

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4572 of 2014

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Smt. Matiraniya Devi Wife Of Babulal Choudhary, Daughter Of Late Jalumat Choudhary Resident Of Village - Jhirwa, At Present Resident Of Piperahi, P.O. Shukla Vindavan, P.S. Uchkagaon, District - Gopalganj

.... Petitioner

Versus

1. Smt. Piyaria Devi Wife Of Babu Nand Choudhary, Daughter Of Late Halumat Choudhary Resident Of Village - Mauza Jhirwa, At Present Resident Of Piperahi, P.S. Uchkagaon, District - Gopalganj
2. Smt. Sawariya Devi Wife Of Banka Choudhary, Daughter Of Halumat Choudhary Resident Of Village - Dharm Parsa, P.S. Manjhagarh, At Present Resident Of Piperahi, P.O. Shukla Vindavan, P.S. Uchkagaon, District - Gopalganj
3. Badhu Bin Son Of Late Raghu Bin
4. Ram Prasad Sah Son Of Late Nageshar Sah
5. Munna Sah Son Of Ram Raj Sah
6. Nandjee Bin Son Of Late Sagar Bin
7. Ranglal Bin Son Of Late Mahanth Bin
8. Jagdish Bin Son Of Late Raghu Bin
9. Ram Nath Choudhary Son Of Late Raghu Bin
10. Sheo Nath Bin Son Of Late Bhakol Bin
11. Baliram Bin Son Of Late Mukhlal Bin
12. Rameshwar Bin Son Of Late Shyam Lal Bin
13. Gorakh Bin Son Of Late Vishuni Bin
14. Sheo Shankar Bin Son Of Late Shakil Bin
15. Kapildeo Bin Son Of Late Bigan Bin
16. Brahmdeo Bin Son Of Late Sahdeo Bin
17. Saral Bin Son Of Late Palak Bin
18. Shesh Nath Bin Son Of Late Kailash Bin
19. Indradeo Bin Son Of Late Jigan Bin All Resident Of Village - Piperahi, P.O. Shukla Vindavan, P.S. Uchkagaon, District - Gopalganj

.... Respondents

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Appearance :

For the Petitioner : Mr. Naresh Prasad, Advocate

For the Respondents : Mr. Shailednra Kumar Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 26-02-2018 This application has been filed for setting aside the order dated 16.01.2014 passed by learned Sub Judge-IV, Gopalganj in Title Suit No.262 of 2006 whereby and whereunder the



amendment petition filed by plaintiff to amend the plaint was allowed.

2. Heard learned counsel for the petitioner and the respondents.

3. The respondent Ist set filed Title Suit No.262 of 2006 for partition of suit property claiming her share to the extent of $\frac{1}{3}^{\text{rd}}$ in the land mentioned in schedule-1 of the plaint besides some other reliefs. According to the case of plaintiff, one Ram Sahay died leaving behind two sons, namely, Halkhori Choudhary and Sukat Choudhary. The plaintiff, defendant no.1 and defendant no.2 are daughter of Halkhori Choudhary. The other respondents are purchases from the father and sister of the plaintiff. The plaintiff filed an amendment petition on 21.10.2013 which after hearing was allowed. As per amendment, the para no.6 of the plaint was deleted in its place, it has been mentioned that Sukat Choudhary died in the year 1959 leaving behind sole daughter, namely, Anjoriya Devi. The said Anjoriya Devi had four sons, namely, Harihar, Rajdeo, Lalu and Vishwanath and they are possession over the land of the share of Sukat Choudhary. The plaintiff further added the fact that the plaintiff, defendant nos.1 and 2 and 20 to 26, heirs of Ram Sahay Choudhary are in possession over the same. The plaintiff further amended para-11 by mentioning the



figure $1/6^{\text{th}}$ share after deleting $1/3^{\text{rd}}$ share.

4. The learned counsel for the petitioner submitted that the amendment petition has been filed at the time of argument and so the defendants have seriously been prejudiced. The said amendment changes the nature of the suit also as the plaintiff has withdrawn its admission as regards the genealogical table.

5. The learned counsel for the respondents on the other hand submits that some of the heirs of Sukat Choudhary filed a Title Suit No.68 of 2008 and both the suits were ordered for analogous trial but subsequently, both the suits were separated. The sons of Anjoriya Devi claimed share in the suit property and so the plaintiff in view of claim of some of the heirs of Sukat Choudhary has amended the plaint. The petitioner is full sister of the respondent Ist set and they all have equal share in the suit properties. The respondent/plaintiff has reduced the share from $1/3^{\text{rd}}$ to $1/6^{\text{th}}$ in view of claim of some of the heirs of Sukat Choudhary. The plaintiff was residing away from village home and so she had no knowledge about the legal heirs left by the co-sharer and so the defendants are not prejudiced by the said amendment. The amendment appears simple in nature. The court below considering the simple nature of amendment has allowed the amendment petition.



6. In view of above discussions, I do not find any jurisdictional error in allowing the amendment petition by the court below. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

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