

## IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3960 of 2014

=====

Rana Bharat Singh S/O Ram Ayodhya Singh R/O Mohalla- Bhaluhipur, P.S.- Ara  
Nagar, District- Bhojpur

.... .... Petitioner/s

Versus

1. Krishna Kumar Singh, Son Of Late Ramkhelawan Singh
2. Pradip Kumar Singh
3. Dilip Kumar Singh Both Sons Of Ram Ayodhya Singh
4. Pratik Singh S/O Pradip Kumar Singh
5. Arvind Kumar Singh S/O Late Ram Sevak Singh
6. Sidharth Singh S/O Krishna Kumar Singh
7. Krishna Pratap Narayan Singh S/O Ram Ayodhya Singh
8. Jaya Singh D/O Krishna Kumar Singh
9. Archana Singh W/O Priyaranjan Singh, All Resident Of Mohalla- Bhaluhipur,  
P.S.- Ara Nagar, District- Bhojpur
10. Durga Singh W/O Prof. Gulab Singh All R/O Near Chamkili Kothi, P.S.  
Nawada, Ara, District- Bhojpur
11. Kamla Singh W/O Late Kuar Bhartendu Singh R/O Khairha Burhar District  
Shahdol, M.P.
12. Krishna Singh W/O Late Bijendra Pratap Singh Flat No. 506, Sfc Flat, Block C  
Sector 19, Delhi 85
13. Raj Kishori Singh W/O S.K. Singh, 509/114c Sai Nivas Ekta Vihar, Shyam Lal  
Ki Bagiya, Old Hyderabad Colony, Lucknow 226007
14. Anupama Singh W/O Pradeep Kumar Singh R/O House No. 53, Lane No.3,  
Keshav Vihar Colony, G.M.S. Road, Dehradun, Uttarakhand
15. Neha Singh W/O Abhishek Kumar Singh C/O- Khaderan Singh, R/O Vill-  
Phua, P.O. Via Naya Mohammadpur, Dist- Bhojpur

.... .... Respondent/s

=====

**Appearance :**

|                                          |   |                                                                      |
|------------------------------------------|---|----------------------------------------------------------------------|
| For the Petitioner/s                     | : | Mr. Ankit Katriar, Advocate<br>Mr. Sarvesh Kumar Singh, Advocate     |
| For the Respondent nos.1,2,6<br>4,10 &15 | : | Mr. Jitendra Kishore Verma, Advocate<br>Mr. Abhishek Anand, Advocate |
| For the Res. Nos.11,12,13                | : | Mr. Anish Chandra Sinha, Advocate                                    |

=====

**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

ORAL JUDGMENT

**Date: 14-08-2018**

Petitioner before this Court is plaintiffs of Title (Partition)

Suit No.167 of 2008 pending in the Court of Sub Judge-V, Ara. He  
has filed this application for setting aside the part of order dated  
06.12.2013 whereby the application filed under Order 6 Rule 17 for



amendment of plaint was dismissed.

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

3. Petitioner before this Court had filed amendment petition on 20.09.2013 for inclusion of some ancestral land as well as the property which were acquired with the aid of joint family fund. It has been submitted that the petitioner in spite of due diligence could not bring the entire properties as subject matter of suit. The said properties were not within his knowledge. The father of the petitioner and defendant no.1 was managing the suit property and so the petitioner had no knowledge about the entire property. The trial court has erred in not allowing the amendment.

4. Learned counsel for the respondents on the other hand submits that the petitioner/plaintiffs filed the amendment petition at belated stage. The hearing of the suit has already commenced and four witnesses have been examined by the plaintiffs. The property which are sought to be added by amending the plaint is self acquired property of respondent no.4. The house situated at Rohani, New Delhi was purchased by the respondents after taking housing loan of Rs.11,00,000/- at floating rate of interest of 7.75% per annum payable in one eighty monthly instalments from the IDBI Bank Ltd. The said loan amount has been sanctioned for 15 years. The house was purchased by virtue of registered sale deed dated 07.07.2004 from one



Ram Bachan Mishra. The amendment as regards para-17A is also vague and has been sought for only to complicate the suit with ulterior motive. The averment regarding making of T.V. serial (Panchali & Bollywood Bonanja) from the fund of joint family amounting to Rs.5 crore is vague. In the said serial the defendant no.3 has been alleged to be financier and defendant no.5 has been alleged to be an actor. The joint family had no such fund amounting to Rs.5 crore. As regards amendments no.17B, it has been submitted that the gas agency was proprietorship business in the name of defendant no.5 which remained in existence from 1994 to 1997. Now the said business has been closed and so the same cannot be subjected to partition. The court below has not committed any jurisdictional error in refusing to amend the plaint at belated stage as the trial has already commenced.

5. On going through the impugned order as well as documents on record, I find that the suit was filed in the year 2008. The defendants appeared and filed the written statement. The petitioner filed an application under Right to Information Act and then got information about some of the landed properties which are standing in the name of ancestors of both the parties. The petitioner has filed copy of Khatian in support of his contention and copy of information obtained under Right to Information Act. The amendment as regards inclusion of ancestral properties with respect to land situated in Bhojpur district appears to be formal in nature and it does



not change the nature of the suit. So far amendment with respect to property of Rohani, New Delhi and amendment for adding para-17A and 17B are concerned, these amendments are vague and no document has been produced to show the said property to be acquired with the aid of joint family fund rather the respondents have asserted that the same was proprietorship business and acquired after taking loan from the bank. The said amendment if allowed, would change the nature of the suit and so the amendment with respect to inclusion of land of New Delhi and para-17A and 17B has rightly been rejected.

6. In view of above discussion, the impugned order refusing to include the land of Bhojpur District in schedule-‘Ka’ of the plaint is set aside and the land of Bhojpur District are ordered to be included in schedule ‘Ka’ of the plaint. The order refusing to add remaining property in the plaint and amendment under paragraph no.17A and 17B is sustained as it requires no interference. The court below shall give an opportunity to the defendants to file additional written statement with respect to amended plaint, i.e., addition of land of Bhojpur District and also to adduce evidence if required.

7. This writ application stands disposed of.

**(Sanjay Kumar, J)**

Brajesh Kr./-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 21.08.2018 |
| Transmission Date | N/A        |

