

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.429 of 2019

Yatindra Narayan Choudhary, retired Major Son of Late Hriday Narayan Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.

... .. Plaintiff/Petitioner

Versus

1. Ram Kumar Choudhary Son of Late Jagdeo Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
2. Laxman Choudhary, Son of Late Jagdeo Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
3. Kedar Narayan Choudhary, Son of Late Rajeshwar Choudhary resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga
4. Birendra Narayan Choudhary, Son of Late Rajeshwar Choudhary. resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
5. Satendra Narayan Choudhary, Son of Late Rajeshwar Choudhary. resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
6. Ratneshwar Choudhary, Son of Late Ram Pukar Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
7. Mangal Prasad Choudhary, Son of Late Ram Pukar Choudhary. resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
8. Ram Bilash Choudhary, Son of Late Chandrabhushan Choudhary. resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
9. Upendra Narayan Choudhary, Son of Late Ramanand Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
10. Vishwa Mohan Kumar Choudhary, Son of Ramchandra Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
11. Ramudar Choudhary, Son of Late Ram Kripal Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
12. Arun Kumar Choudhary, Son of Late Ram Kripal Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
13. Birendra Narayan Choudhary, Son of Late Yugal Kishore Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
14. Hira Kant Choudhary, Son of Late Braj Kishore Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
15. Manikant Choudhary, Son of Late Braj Kishore Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
16. Upendra Choudhary, Son of Late Babu Narayan Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
17. Ramashray Choudhary, S/o Late Babu Narayan Choudhary. resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
...Defendants 1st Party/Respondent 1st Party
18. Hem Kumar Choudhary, Son of Late Yogendra Narayan Choudhary, resident



of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.

19. Mahendra Narayan Choudhary Son of Late Hriday Narayan Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.
20. Rabindra Narayan Choudhary, Son of Late Hriday Narayan Choudhary, resident of Village- Nadiami, P.S.- Sakatpur, District- Darbhanga.

... ..Defendant 2nd Parties/ Respondent 2nd Parties.

Appearance :

For the petitioner	:	Mr. Dharmendra Chaudhary, Advocate Mr. Ashok Kumar Mishra, Advocate Mr. Rishideo Kumar Singh, Advocate
For the Respondent	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 25-07-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner for setting aside the order dated 25.02.2019 passed by learned Sub-Judge-1, Darbhanga in Title Suit No. 103 of 1991 whereby he has dismissed the petition dated 04.12.2018 filed by the petitioner under Order 14, Rule 5 of the Code of Civil Procedure (for short 'CPC') with cost of Rs.1500/- to be paid in favour of District Legal Services Authority, Darbhanga together with strict warning not to file repeated applications in the same subject matter.

3. Learned counsel appearing for the petitioner submitted that the petitioner had suggested 13 issues to be framed for effective adjudication of the suit. Although few



issues suggested by the petitioner were incorporated while framing issues but some other issues were not taken into consideration. In that view of the matter, after the evidences on behalf of the parties were closed, the petitioner filed an application on 04.12.2018 praying therein that the issues suggested by him which were initially not included while framing issues be also added for effective adjudication of the suit. He contended that the trial court without appreciating the facts and law in correct perspective rejected the application dated 04.12.2018 filed by the petitioner with cost. According to him, the order impugned is not sustainable in the eyes of law. The same is punitive in nature, which is required to be set aside so that an effective adjudication of the dispute may be made by the trial court.

4. Having heard learned counsel for the petitioner and carefully perused the materials on record, I find that the petitioner has filed a suit for declaration that the compromise decree dated 12.03.1948 in Title Partition Suit No. 104 of 1946 is illegal and void and not binding on him. A further prayer has been made that a preliminary decree for partition in the suit property be awarded to the plaintiff and against the defendant.



5. It would be pertinent to note that earlier also, the petitioner had filed a similar application for addition of the issues which was rejected by the trial court vide order dated 21.08.2009. Thereafter, once again, the petitioner filed an application for addition of the same issues for which the application was rejected earlier. The said application was also rejected vide order dated 17.06.2011 observing that in course of hearing, if the court would find any necessity for any addition of issues, the same would be done at that stage. The court had also observed that the High Court has already directed to dispose of the suit within six months.

6. Apparently, the suit could not be disposed of within the period granted by this Court and for one reason or another, the disposal of the suit is being delayed. Almost 9 years after the dismissal of the first application under Order 14 Rule 5 of the CPC and after 7 years of disposal of the second application once again the petitioner has filed an identical application on 04.12.2018, which has been rejected by the trial court vide impugned order dated 25.02.2019.

7. Order 14, Rule 5 of the CPC confers power upon the court to amend and strike out issues. It reads as under :-



“5. Power to amend, and strike out, issues.—(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

8. It would be evident from perusal of Order 14, Rule 5 of the CPC that amendment of issues is in the discretion of the trial court. While framing issues no right or obligation of a party is determined. It is only a procedural matter. It is for the trial court to determine the controversy between the parties. It is well settled principle in law that it is not necessary to frame all issues. The issues are framed on question of law and fact and in order to determine whether the plaintiff is entitled to the relief claimed or the suit is liable to be dismissed. It would further be evident that if the court considers



it necessary for determining the matter in controversy, it can raise an additional issue even at the stage of final arguments and allow parties to lead evidence on such issue.

9. However, in the present case, since the court is of the considered view that the issues intended to be added as additional issues are not necessary for determining the suit, the petitioner cannot compel the court for addition of those issues.

10. In view of the repeated applications of identical nature being filed by the petitioner under Order 14, Rule 5 of the CPC, the court below has rightly dismissed the application with cost.

11. Since the order impugned does not suffer from any illegality or irregularity or want of jurisdiction, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.07.2019
Transmission Date	NA

