

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1326 of 2017

Mohammad Ali, S/o Mansoor Hussain, Resident of Village P.O.- Bhowraipur,
P.S.- Andar, Via- Andar, District- Siwan.

... .. Petitioner/s

Versus

1. Amir Haider
2. Ghulam Haider
3. Tahrima Khatoon
4. Robab Khatoon
5. Jarina Khatoon 1 and 2 are sons and 3 to 5 are daughters of Late Taukir Hussain and all Residents of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
6. Nurul Hoda H/o Late Bibi Sabira
7. Ahmad Ali
8. Mohmad Ali
9. Safdar Ali
10. Bunni
11. Fiza
12. Meena All 7 to 9 son and 10 to 12 daughter of Late Bibi Sabira, Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
13. Jayer Hussain
14. Achan Hussain
15. Nanhe Hussain
16. Dadir
17. Husana All 13 to 15 Son and 16 and 17 daughter of Late Sabir Hussain,
18. Mohammad Nasim S/o Late Wasi Ahmad All 13 to 18 Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
19. Bibi Fiza W/o Late Aftab Haider
20. Jiyaat
21. Sachhe
22. Kimi
23. Simi
24. Perwezi All 20 to 24 sons and daughter of Late Aftab Haider null
25. Bibi Janat Khatoon
26. Amirun Nisha
27. Saidun Nisha
28. Nazma Khatoon All 25 to 28 daughter of Late Samshir Hussain, All 19 to 28 Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.



29. Ekwat Haider s/o LAte Izhar Hussain
30. Ansar Mehndi
31. Bibi Sayeda
32. Bibi Taiyba
33. Bibi Sidika All 30 to 33 sons and daughter of Late Akhtari Begum Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
34. Bibi Amsa Khatoon W/o Late Asrarul Islam
35. Razi Akhtar
36. Wasim Akhtar
37. Fahim Akhtar
38. Parwez Akhtar
39. Nasim Akhtar
40. Moin Akhtar
41. Sadik Akhtar
42. Rizwan Ahsan
43. Jikhan Ahsan
44. Rishad Ahsan
45. Meena Ahsan All 35 to 45 sons and daughters of Late Asarul Islam, Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
46. Muzaffar Abu Sahad
47. Julfikar Haider
48. Gufran Haider
49. Nasira Khatoon
50. Nazira Khatoon
51. Nahid Khatoon All 46 to 51 sons and daughter of Late Ali Akbar, Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
52. Ramadhar Yadav
53. Kashi Yadav
54. Jhagru Yadav
55. Dashrath Yadav All son of Late Raja Munshi Yadav, Resident of Village- Padari, P.S. Pragna- Andar, P.O.- Tiyyay, Via- Andar, District- Siwan.
56. Sobhnath Yadav
57. Doodhnath Yadav Both 56 & 57 son of Late Nagina Yadav Ramjanam Yadav
58. Shiv Janam Yadav
59. Shiv Bhajan Yadav
60. Ram Janam Yadav All 58 to 60 son of Late Basgir Yadav, Resident of Village- Padari, P.S. Pragna- Andar, P.O.- Tiyyay, Via- Andar, District- Siwan.
61. Parshuram Yadav S/o Jagarnath Yadav null



62. Chandrika Yadav S/o Jagdeo Yadav
63. Sharda Yadav S/o Mukhlal Yadav
64. Hamid Mian S/o Bakridi Mian
65. Permanand Yadav S/o Saudager Yadav, All 61 to 65 Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.
66. Mansoor Hussain, S/o Manjoor Hussain
67. Ahida Parween W/o Wahzad Hussain D/o Manjoor Hussain
68. Fahmi Jahan W/o Abrar Ahmad D/o Manjoor Hussain, All 66 to 68 Resident of Village P.O.- Bhowraipur, P.S.- Andar, Via- Andar, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Waliur Rahman, Advocate

For the Respondent/s : Mr. Rakesh Kumar Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

4 27-07-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed against the order dated 06.07.2017 passed by learned Subordinate Judge-IV, Siwan in Title Suit No. 220 of 1993 by which the learned Court below rejected the petition for incorporation of amendment in plaint which was already allowed on 02.12.1994 at the cost of Rs. 100/-.

3. Brief facts of the case are that plaintiff / petitioner filed a suit for decree of partition in the suit property and the written statement was filed on behalf of the defendants / respondents contesting the suit. The petition of amendment in the plaint was filed by the plaintiff which was allowed by the learned Court below vide order dated 02.12.1994 at the cost of



Rs. 100/- and the suit proceeded thereafter. However, inadvertently the said amendment was not incorporated in the plaint. Accordingly, petition dated 26.05.2017 was filed by the plaintiff / petitioner for seeking permission from the Court to incorporate the amendment which could not be incorporated inadvertently and on misconception in the plaint. Otherwise, it would cause serious prejudice to the plaintiff.

4. Further, it is submitted that due to laches on the part of the learned counsel for the petitioner who later on died, the amendment could not be incorporated within time as prescribed under Order VI Rule 18 C.P.C. Learned counsel for the petitioner further submits that petitioner is ready to pay the appropriate cost if the amendment is allowed to be incorporated in the plaint.

5. A supplementary affidavit has been filed on behalf of petitioner giving undertaking that petitioner shall not examine any witness or produce any evidence even after incorporation of the amendment allowed on 02.12.1994.

6. Learned counsel for the respondents submits that the case is at stage of final argument and it is not in the interest of justice to allow the said amendment which the plaintiff failed to incorporate within the scheduled time and allowing the same,



it will prolong the adjudication of the suit.

7. Learned counsel for the respondents further submits that appropriate cost may be imposed by this Court for not incorporating the said amendment within the stipulated time and he further submits that the direction may be given for early disposal of the case as both the parties are ready to cooperate the trial Court for expeditious disposal of the case.

8. This Civil Miscellaneous application is allowed on consent of both sides subject to payment of cost of Rs. 10,000/- to be paid by the plaintiff to the defendants in the Court below. Accordingly, the impugned order dated 06.07.2017 is set aside.

9. The petitioner is directed to incorporate the said amendment in the plaint within four weeks from the date of receipt / production of a copy of this order subject to payment of aforesaid cost. The suit is very old pending since 1993 which requires expeditious disposal. Both the parties submit that the case is pending for final argument.

10. Learned Court below is directed to expedite the disposal of the suit and both the parties are also directed to cooperate the trial Court for early disposal of the suit. No unnecessary adjournment shall be given to any party.

11. With the aforesaid direction and observation, this



Civil Miscellaneous application stands disposed of.

(Sunil Dutta Mishra, J)

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