

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.794 of 2017

1. Sachchidanand Rai, Son of Kali Prasad Rai, Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
2. Manoj Kumar Rai @ Funi Rai, Son of Bashishtha Prasad Rai, Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
- 3.1. Usha Devi Wife of Late Binod Kumar Rai Resident of Village- Ray Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
- 3.2. Deependra Kumar Rai Son of Late Binod Kumar Rai Resident of Village- Ray Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
- 3.3. Sapana Rai @ Sapana Devi Wife of Mukesh Kumar Rai, daughter of Late Binod Kumar Rai Resident of Village- Nanhwaliya, Police Station- Bettiah Muffasil, District- West Champaran.
4. Shambhu Sharan Rai, Son of Uma Shankar Rai Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
5. Rajan Rai, Son of late Baleshwar Rai Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
6. Pushkar Kumar Rai, Son of Late Baleshwar Prasad Rai Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.

... .. Petitioner/s

Versus

1. Sushil Upadhyay, Son of late Sitaram Upadhyay, Resident of Village Upadhyay Tola, P.O.- Kurwa Mathiya, Police Station- Chanpatia, District- West Champaran.
2. Bhawesh Narayan Upadhyay, Son of Sushil Upadhyay Resident of Village Upadhyay tola, P.O.- Kurwa Mathiya, Police Station- Chanpatia, District- West Champaran.
3. Anant Upadhyay, Son of Sushil Upadhyay Resident of Village Upadhyay tola, P.O.- Kurwa Mathiya, Police Station- Chanpatia, District- West Champaran.
4. Aditya Narayan @ Mahanth Upadhyay, Son of Sushil Upadhyay Resident of Village Upadhyay tola, P.O.- Kurwa Mathiya, Police Station- Chanpatia, District- West Champaran.
5. Chanda Devi, Daughter of Sushil Upadhyay Resident of Village Upadhyay tola, P.O.- Kurwa Mathiya, Police Station- Chanpatia, District- West Champaran.
6. Satyanarayan Upadhyay, Son of late Sitaram Upadhyay Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
7. Shailesh Upadhyay, Son of Satyanarayan Upadhyay Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
8. Dipu Upadhyay, Minor, Son of Satyanarayan Upadhyay Resident of Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.



9. Araj Dev, Daughter of Satyanarayan Upadhyay Resident of Village-
Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
10. Laddu Dev, Daughter of Satyanarayan Upadhyay Resident of Village-
Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
11. Kshema Dev, Daughter of Satyanarayan Upadhyay Resident of Village-
Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
12. Baby Dev, Daughter of Satyanarayan Upadhyay Resident of Village-
Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
13. Rupa Dev, Minor, Daughter of Satyanarayan Upadhyay Resident of
Village- Dhurwa, Police Station- Bettiah (Manuapul), District- West
Champaran.
14. Dadan Upadhyay, Son of late Tapasi Upadhyay Resident of Village-
Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
15. Muskan Upadhyay, (Minor), Son of Dadan Upadhyay, Resident of Village-
Dhurwa, Police Station- Bettiah (Manuapul), District- West Champaran.
16. Chhoti Kumari, Minor, Dadan Upadhyay Resident of Village- Dhurwa,
Police Station- Bettiah (Manuapul), District- West Champaran.
17. Rupam Kumari, Minor, Dadan Upadhyay Resident of Village- Dhurwa,
Police Station- Bettiah (Manuapul), District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 01-02-2024

Heard learned counsel for the petitioners and I intend
to dispose of the present petition at the stage of admission itself.

2. The petitioners are aggrieved by the order dated
22.03.2017, passed by learned Sub-Judge-3rd, West Champaran
at Bettiah in Partition Suit No. 234 of 2013, whereby and
whereunder, the application dated 04.07.2016, filed by the
plaintiffs under Order VI, Rule 17 read with Section 151 of the
Code of Civil Procedure has been allowed.



3. Learned counsel for the petitioners submits that respondents 1st set are defendants 2nd set in Partition Suit No. 234 of 2013, wherein the plaintiffs have claimed 1/2 share in property given in schedule no.2 of the plaint. After filing of the written statement, the plaintiffs filed an application seeking certain amendments changing the relationship of the parties as well as the genealogical table. Learned counsel further submits that the petition filed for amendment mentions paragraph no.8 in which the amendment was sought, but from the perusal of the plaint and amendment petition, it appears that paragraph no. 4 was supposed to be amended by the plaintiffs. The petitioners who are defendants 2nd set filed rejoinder to the petition dated 04.07.2018 on 28.07.2016 submitting that the proposed amendment would defeat the legal right accrued to the defendants 2nd set. However, learned Trial Court allowed the amendment petition vide order dated 22.03.2017, which has been challenged before this Court.

4. Learned counsel for the petitioners further submits that the order of the learned Trial Court is against law and the plaintiffs retracting their genealogical table and bringing on record a different genealogical table will seriously prejudice the cause of the defendants 2nd set. The said amendment has been



sought only to frustrate the defence of the defendants 2nd set. The impugned order has been passed considering the amendment to be formal in nature, but it is not so. Further the amendments are quite vague. On the aforesaid ground, the impugned order is not sustainable.

5. I have gone through the records and find that when the amendments were allowed subject to cost of ₹1,000/-, it was just after filing of the written statement by the petitioners/defendants 2nd set. So the trial has not commenced before the learned Court below. Further, it transpires from the impugned order that the defendants have been given opportunity to file written statement within 14 days from the date of the order. Learned Trial Court has also observed that amendments were necessary for the purpose of determining the real question of controversy between the parties and the amendments would not change the nature of the dispute.

6. Since the amendment was sought before commencement of trial and the defendants were given opportunity to controvert/rebut the proposed amendment by filing additional written statement, I am of the considered view that the said amendment would not cause prejudice to the defendants 2nd set/petitioners herein. Since the plaintiffs had



filed a suit for partition and even after change in genealogical table and making correction in relationship of some of the plaintiffs in the suit, it will remain a suit for partition. The petitioners/defendants 2nd set have got ample opportunity to controvert the claim of the plaintiffs sought to be introduced by way of amendment. So I find no infirmity in the orders of the learned Trial Court.

7. Hence, the order dated 22.03.2017, passed by learned Sub-Judge-3rd, West Champaran at Bettiah in Partition Suit No. 234 of 2013 is affirmed. However, the learned Trial Court is directed to give ample opportunity to the defendants 2nd set/petitioners to controvert the amendment by filing additional written statement.

8. Accordingly, the instant petition stands dismissed being devoid of merit.

(Arun Kumar Jha, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-02-2024
Transmission Date	N/A

