

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.179 of 2018**

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Jagat Lal Beldar @ Jagat Lal Mahto Son of Mantokhi Beldar, Resident of
Village- Bishaharia, P.O.- Sisya, P.S.- Korha District- Katihar, Pin- 854108.

... .. Petitioner/s

Versus

- 1.1. Akhilesh Mahton S/o Late Sohan Mahton resident of Village- Bishaharia,
P.O.- Sisya, P.S.- Korha, District- Katihar Pin- 854108.
- 1.2. Vidya Nand Mahton S/o Late Sohan Mahton resident of Village- Bishaharia,
P.O.- Sisya, P.S.- Korha, District- Katihar Pin- 854108.
- 1.3. Sunil Mahton S/o Late Sonhan Mahton resident of Village- Bishaharia, P.O.-
Sisya, P.S.- Korha, District- Katihar Pin- 854108.
- 1.4. Munni Lal Mahton S/o Late Sohan Mahton resident of Village- Bishaharia,
P.O.- Sisya, P.S.- Korha, District- Katihar Pin- 854108.
- 1.5. Ranjit Kumar S/o Late Sohan Mahton resident of Village- Bishaharia, P.O.-
Sisya, P.S.- Korha, District- Katihar Pin- 854108.
2. Ashok Mahton, Son of Late Banni Mahton, resident of Village- Bishaharia,
P.S.- Sisya, P.S.- Korha, District- Katihar Pin- 854108.
3. Kartik Mahton, Son of Late Banni Mahton, resident of Village- Bishaharia,
P.S.- Sisya, P.S.- Korha, District- Katihar Pin- 854108.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jai Krishna Prasad
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 25-08-2022 The plaintiff- petitioner (decree holder) is aggrieved

by the order dated 01.11.2017 passed in T.S. No. 131 of 1973 by

which the prayer of the petitioner for amendment of the plaint

has been rejected.

Brief fact of the case is that a suit for partition was

filed by the plaintiff-petitioner for partition of the properties

mentioned in Schedule of the plaint and the suit was decreed

vide judgment and preliminary decree dated 27.03.1976 in



which $\frac{3}{4}$ share has been given to the petitioner and $\frac{1}{4}$ share to the defendant.

It appears that an appeal was filed by the defendant against the preliminary decree which got dismissed on contest *vide* judgment and decree dated 01.09.1977. On 17.09.2015 petition for amendment under Order 6 Rule 17 of the CPC has been filed by the plaintiff- petitioner stating that both the parties have sold their share in R.S. Plot - 30 pertaining to R.S. Khata- 700 , Mauza - Beshharia, Thana - Korha and in view of subsequent development the said R.S. Plot- 30 of R.S. Khata - 700 , Mauza- Beshaharia be deleted from the plaint so that final decree may be prepared as per report of the Survey Knowing Pleader Commissioner.

A rejoinder to this petition has been filed by the defendant-respondent *inter alia* stating therein that the defendant does not admit the averments of the plaintiff / petitioner and further the land of R.S. Khata - 700, R.S. Plot-30 , Mauza- Beshaharia is already in the plaint and the suit is already decreed. Thereafter the defendant filed appeal before the appellate court and the appellate court also confirmed the judgment and decree dated 27.03.1976. It is further stated that this is not the stage of filing amendment petition by the plaintiff.



The learned court below after taking into consideration the fact that the plot in question is a part of the preliminary decree and the averment made by the petitioner has been denied by the defendant, has rejected the petition filed by the petitioner for amendment in the plaint at the stage of final decree proceeding.

The amendment has been filed i.e. after preparation of decree in which the plot in question has already been partitioned amongst the parties, the same cannot be removed by way of amendment at this stage.

I do not find any infirmity in the impugned order.

This civil miscellaneous application accordingly stands dismissed.

(Anil Kumar Sinha, J)

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