

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.595 of 2018**

1. Ramawati Devi Wife of late Ramdhyan Mahto
2. Madan Prasad Son of late Ramdhyan Mahto
3. Manoj Prasad @ Manoj Kumar Son of late Ramdhyan Mahto
4. Sanjay Prasad Son of late Ramdhyan Mahto All are resident of Mauza- Dhum Nagar, Village- Bagaicha tola, P.O.- Dhum Nagar Kachahari Police Station/Anchal- Nautan, District- West Champaran.

... .. Petitioner/s

Versus

1. Ramchandra Mahto Son of late Sita Ram Mahto
2. Awadhkishore Prasad Son of Ramchandra Mahto
3. Janardan Prasad Son of Ramchandra Mahto
4. Surendra Prasad Son of Ramchandra Mahto
5. Upendra Mahto Son of Ramchandra Mahto
6. Rajesh Kumar Son of Ramchandra Mahto All resident of Mauza- Dhum Nagar, Village- Bagaicha Tola, P.O.- Dhum Nagar Kachahari Police Station/Anchal- Nautan, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedy
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 15-11-2022 Heard Mr. Shiv Kumar Dwivedy, learned counsel for
the petitioner.

No one appears for the respondents despite valid
service of notice.

The petitioners are the plaintiff and are aggrieved by
the order dated 21/12/2017 passed in Partition Suit No. 41 /
2007 by which the learned trial court has allowed the
amendment in the written statement sought by the respondents



at the fag end of the suit, after closure of evidence of both the parties.

Learned counsel for the petitioners submits that petitioners have filed Partition Suit No. 41 of 2007 claiming half share ($\frac{1}{2}$) in the suit property mentioned in Schedule ३ and ४ of the plaint. Learned counsel further submits that written statement was filed by the defendants-respondents and in paragraph- 12 of the written statement the defendants have categorically stated the details of self acquired land belonging to the defendants which have been mentioned in Schedule II and that the defendants have got no objection if the decree of partition is filed regarding Schedule- 1 property. The written statement filed by defendant nos. 1 and 6 is at Annexure-2 to this petition. It has further been stated by the defendants in paragraph -21 of the written statement by way of prayer that a decree of partition may be passed after taking into consideration the facts stated in the written statement. By way of amendment all these admissions regarding the partition of the property have been sought to be deleted by the defendants-respondents that too at the fag end of the suit when evidence of both plaintiffs and defendants have been closed in the year 2016 and the suit is fixed for argument. Learned counsel next submits that by way of



amendment the defendants- respondents have also brought a new case of previous partition and have also tried to withdraw their admission regarding partition of the joint family property. Further submission is that the learned trial court while allowing the amendment has come to incorrect finding that the amendment sought is formal in nature and there shall be no effect on the evidence led by the parties. In other words, submission is that if the entire admission of the defendants for partition of the joint family property is reverted, then the trial has to start *de novo*. In support of his argument, he relies upon a judgment of the Hon'ble Supreme Court reported in (2007) 5 Supreme Court Cases 602 Usha Balashaheb Swami and Ors. *versus* Kiran Appaso Swami and Ors. in which the Hon'ble Supreme Court has held that "a party cannot wriggle out of an admission by seeking amendment"

I have heard learned counsel for the petitioners and after going through the material on record as well as the impugned order it transpires that there is specific admission by the defendants in their written statement giving no objection for partition of the joint family property described in Schedule- 1. Both the parties have led evidence on the basis of this admission. The evidence of both the parties



have been closed and the suit is fixed for argument. At this stage the respondents-defendants have tried to wriggle out from the admission made in the written statement for partition and tried to come out with a new case of previous partition which in my opinion is not permissible in view of the facts of the case as well as the judgment of the Hon'ble Supreme Court relied upon by learned counsel for the petitioners.

In the result, the impugned order 21.12.2017 passed in Partition Suit No. 41 / 2007 is set aside and amendments, if any incorporated in the written statement, is also erased.

Accordingly, this application is allowed.

(Anil Kumar Sinha, J)

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