

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18448 of 2013

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1. Koshila Devi D/o late Shankar Choudhary All are resident of Village Sahajanwa Kala, P.S. Katiya, District- Gopalganj.
 2. Ramashish Yadav
 3. Barmha Yadav
 4. Ramadhar Yadav
 5. Bikram Yadav All are sons of late Shankar Choudhary
 6. Bhagan Choudhary S/O Firangi Choudhary Resident Of Village - Sahajanwa Kala, P.O. Bhagipattijhil, P.S. Kateya, Distt. - Gopalganj
 7. Karamchari Choudhary Son Of Late Chandrika Choudhary Resident Of Village - Sahajanwa Kala, P.O. Bhagipattijhil, P.S. Kateya, Distt. - Gopalganj
 8. Sri Ram Choudhary Son Of Late Chandrika Choudhary Resident Of Village - Sahajanwa Kala, P.O. Bhagipattijhil, P.S. Kateya, Distt. - Gopalganj

.... Petitioners

Versus

1. Ram Asan Choudhary S/O Algu Choudhary Resident Of Village - Sahajanwa, P.O. Bhagipatti, P.S. Kateya, Distt. - Gopalganj
2. Anirudh Rai S/O Depty Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
3. Most. Rajpati Kuwar W/O Late Rajdeo Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
4. Pradeep Rai Son Of Late Rajdeo Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
5. Pramod Rai Son Of Late Rajdeo Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
6. Nitu Kumari D/O Late Rajdeo Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
7. Usha Devi D/O Late Rajdeo Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
8. Ravindra Rai Son Of Late Suraj Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
9. Radheshyam Rai Son Of Late Suraj Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
10. Most. Bedami Kuwar W/O Lalan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
11. Anil Rai Son Of Late Lalan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
12. Ashok Rai Son Of Late Lalan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
13. Santosh Rai Son Of Late Lalan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
14. Raja Rai Son Of Late Lalan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
15. Parma Rai Son Of Late Raja Ram Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
16. Ramanand Rai Son Of Late Raja Ram Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
17. Mahatam Rai Son Of Late Satan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj
18. Suraj Nath Rai Son Of Late Satan Rai Resident Of Village - Sahajanwa, P.S. Kateya, Distt. - Gopalganj



19. Prakash Rai Son Of Late Satan Rai Resident Of Village - Sahajanwa,
P.S. Kateya, Distt. - Gopalganj

.... Respondents

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Appearance :

For the Petitioners : Mr. Shailendra Kumar Dwivedi, Advocate
For the Respondents : Mr. Raghav Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

9 08-02-2018 This application has been filed for setting aside the order dated 25.07.2013 passed by learned Munsif, Gopalganj in Title Suit No.161 of 2006 whereby and whereunder the amendment petition filed by plaintiff Ist set was allowed.

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

3. It appears that the respondent Ist party filed the aforesaid suit for partition of land measuring 7 bighas 8 Kathas 19 dhurs claiming share to the extent of half in the suit property. The defendants appeared and filed written statement. After framing of issues both the parties examined their witnesses and produced documents. After closing the evidence of both the witnesses, the argument commenced. The argument on behalf of defendants concluded on 19.03.2013 and thereafter the plaintiffs argument commenced. It appears that when the case was pending for argument, the defendants filed a petition under Section 4(c) of Bihar Consolidation of Holding (Prevention of Fragmentation) Act. During the pendency of hearing of said petition, the plaintiff filed



petition on 03.05.2013 for amending the plaint which after hearing was allowed. The plaintiff initially had sought partition of suit property but by amendment he has introduced some new facts. The plaintiff has converted his relief of partition into declaration of his title. The plaintiffs as per new amendment have asserted that after partition he came in possession over the land to the extent of half as per detailed given in the schedule. The plaintiff has changed his cause of action also. Thus, I find that by introducing the amendment at the time of argument, the plaintiff has virtually changed the plaint. The defendants have seriously been prejudiced particularly, when the evidence has already been closed. Such type of amendment which changes the basic structure of the suit is not permissible in law. The impugned order allowing amendment is not sustainable and is therefore set aside.

4. This application is accordingly allowed.

(Sanjay Kumar, J)

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