

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CIVIL MISCELLANEOUS JURISDICTION No.960 of 2016**

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1. Shushil Pandey Son of Baikunth Pandey
  2. Sonu Pandey Son of Baikunth Pandey
  3. Monu Pandey Son of Baikunth Pandey
  4. Ujjawal Pandey Son of Baikunth Pandey All are resident of Village- Pandey Tola, Police Station- Bheldi, District- Saran (Chapra).

.... .... petitioners

Versus

1. Baikunth Pandey Son of Late Palita Pandey
2. Mina Devi wife of Late Bhrigu Pandey
3. Anish Pandey Son of Late Bhrigu Pandey
4. Abha Kumari Daughter of Late Bhrigu Pandey
5. Rima Kumari Daughter of Late Bhrigu Pandey
6. Farwad Pandey Son of Late Bhrigu Pandey, 3 to 6 are minor under guardianship of Mother Mina Devi
7. Pramila Devi wife of Baikunth Pandey
8. Rubi Devi Daughter of Baikunth Pandey
9. Mira Devi Daughter of Baikunth Pandey
10. Rani Devi Daughter of Baikunth Pandey
11. Sita Devi Daughter of Baikunth Pandey
12. Rupam Kumari Daughter of Baikunth Pandey
13. Richa Kumari Daughter of Baikunth Pandey
14. Abhishek Pandey Son of Baikunth Pandey 1-14 are resident of Village- Pandey Tola, Police Station- Bheldi, District- Saran (Chapra).
15. Sonapati Devi Daughter of Late Palita Pandey, Wife of Yamuna Singh Resident of Village- Paharpur Tihti, Police Station- Phulwari Sharif, District- Patna.
16. Smt. Saraswati Devi Daughter of Late Palita Pandey, wife of Geeta Pandey, Resident of Village- Tarwar, Police Station- Amnour, District- Saran (Chapra).
17. Alauddin Miyan Son of Bakridan Miyan
18. Salauddin Miyan Son of Bakridan Miyan
19. Qyamuddin Miyan Son of Bakridan Miyan
20. Kalamuddin Miyan Son of Bakridan Miyan
21. Abidin Miyan Son of Bakridan Miyan
22. Samima Khatoon Daughter of Bakridan Miyan
23. Ajmeri Khatoon Daughter of Bakridan Miyan
24. Hasina Bibi Wife of Bakridan Miyan 17 to 24 are resident of Village- Pandey Tola, Police Station- Bheldi, District- Saran (Chapra).
25. Prabhu Sahni Son of Mangal Sahni
26. Nazamuddin Miyan Son of Pan Mohammad Miyan
27. Jangal Sahni Son of Dhaneshwar Sahni
28. Trivuan Sahni Son of Manager Sahni
29. Daroga Sahni Son of Panchit Sahni
30. Asharfi Sahni Son of Bharat Sahni
31. Prabhu Pandey Son of Ramagya Pandey
32. Wakil Miyan Son of Aniul Miyan
33. Habib Miyan Son of Aniul Miyan
34. Jalil Miyan Son of Rauf Miyan
35. Rojaddin Miyan Son of Rauf Miyan



36. Azmullah Son of Rahmat Miyan
37. Ugrah Sahni Son of Jangli Sahni
38. Rang Lal Sahni Son of Jangli Sahni
39. Ali Miyan Son of Pan Mohammad Miyan
40. Rauf Miyan Son of Jumad Miyan
41. Kailash Sah Son of Sahmura Sah
42. Kasim Miyan Son of Jan Mohammad Miyan
43. Nazruddin Miyan Son of Jan Mohammad Miyan
44. Lalmati Devi Daughter of Bharat Sahni
45. Sugriv Sahani Son of Dular Sahani
46. Dhuri Sahni Son of Late Yamuna Sahni
47. Rukmini Devi Daughter of Late Yamuna Sahni
48. Kunti Devi Daughter of Late Yamuna Sahni
49. Lalan Sahni Son of Ramuna Sahni
50. Umrawati Devi Daughter of Ramuna Sahni
51. Sharda Devi Daughter of Ramuna Sahni
52. Kishunpati Devi Daughter of Mangal Sahni
53. Phulpati Devi Daughter of Mangal Sahni 25 to 53 are resident of Village- Pandey Tola, Police Station- Bheldi, District- Saran (Chapra).

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Arun Kumar Rai

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 02-04-2018**

Heard learned counsel for the petitioners.

Nobody appears on behalf of respondent nos.17 to 24, although power has been filed on their behalf.

The petitioners have filed this Civil Miscellaneous petition against the order dated 20.07.2016 passed in Partition Suit No.434 of 2007 by Sub-Judge-Vth, Saran at Chapra, by which, the amendment petition of the petitioners has been dismissed.

Learned counsel for the petitioners submits that the petitioners filed the suit for partition. Defendants No. 7 Bakridan



Miyan and Defendant No. 8 Hasina Bibi filed their written statement on 02.05.2008 but they did not disclose about the execution of three sale deeds, executed by Shanti Devi, defendant no.3 in their favour. The defendant no.3 died and defendants No.17 to 24 filed written statement on 05.10.2015 and stated that the defendant no.3, Shanti Devi executed three sale deeds in favour of their ancestors namely Bakridan Miyan and his wife Hasina Bibi. The plaintiffs filed amendment petition to incorporate same facts in the plaint, in the light of statements made by the defendant nos. 17 to 24 in the additional written statement and bringing on record three sale deeds in evidence but learned court below has rejected the petition of amendment only because the same has been filed after much delay.

Having considered the submission of the petitioners and from perusal of the petition as well as on record, I find that the plaintiffs have specifically stated in the suit and made the defendants party in the partition suit. The defendant no. 7 and 8 did not state anything in the written statement, filed by them about the execution of three sale deeds in their favour. After the death of defendant no.3, her substituted legal heirs, defendant no.17 to 24 filed additional written statement on 05.10.2015 and disclosed the fact that Shanti Devi, defendant no.3 executed three sale deeds in favour of their ancestors namely Bakridan Miyan and his wife Haseena Bibi. All the three sale



deeds were also brought on record as exhibits. Immediately thereafter the petitioners wanted to incorporate certain facts about execution of sale deeds by impersonating Shanti Devi.

It appears that there is no delay on the part of the petitioners. The petitioners had no knowledge about the execution of sale deeds in favour of Bakdridan Miyan and his wife Haseena Bibi and when this fact was brought to the notice of plaintiffs, the plaintiffs filed amendment petition. The fact appears to be very much essential and relevant for the determination of the dispute between the parties.

Thus, I find that learned Sub Judge, Vth, Saran at Chapra has committed jurisdictional error in rejecting the amendment petition.

Accordingly, the order dated 20.07.2016 passed in Partition Suit No.434 of 2007 is set aside and the Civil Miscellaneous petition is allowed. Consequently, the plaintiffs are allowed to incorporate facts in the plaint.

**(Prabhat Kumar Jha, J)**

Amit/-

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