

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1635 of 2017

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1. Mahakant Jha son of Late Markandey Jha,
2. Ganesh Jha son of Late Markandey Jha,
3. Ashutosh Jha S/o Mahakant Jha
4. Abinash Jha son of Mahakant Jha
5. Abnish Jha son of Ganesh Jha, All resident of Village- Suro, P.S.
Bachhwara, District- Begusarai.

.... Petitioner/s

Versus

1. Sri Raj Gopal Jha son of Late Nand Kishore Jha
2. Sri Hemant Kumar Jha son of Sri Gopal Dutta Jha
3. Sri Sushil Kumar Jha son of Sri Gopal Dutta Jha
4. Awaneet Kumar Jha son of Sri Gopal Dutta Jha
5. Prabhat Kumar Jha son of Sri Gopal Dutta Jha
6. Sashi Kant Jha son of Sri Raj Gopal Jha
7. Priyadarshi Jha son of Sri Raj Gopal Jha, All resident of Village- Suro,
P.S. Bachhwara, District- Begusarai.
8. Surendra Jha
9. Devendra Jha
10. Jitendra Jha all sons of Late Sri Ram Dutta jha
11. Sri Jai Gopal Jha son of Late Nand Kishore Jha.
12. Birendra Jha son of Late Chandra Shekhar Jha
13. Babloo Jha son of Birendra Jha All resident of Village- Suro, P.S.
Bachhwara, District- Begusarai.
14. Narmadeshwar Jha Son of Bisheshwar Jha resident of Village & P.O.-
Majhaul, District- Begusarai.
15. Akhilesh Jha son of Shyam Sundar Jha resident of Village and P.O.
Manika, Pargana Saraisa, District Samastipur.
16. Smt. Deomuni Devi wife of Kashi Nath Mishra, resident of Village and
P.O. Morwa Anantpur, P.S. Tajpur, District Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gajendra Kumar Jha
Mr. Surya Kant Mishra
Mr. Sushil Kumar Jha
For the Respondent/s : Mr. Rajni Kant Jha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 17-07-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition



against the order dated 25.05.2017 passed in Title Suit No.177 of 1987 by which the petition of the petitioner for amendment of the written statement has been rejected.

The defendant filed amendment petition to incorporate some lines in para 18 and 19 of the plaint and stated that bamboo clamps standing in survey Plot No.601, which is adjoining to survey plot No.438, expanded to Plot No.438. The ancestor of the plaintiff and defendant exchanged the lands with each other.

It is submitted that issue has not yet been framed although the title suit is of the year 1987 but the learned court below has illegally rejected the amendment petition but I find that the defendants in their written statement admitted that they have not encroached on the lands of R.S. Plot No.438 or 601 falling in the share of plaintiff. Admittedly, the plaintiff and defendants are descendants of common ancestor. The plaintiff and defendants got their share in R.S.Plot No.601 and R.S. Plot No.438. The case of the plaintiff is that the defendants encroached upon the share falling in the share of the plaintiff of Plot Nos.601 and 438. At the first instance, when the defendants filed written statement on affidavit, the defendants admitted that they did not encroach upon any portion of the share fell in the share of plaintiff of Plot No.601 or Plot No.438.



On the face of it, it appears that defendants wanted to withdraw the admission by bringing about a new case of exchange from the share of the plaintiff.

Therefore, I do not find any illegality or irregularity in the order of the learned Munsif. Accordingly, this civil miscellaneous petition is dismissed.

Since the suit is of the year 1987, the learned Munsif is directed to hear the suit after framing of issue and dispose of the same expeditiously within six months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

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