

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.918 of 2018

- 1.1. Randheer Kumar Son of Late Haribansh Rai Resident of village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District - Saran.
- 1.2. Ranjeet Kumar, Son of Late Haribansh Rai Resident of village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District - Saran.
- 1.3. Most. Jalpatiya Kuar, Wife of Haribansh Rai Resident of village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District - Saran.
- 1.4. Rintu Devi, D/o Late Haribansh Rai and W/o Ashok Rai, resident of village Bangara, P.S. Garkha, District - Saran.
- 1.5. Rita Devi, D/o Late Haribansh Rai and W/o Sipahi Rai, resident of village Nawal Tola, P.S. Dighwara, District - Saran.
- 1.6. Sangita Kumari, D/o Late Haribansh Rai, W/o Bablu Rai, resident of village Jagdishpur, P.S. Khaira, District - Saran.
- 1.7. Sarita Devi, d/o Late Haribansh Rai and wife of Vidhan Rai, resident of village Jagan Chapra, P.S. Madhara, District- Saran.
- 1.8. Sabita Kumari d/o Late Haribansh Rai, resident of village Pohiya, P.S. Garkha, District - Saran.
- 1.9. Sabitri Kumari, d/o of Late Haribansh Rai, resident of village Pohiya, P.S. Garkha, District - Saran.

... .. Petitioner/s

Versus

1. Paras Rai Son of Late Shiv Narayan Rai, Resident of Village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District Saran.
2. Ramnath Rai Son of Late Shiv Narayan Rai, Resident of Village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District Saran.
3. Hari Rai, Son of Ganesh Rai Resident of Village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District Saran.
4. Patia Devi, Wife of Ganesh Rai, Resident of Village Pohiyan, P.O. Bhainsmara, P.S. Garkha, District Saran.
5. The State of Bihar through the Collector, Saran.
6. The Collector, Saran.
7. The Circle Officer, Garkha, District Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nagendra Rai
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

19 28-08-2023

Heard learned counsel for the parties.



2. This application has been filed for setting aside the order dated 27.02.2018 (Annexure-5) passed by Sub-Judge-10, Chapra in T.S. No. 131 of 2006 rejecting amendment in plaint and further to allow the amendment petition dated 23.01.2017 filed by the plaintiff/petitioners to amend the plaint according to the Survey Knowing Commissioner Report and correcting some typing errors.

3. By the impugned order dated 27.02.2018 the amendment application of the petitioner has been rejected. It has been submitted by learned counsel for the petitioners that the amendment sought for doesn't change the nature of the suit as the suit remains for removal of the encroachment. He also submits that for the just decision of the suit the amendment sought is necessary.

4. Learned counsel for the petitioners/defendants have submitted that the amendment seeks to withdraw the admission of the plaintiff and it has been filed after a delay. The amendment sought for is basically clarifying the area of encroachment which is sought by the defendants.

5. In my opinion, the objection of the defendants for opposing the amendment is not sustainable in view of the law laid down by Hon'ble Supreme Court in the case of *Life*



Insurance Corporation Of India v. Sanjeev Builders Private Limited 2022 SC 4277 while deciding the issue of amendment in Paragraph 70 reads as follow:

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

7. In view of above, this application is allowed.

8. The suit is for removal of the encroachment is of the year 2006 and the same has not been decided.

9. This application is allowed with a direction to the concerned Sub Judge-10, Chapra to decide the suit within a year of communication of the order of this Court.

(Sandeep Kumar, J)

Ranjeet/-

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