

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23976 of 2013

- =====
1. Amitrajeet Kumar Alias Ajendra Kumar Sinha Son of Late Punyadeo Sinha, resident of village- Paharpur, P.S.- Barharia, Pergana- Bara, District- Siwan
 2. Smt. Aneeta Devi Alias Kalawati Devi wife of Sri Amitrajeet Kumar Alias Ajendra Kumar Sinha, resident of village- Paharpur, P.S.- Barharia, Pergana- Bara, District- Siwan.

.... Petitioner/s

Versus

1. Smt. Guddi Devi all from 3 to 5 are D/o late Rajendra Prasad @Bachha Prasad all are residents of village- Paharpur, P.S. Barharia, District- Siwan.
2. Smt. Ruby Devi
3. Usha Kuwar W/o late Rajendra Prasad @ Bachha Prasad
4. Sanjay Kumar Sinha S/o late Rajendra Prasad @ Bachha Prasad
5. Smt. Nidhu Devi

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Adv.
Mr. Ganjendra Kumar Singh

For the Respondent/s : Mr. Ajay Kumar Pandey, Adv.
Mr. Sandeep Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-09-2018

Petitioners before this Court are plaintiffs in Title (Partition) Suit No. 270 of 1993 pending in the court of Sub-Judge-V, Siwan. They have filed this application for quashing the order dated 01.10.2013 whereby and whereunder their prayer to amend the plaint was rejected.

2. Heard learned counsels for the petitioner as well as the respondents and perused the record.

3. It appears that the petitioners filed the aforesaid suit for partition of their ancestral land. The respondents are cousin



brothers of the petitioner no. 1. The father of petitioner no. 1 and father of respondents were full brothers. The father of respondents had filed the written statement in the year 1995. The original defendant at paragraph 4 of his written statement has raised objection as regards maintainability of suit in absence of necessary party. According to respondents, the plaintiffs have not impleaded the daughters of Bashist Narayan Lal and sisters of plaintiff no. 1 as party to the suit and so the suit is bad for defect of party. The plaintiffs filed an amendment petition on 31.07.2013 praying therein to implead the aforesaid persons as party to the suit.

4. The learned counsel for the respondents has raised objection only on the point of delay in filing the amendment petition. It has been submitted that the suit was filed in the year 1993 and the father of respondents raised objection as regards maintainability of suit on the ground of absence of some of the heirs of Bashist Narayan Lal. The written statement was filed in the year 1995 and the amendment petition has been filed after a delay of 18 years and so the court below has rightly rejected the amendment petition.

5. On going through the amendment petition, pleadings and submissions of both parties it appears that the suit is at initial stage of hearing. By proposed amendment, these petitioners want to add the heirs of their ancestor who have interest in the suit property.



The respondents are aware with this fact. In absence of said heirs, the suit is bound to fail. The said amendment is formal in nature and if allowed it will not change the nature of the suit.

6. In view of above discussions and also in order to void multiplicity of suit, the impugned order refusing to amend the plaint as per impugned order is set aside, subject to payment of cost of Rs.3,000/- to the contesting defendants before court below.

7. This application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2018
Transmission Date	N/A

