

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.528 of 2016

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1. Most. Sumitra Devi Wife of Late Sheo Shanker Bhagat
2. Vakil Bhagat Son of Late Sheo Shanker Bhagat Both resident of village
Post and Police Station Dhabouli, District - Begusarai

.... Petitioner/s

Versus

1. Nathuni Bhagat Son of Late Biranchi Bhagat resident of village Post and
Police Station Dhabouli, District Begusarai
2. Ashok Bhagat
3. Rajan Bhagat
4. Sunita Bhagat All sons & daughter of Late Birenchi Bhagat & Tetri Devi
All resident of Mokama, Police Station Mokama, District - Patna
5. Chandrakala Devi Wife of Suresh Mandal, D/o Late Biranchi Mandal
resident of village - Katihar, Post and Police Station Suryagraha, District -
Lakhisarai
6. Krishna Bhagat
7. Kalpana Devi
8. Kasami D/o of late Anjanina Bhagat
9. Dabbu S/o late Anjanina Bhagat, both are under guardianship of their
father named Pankaj Chourasia and both are resident of Mohallah- Barauni
Flag, Post- Dehori, Police Station- Teghra, District- Begusarai.
10. Mahendra Bhagat
11. Ramashish Bhagat
12. Ram Pravesh Bhagat All sons of Late Jitan Bhagat resident of village
post and Police Station Dhabauli, District Begusarai
13. Shakuntala Devi Wife of Narayan Prasad Chourasia, D/o Late Jitan
Bhagat resident of village Post and Police Station Bank, Sub Division,
Ballia, District - Begusarai
14. Pankaj Bhagat
15. Pawan Bhagat Both sons of Mahendra Bhagat resident of village Post
and Police Station Dhabauli, District - Begusarai
16. Manoj Bhagat
17. Suraj Bhagat Both Sons of Sheo Shanker Bhagat resident of village -
Post and Police Station Dhabauli, District - Begusarai
18. Mahendra Bhagat
19. Kailash Bhagat Both Sons of Jai Ram Bhagat
20. Dyalti Devi Wife of Brijnandan Prasad All resident of village -
Karmama Bazar, Post and Police Station Dhamauli, District Nalanda
21. Anant Kumar
22. Rita Kumari Both sons & daughter of Late Ajholi Devi and Late
Lakhan Bhagat resident of village Ojhogh Bariarpur, District Munger
23. Dulari Wife of Ram Chandra Prasad Chourasia resident of village -
Sima, Post and Police Station Barpa, District Aurangabad
24. Chando Bhagat
25. Chandra Shekhar Bhagat Both sons of Late Khakhar Bhagat both
resident of village and Post Maniappa, Police Station Matihani, District
Begusarai

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Syed Ashfaque Ahmad



For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

8 31-08-2018 Heard both sides.

The petitioners have filed this civil miscellaneous petition against the order dated 11.04.2016 passed by Sub Judge V, Begusarai in Title Suit No.150 of 1995 by which the learned Sub Judge V, Begusarai rejected the petition of the petitioners for amendment in the plaint and adding some lands in Schedule II of the plaint.

Petitioners are plaintiffs. The plaintiffs filed the suit for partition of the land mentioned in Schedule II of the plaint. During the pendency of the suit, plaintiffs filed the petition under Order VI Rule 17 C.P.C. stating therein that due to inadvertence and typing error some lands are left to be mentioned in Schedule II of the plaint for partition. By the impugned order, the same petition for amendment is dismissed.

Learned counsel for the petitioner submits that of course the suit is of the year 1995 but hearing of the suit began in 2010. The plaintiffs have examined only eight witnesses. The lands proposed to be added in Schedule II of the plaint are joint family property and due to inadvertence, the same were left out to be mentioned in Schedule II of the plaint. The defendants did not



deny the facts of jointness of the left out properties intending to be brought by way of amendment. The only objection of the defendant is that the amendment petition is brought at a very belated stage. Learned Sub Judge has illegally rejected the petition of the amendment.

On the other hand, Mr. Rajni Kant Jha, learned counsel for the respondents submits that eight plaintiff's witnesses were examined. The proviso of Order VI Rule 17 says that after hearing of the suit, no amendment shall be allowed unless the plaintiff shows the due diligence that those facts could not be find out even after making their best efforts and, therefore, the order does not require any interference. From the facts, it is further submitted that in a similar circumstances, Hon'ble Supreme Court in the case of **Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka and Ors., 2013(2) PLJR 356(SC)** rejected the amendment petition.

From the facts of the case, it is admitted that the plaintiff filed the suit for partition of the property mentioned in Schedule II of the plaint. The plaintiff filed the petition on 26.08.2015 for amendment in Schedule II of the plaint and for adding the lands of Khata No.325, 267, 303, 326, 268 and for correction of Plot No.142 of Khata No.326. The defendants did not dispute the facts that the lands to be added in Schedule II of the plaint are not joint



family property. Therefore, I find that even if the plaintiffs have already examined witnesses, the amendment will not change the nature of the suit and the same would not cause any irreparable loss and prejudice to the case of the defendants, who are yet to be examined after closing the evidence of the plaintiffs. The object of the amendment as provided under Section VI Rule 17 C.P.C. is that all such amendments which are relevant for the determination of disputes between the parties shall be allowed save and except the same would cause irreparable loss or injustice to the defendant but there is nothing on record to show that by allowing such amendment, the same would cause any irreparable loss or prejudice to the defendant. Thus, I find that learned Sub Judge has committed jurisdictional error in dismissing the petition of the petitioners for amendment. Consequently, the order dated 11.04.2016 is set aside. The amendment petition of the petitioners filed on 26.08.2015 is allowed. However, the defendants shall have at liberty to file additional written statement. Accordingly, this civil miscellaneous petition is allowed. Since the suit is very old, learned Sub Judge is directed to dispose of the same expeditiously.

Saurabh/-

(Prabhat Kumar Jha, J)

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