

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1254 of 2018

Prem Bihari Lal, Son of Late Sheo Shankar Lal, Resident of Village- Verma Sadan, Sadhanapuri, Road No.6 D, Gardanibagh, Patna.

... .. Petitioner/s

Versus

1. Aruna Prasad, Wife of Sri Jagarnath Prasad and Daughter of Late Krishna Bihari Lal, Permanent resident of Mohalla- Prem Chand Path, Gaurakshni, Sasaram, District- Rohtas, Presently Resident of Flat No. 6 Plot No.14, Sector-13, Khanda Colony, Near Pantel West, New Mumbai, Maharastra through, Sri Om Prakash Singh, Son of Late Durga Prasad Singh, Resident of Mohalla- Prem Chand Path, Gaurakshni, P.O. and P.S.- Sasaram, District- Rohtas, Attorney for Aruna Prasad to sue in his name for and on behalf of the property of the plaintiff.
2. Binod Bihar Lal, Son of Late Banke Bihari Lal, Resident of Mohalla- North Sri Krishnapuri, Tilak Marg, House No. B/6, Patna.
3. Rita Lal, Wife of Late Pramod Bihari Lal,
4. Gabbu, Daughter of Late Pramod Bihar Lal,
5. Chhoti M,
6. Nilli M, Sl. No.5 and 6 minor daughters of Late Pramod Bihari Lal, under guardianship of mother Rita Lal natural guardian and next friend. All Resident of Village- Bhabhanbai, P.O.- Mushipidhi, Hazaribagh, District- Hazaribagh Jharkhand.
7. Usha Sinha, Wife of Om Prakash Sinha and Daughter of Late Krishna Bihari Lal, Resident of Mohalla- Prem Chand Path, Gaurakshni Green Villa, P.O. and P.S.- Sasaram, District- Rohtas.
8. Puspa Sahay, Wife of Sri Girish Nandan Sahay and Daughter of Late Krishna Bihari Lal, Resident of Harihar Apartment, East Boring Canal Road, Patna.
9. Suresh Lal, Son of Late Srinath Lal, Resident of Mohalla- New Bank Colony, Fazalganj, P.O. and P.S.- Sasaram, District- Rohtas.
10. Bhagwat Prasad Singh, Son of Sant Prasad Singh, Resident of Village- Dorian, P.O. More Sarai, P.S.- Sheosagar, District- Rohtas.
11. Ajay Lal, Son of Uma Bihari Lal, Resident of Hessal, Ratu Road, Ranchi, P.O.- Hetal, P.S.- Sukhdeo Nagar, District- Ranchi Jharkhand. At present Assistant, State Bank of India, Main Branch, Sasaram, District- Rohtas.
12. Ravi Bhushan Sinha, Son of Pasupatinath Sinha, Resident of Village- Imlikothi, Barka Gaon Road, Hazaribagh, P.O. and P.S.- Hazaribagh, District- Hazaribagh Jharkhand.



13. Ravindra Kumar Sinha, Son of Late Baijnath Lal,
14. Sushila Devi, Wife of Awadh Bihari Sinha, Both Residents of Prem Chand Path, Gaurakshni, Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Rai, Advocate
Mr. Surendra Kumar Choubey, Advocate
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 23-01-2023 Heard learned counsel for the petitioner.

This Miscellaneous application has been filed against the order dated 07.03.2018 passed by Sub-Judge 1, Rohtas in Partition Suit No. 398 of 2010 whereby the trial court allowed the petition of the plaintiff / respondent filed Under Order VI Rule 18 of Code of Civil Procedure.

Learned counsel for the petitioner submits that vide order dated 09.04.2013 in T.S. No. 398/2010 the application of plaintiff was allowed for substituting the entire schedule-A with a fresh schedule-A but due to negligence the amendments were not incorporated in the plaint within time. The suit was decreed ex-parte and preliminary decree has also been prepared.

The plaintiff / respondent 1st set filed a petition under Order VI Rule 18 C.P.C. on 18.03.2017 for grant of extension of time for incorporating the amendment which has been allowed by the impugned order.



On the specific question of the Court, learned counsel for the petitioner conceded that against the amendment order the petitioner has not filed any application.

It appears that the petition for amendment in schedule-A of the plaint was allowed, but the same was not incorporated in the plaint and on application of the plaintiff after much delay, the Court in the interest of justice allowed the petition for extension of time for incorporating the amendment in the plaint.

The provisions of Order 6, Rule 17 and 18 have to be read with the provision of section 148 of the Code of Civil Procedure which empowers the Court to extent the time fixed by the Court or allowed by the Court itself.

The Hon'ble Supreme Court in **Union of India vs. Pramod Gupta (2005) 12 SCC 1** held that in terms of Order VI, Rule 18 of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party who has obtained the leave to amend his pleadings within the time granted therefor and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order VI, Rule 18 of the Code



is that the party shall not be permitted to amend his pleadings thereafter unless the time is extended by the Court.

Rules of procedure are intended to be handmaid to the administration of Justice. A party cannot be refused to just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules or procedure. The Hon’ble Supreme Court in M/S Ganesh Trading Co. Vs. Moji Ram (AIR 1978 SC 484) held that “ Procedure Law is intended to facilitate and not to obstruct the course of substantive justice”.

Considering the aforesaid facts and circumstances and in view of Law discussed above, I do not find any jurisdictional error in the impugned order for interference by this Court under article 227 of the Constitution of India.

This Civil Miscellaneous application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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