District- Patna- 800020.
 6. Madhuri Singh Wife of Late Rajeshwar Singh, resident of Sudha Dairy Project, Near Phulwari Sharif, P.O. and P.S.- Phulwari Sharif, District- Patna.
 7. Shashi Kala Sinha Wife of Ashok Kumar Sinha, resident of MIG-355A, Lohia Nagar, P.O.- Lohia Nagar, P.S.- Kankarbagh, District- Patna- 800020.
- Respondent Nos. 2 to 7 are also Daughters of Late Brahma Nand Singh, resident of Village- Kothwa, P.O. and P.S.- Khagaul, District- Patna- 801105.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pandit Jee Pandey, Advocate with Nawnit Kumar Tiwary
For the Respondent/s	:	Mr. Sashi Shekhar Dwevedi, Sr. Advocate with Mr. Parth Gaurav, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT AND ORDER

4 30-08-2017 Heard learned counsel for the parties.

2. An order, dated 03.09.2016 passed by learned Sub-Judge IV, Danapur in Title Partition Suit No. 432 of 2012 is



under challenge in the present application filed under Article 227 of the Constitution of India, whereby the Court below has allowed an amendment petition filed on behalf of the plaintiffs. The petitioners are the defendants before the Court below.

2. Learned counsel appearing on behalf of the petitioners has raised a very short question referring to the impugned order. He has submitted that the Court below though realized that the amendment sought was not formal in nature and amendment petition was filed at the belated stage, without recording reasons as to why the amendment so proposed was yet to be allowed, the impugned order has been passed in the public interest.

3. Learned Senior Counsel appearing on behalf of the plaintiffs/respondents, on the other hand, has submitted that an order allowing amendment should not be interfered with by this Court in a proceeding under Article 227 of the Constitution of India unless it is shown that such order shall prejudice the case of a party aggrieved and it will lead to miscarriage of justice.

4. However, as I notice from the impugned order, the Court below after having considered the rival submissions of the parties and materials on record found that the proposed amendment was not formal in nature and it was being sought at belated stage, he still allowed the amendment petition without



recording and reasons, dealing with the amendment sought and delay in filing of such application.

5. For the said simple reason, the impugned order, dated 03.09.2016, requires interference is, hereby, set aside. The Court below is directed to pass an order afresh on the amendment application filed on behalf of the Respondent Nos. 1 and 2 within a period of four weeks from the date of receipt/production of a copy of this order.

6. It is made clear that nothing in the present order shall be treated to be an opinion of the Court on the question as to whether amendment sought on behalf of the said respondents will amount to altering the nature of dispute or whether such amendment is essential for adjudication of the case.

7. It goes without saying that while passing any order pursuant to remand, the Court below shall keep in mind mandatory statutory provisions including the provisions under Order 6 Rule 17 of the Code of Civil Procedure, 1908 and other provisions of law.

8. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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