

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.4 of 2018

1. Raj Kishore Thakur Son of Nageshwar Thakur
2. Malti devi Wife of Raj Kishore Thakur Both are resident of village- Kishnapur Tabhka, P.S.- Bibhutipur, District- Samastipur

... .. Petitioner/s

Versus

1. Sri Prakash Son of Sri Chandramauleshwar Prasad Narayan Singh Resident of village- Virsingpur, P.S.- Kalyanpur, District- Samastipur, Presently resident of Mohalla- Soundhani, P.S.- Bhagwanpur, District- Siwan
2. Anil Thakur Son of Ramdas Thakur
3. Sundeshwar Rai Son of Sitaram Rai
4. Devu Jha Son of Ram Khelawan Jha
5. Ram Badan Rai Son of Nathuni Rai
6. Manikant Jha Son of Vishwanath Jha
7. Chandeshwar Rai W/o Ramshresth Rai
8. Ram Jinish Yadav Son of Ram Pratap Yadav
9. Ram Naresh Mahto W/o Munnu Mahto All are Resident of village- Kishanpur Tabhka, Tole- Pachiyari Tabhka, P.S.- Bibhutipur, District- Samastipur
10. Sudu Sahani son of Dularchand Sahani
11. Jamun Rai Son of Brihaspati Rai
12. Guljari Mahto son of Chanchan Mahto
13. Gangodas son of Chanchal Das
14. Allauddin Son of Shekh Aziz
15. Jaleshwar Paswan son of Anup Paswan All residents of Village Mohammadpur Sakra, P.S. - Bibhutipur, District - Samastipur.
16. Ram Vilash Chaudhary son of Ramprit Chaudhary
17. Ishwar Jha Son of Kuleshwar Jha
18. Suresh Thakur son of Mahendra Thakur
19. Girdhari Jha son of Ram Swaroop Jha Resident of Kishanpur Tabhka, Tole - Pachiyari Tabhka, P.S. - Bibhutipur, District - Samastipur.
20. Bipin Bihari Singh son of Ramawtar Singh
21. Feku Mahto son of Palak Mahto
22. Shankar Mahto son of Rameshwar Mahto
23. Nanhaku Poddar son of Ramji Poddar
24. Kailash Sah son of Mauji Sah
25. Kamla Jha son of Kamti Jha All residents of Kishanpur Tabhka, Tole - Pachiyari Tabhka, P.S. - Bibhutipur, District - Samastipur.



26. Mahendra Jha son of Ram Udgar Jha
27. Vijay Kant Choudhary son of Laxmi Kant Choudhary
28. Anil Jha son of Khudeshwar Jha
29. Lakshmeshwar Jha son of Ram Chandra Jha
30. Upendra Jha son of Srikant Jha All residents of Mauza Kishanpur Tabhka, Post - Pandit Tol Tabhka, P.S. - Bibhutipur, District - Samastipur.
31. Manu Mahto son of Ram Swaroop Mahto Resident of Village Mohammadpur Sakhra, P.S. - Bibhutipur, District - Samastipur.
32. Ram Bali Mahto son of Ram Prasan Mahto
33. Bhola Mahto son of Ram Saran Mahto
34. Ram Sakal Mahto son of Ram Janak Mahto All residents of Mishroulia, P.O. - Samarath, P.S. - Bibhutipur, District - Samastipur.
35. Arun Kumar Choudhary son of Ram Karan Choudhary
36. Kameshwar Choudhary son of Yosendra Choudhary null
37. Amod Choudhary son of Deo Kant Choudhary
38. Rajeshwar Choudhary son of Yoschdra Choudhary
39. Ram Naresh Choudhary son of Dhanraj Choudhary
40. Amresh Choudhary son of Suresh Choudhary
41. Jai Ram Choudhary son of Umakant Choudhary
42. Saroj Choudhary son of Late Visheshwar Choudhary
43. Chandrakant Choudhary son of Late Devkant Choudhary
44. Mukesh Kumar Choudhary son of Sri Prabhu Narayan Choudhary
45. Kapildeo Rai son of Ram Sagar Rai All residents of village Kishanpur Tabhka, P.S. - Bibhutipur, District - Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushkar Narain Shahi, Sr. Advocate
Mr. Shivam, Advocate
For the Respondent/s : Mr. Anant Kumar Bhaskar, Advocate.
Mr. Sanjay Kumar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

12 06-12-2022 Heard Mr. Pushkar Narain Shahi, learned senior

counsel for the petitioners and Mr. Anant Kumar Bhaskar

learned counsel appearing for the respondents/plaintiffs.

The petitioners are aggrieved by the order dated 15th



November, 2017 passed by the learned Sub Judge-III, Rosera, in Title Suit No. 80 of 2004, by which, the learned Trial Court has allowed the amendment of plaint filed by the plaintiffs after commencement of trial and closure of evidence of the plaintiffs and while the evidence of defendants was going on.

Learned senior counsel pointing to the paragraph 3 of the plaint submits that this is a categorical case of the plaintiffs in paragraph-3 that after death of Babu Maheshwar Prasad Narayan Singh, the property in question was succeeded by all the heirs and by virtue of family arrangement, the property came to the plaintiff and the plaintiff is in possession and ownership of the same. The objection of the petitioners is with regard to the amendment No. 5 only by which the respondent/plaintiff wants to change his stand taken in the plaint to the extent that instead of statement that the property was succeeded by all the heirs of Babu Maheshwar Prasad Narayan Singh, the same was only succeeded by his son Chandramauleshwar Prasad Narayan Singh be added. Accordingly, his submission is that the amendment at the later stage and after commencement of the trial and closure of evidence of the plaintiff, ought not have been allowed by the learned Trial Court, particularly when the intention of the plaintiff is not *bona fide* inasmuch as the



plaintiff wants to fill up the lacuna by amending the plaint in conformity with the deposition of plaintiff's witnesses recorded during course of the trial.

On the other hand, learned counsel for the respondents submits that the intention of the learned counsel for the respondents/plaintiffs is *bona fide* and no prejudice shall be caused to the petitioners if the amendment is allowed. The plaintiff has not deviated from his statement made in paragraph-3 of the plaint. He further submits that the objection is with regard to the amendment No. 5 only and the petitioners have not raised any objection against other amendments.

I have heard learned counsel for the parties and perused the amendment petition as well as the plaint. From perusal of paragraph-3 of the plaint, it transpires that the specific case of the plaintiff is that the property was succeeded by all the heirs of late Babu Maheshwar Prasad Narayan Singh. It is also an admitted position that the statement of witnesses produced on behalf of the plaintiff was recorded during trial and after closure of evidence of the plaintiff, the amendment in paragraph-3 of the plaint is sought in order to add new fact regarding the property being succeeded by only one son of late Babu Maheshwar Prasad Narayan Singh, namely,



Chandramauleshwar Prasad Narayan Singh. I find force in the argument of learned senior counsel for the petitioners that amendment in the plaint is sought to fill the lacuna and bring the plaint in conformity with the statement of the witnesses recorded during course of trial.

In view of the aforesaid discussion, in my opinion, after closure of the plaintiff's evidence and in order to fill up the lacuna, the amendment sought in the plaint i.e. amendment No. 5 cannot be allowed.

In the result, this application is partly allowed and the impugned order dated 15.11.2017 to the extent allowing the amendment No. 5 is set aside.

(Anil Kumar Sinha, J)

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