

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.123 of 2018

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1. Chan Mano Kuer W/o Late Kamta Tiwary,
2. Ravindra Tiwary
3. Yogendra Tiwary
4. Satyendra Kumar Tiwary All (2 to 4) sons of Late Kamta Tiwary, All residents of Village- Bhakharua, P.S.- Daudnagar, District- Aurangabad.

.... Appellant/s

Versus

1. Bijay Tiwary
2. Uday Tiwary
3. Ram Vinay Tiwary All sons of Late Gaya Tiwary
4. Deshrani Kuer W/o Late Gaya Tiwary, All residents of Village- Bhakharua, P.S.- Daudnagar, District- Aurangabad.
5. Malki Devi, wife of Ram Pratap Pandey, D/o Late Kamta Tiwary, resident of Village- Beda, P.S.- Sasaram, District- Rohtas.
6. Shashi Bhushan Tiwary, son of Late Kamta Tiwary, resident of Village- Bhakharua, P.S.- Daudnagar, District- Aurangabad. Respondent/s

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Appearance :

For the Appellant/s : Mr. Phulendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 23-04-2018 Heard Mr. Phulendra Kumar, the learned counsel for the petitioners.

The petitioners have filed this Civil Misc. petition against the order dated 112.12.2016/ 13.12.2016 by which the amendment petition of the plaintiff with regard to plot Nos. 332, 239, 1052, 723 and 924 to correct the area was allowed.

The petitioners are some of the defendants. The learned counsel for the petitioners submits that partition suit was preliminarily decreed and the petitioners filed First Appeal No. 182 of 2011 before this court. If the plaintiffs wanted to amend any statement in the plaint or in the schedule of the plaint they should have filed petition in the First Appeal.

On perusal of the order and after considering the



submission of learned counsel for the petitioners, I find that the suit is for partition of the property. The partition suit was preliminarily decreed and against the aforesaid preliminary decree the petitioners/ defendants filed First Appeal No. 182 of 2012. The suit was pending for final decree but in the meantime the plaintiffs filed a petition under Order VI Rule 17 read with under Section 153 of the C.P.C. stating that due to mistake area of the some plots have wrongly been mentioned and the same be corrected. By the impugned order, the court below allowed the amendment petition.

It appears that suit is for partition and the same is pending for final decree. If area of some of the plots is wrongly mentioned in the plaint that can be rectified during the time of preparation of final decree and the same shall not change the nature of the suit or prejudice the case of any of the parties. Therefore, I do not find any illegality or jurisdictional error in the impugned order. This Civil Misc. petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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