

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.88 of 2018

1. Randhir Kumar Yadav son of Late Ram Chandra Yadav Resident of village- Mirzapur, P.S- Manihari District- Katihar.
2. Suthri Devi wife of Munilal Yadav resident of village- Kurpat P.S- Sabour District- Bhagalpur.
3. Kalabati Devi wife of Motilal Yadav resident of village- Nagma, P.S- Kahalgaon District- Bhagalpur.
4. Binay Kumar Yadav son of Late Uday Narayan Yadav @ Uday Yadav Resident of village-Tetariya P.S and District- Banka At present village- Ramjanipur, P.O- Kalgiganj P.S- Kahalgaon District- Bhagalpur.

... .. Petitioner/s

Versus

1. Ramnath Yadav Son of Late Jhagru Yadav Resident of village- Sonutola, Kacharia P.S- Pirpainti Dist- Bhagalpur.
2. Tatari Yadav wife of Late Sheonath Yadav resident of village and P.O- Bakiya P.S- Barari Distirct- Katihar
3. Nirmala Devi daughter of Late Sheonath Yadav and wife of Shri Mithilesh Yadav resident of village P.O- Bakiya P.S- Barari Distirct- Katihar.
4. Dinesh Yadav Son of Late Sheonath Yadav resident of village- Sonu Tola, Kachahariya P.O- Maul Tola P.S- Pirpainti District- Bhagalpur.
5. Binod Yadav Son of Late Sheonath Yadav resident of village- Sonu Tola, Kachahariya P.O- Maul Tola P.S- Pirpainti District- Bhagalpur.
6. Kamal Kishore Yadav son of Late Ram Keshwar Yadav resident of village- Sonu Tola Kachahariya P.O and P.S- Pirpainti District- Bhagalpur.
7. Sachidanand Yadav son of Late Ram Keshwar Yadav resident of village- Sonu Tola Kachahariya P.O and P.S- Pirpainti District- Bhagalpur.
8. Ram Bishun Yadav son of Late Ram Keshwar Yadav resident of village- Sonu Tola Kachahariya P.O and P.S- Pirpainti District- Bhagalpur.
9. Upendra Yadav son of Late Ram Keshwar Yadav resident of village- Sonu Tola Kachahariya P.O and P.S- Pirpainti District- Bhagalpur.
10. Chulhai Devi Wife of Late Prabhudayal Yadav resident of village- Sonu Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.
11. Sudarshan Yadav Son of Late Prabhudayal Yadav resident of village- Sonu Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.
12. Sushila Devi Wife of late Binay Yadav resident of village- Sonu Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.
13. Kajal Priya Daughter of Late Binay Yadav represented through their Natural guardian mother Sushla Devi and as next friend). resident of village- Sonu Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.
14. Sonam Priya Minor daughter of Late Binay Yadav represented through their Natural guardian mother Sushla Devi and as next friend). resident of village- Sonu Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.
15. Vishal Raj minor son of Late Binay Yadav represented through their Natural guardian mother Sushla Devi and as next friend). resident of village- Sonu

Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.

16. Viraj Raj minor son of late Binay Yadav represented through their Natural guardian mother Sushla Devi and as next friend). resident of village- Sonu Tola, Kachahariya P.S- Pirpainti Distirct- Bhagalpur.
17. Tarni Yadav resident of village- Sonutola, Kacharia P.S- Pirpainti District- Bhagalpur.
18. Abhay Kumar Yadav resident of village- Sonutola, Kacharia P.S- Pirpainti District- Bhagalpur.
19. Nagendra Yadav Son of Late Chhotelal Yadav resident of village- Sonutola, Kacharia P.S- Pirpainti District- Bhagalpur.
20. Soni Yadav Son of Late Ram Chandra Yadav resident of village- Mirzapur, P.S- Manihari District- Katihar.
21. Shashi Yadav Son of Late Ram Chandra Yadav resident of village- Mirzapur, P.S- Manihari District- Katihar.
22. Madhu Devi daughter of Late Ram Chandra Yadav resident of village- Mirzapur, P.S- Manihari District- Katihar.
23. Rajendra yadav Son of late Devendra Yadav resident of village- Maharajganj Laheta, P.O- Makduma P.S- Banka District- Banka.
24. Harendra Prasad Yadav Son of Late Devendra Yadav resident of village- Maharajganj Laheta, P.O- Makduma P.S- Banka District- Banka.
25. Jai Shankar Prasad Yadav Son of Late Devendra Yadav resident of village- Maharajganj Laheta, P.O- Makduma P.S- Banka District- Banka
26. Kanhailal Yadav Son of Late Devendra Yadav resident of village- Maharajganj Laheta, P.O- Makduma P.S- Banka District- Banka
27. Smt. Lalita Devi Daughter of Late Devendra Yadav resident of village- Maharajganj Laheta, P.O- Makduma P.S- Banka District- Banka.
28. Indu Devi daughter of Late Uday Narayan Yadav and wife of Sri Ravi Kant Yadav resident of village- Tetaria P.S and District- Banka.
29. Sunaina Devi daughter of Late Uday Narayan Yadav and wife of Sri Jiyalal Yadav resident of village- Kishanpur P.S and District- Banka.
30. Phul Kumari Devi daughter of Late Prabhudayal Yadav and wife of Sri Shashikant Yadav resident of village- Bayalpur, Kahalgaon P.S- Kahalgaon District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vivekanand Vivek, Adv.
For the Respondent nos. 1, 5, 8 & 9	:	Mr. Deepak Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 20-06-2024

Heard learned counsel for the petitioners as well as

learned counsel for the respondent nos. 1,5,8 & 9 and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed under Article 227 of the Constitution of India for quashing the order dated 17.08.2017 passed by learned Munsif, Kahalgaon, Bhagalpur in Title Suit No. 121 of 1988 whereby and whereunder the learned trial court rejected the petition for amendment.

3. The learned counsel for the petitioners submits that the petitioners are plaintiffs before the learned trial court and while the evidence of the plaintiffs was being recorded, the plaintiffs moved an application dated 19.05.2017 under Order 6, Rule -17 of the Code of Civil Procedure (hereinafter referred to as “the Code”) for making certain amendments in the plaint. The learned trial court rejected the amendment on erroneous grounds and observed that allowing the amendment would change the nature of the suit. Learned counsel further submits that bare perusal of the amendments will show that these amendments are formal in nature and do not change the nature of the suit. The learned trial court further committed an error when it passed the orders without appreciating the fact that amendments are necessary for the proper adjudication of the real controversy between the parties. Learned counsel further submits that the

plaintiffs have brought the suit for partition, and in a suit for partition amendment could be allowed at any stage and referred to the decision of the Co-ordinate Bench of this Court reported in (2020)1 PJLR 5. Learned counsel further submits that certain facts have been left to be mentioned in the plaint and further a number of corrections are needed in the description of a number of entries of the *khatian* and other documents with regard to the suit property. The learned counsel for the petitioners thus submits that the learned trial court committed error while passing the impugned order and the same needs to be set aside.

4. Learned counsel appearing on behalf of the respondents submits that the impugned order is proper and legal and there is no infirmity in it. The instant amendment petition has been filed in year 2017 whereas the suit is of year 1988 and no explanation is forthcoming about bringing the amendments after almost 29 years. The learned counsel further submits that the plaintiffs have failed to mention as to why the amendments have been brought so late and the amendments as mentioned in the application filed under Order 6, Rule -17 of the Code almost looks like rewriting the plaint. Learned counsel further submits that it is a case of partition which is pending since 1988 and admittedly the amendments were sought to be incorporated

when the evidence of the plaintiffs was being recorded. Since the plaintiffs have failed to show due diligence, no amendment after commencement of the trial could be allowed.

5. Having regard to the fact and circumstances of the case and the rival submissions of the parties, I am of the considered opinion that the application of amendment has been filed after much delay without any proper explanation and also without explaining the circumstances under which the amendments were sought to be incorporated in the plaint. Merely mentioning what are the amendments which the plaintiffs seek to incorporate in the plaint would not suffice for the purpose. Further, it would also not suffice to say that the amendment would not change the nature of the suit and are formal in nature. The amendment application of the plaintiffs/petitioners is in the teeth of the proviso of the Order 6 Rule -17 of the Code and considering the fact that the suit has been filed in the year 1988 and the amendment application has been filed in the year 2017, that too, without any explanation or without showing any due diligence as required under the provisions of law, I do not think the same could be allowed and for this reason the impugned order does not need any interference by this Court. From the discussion made

hereinabove, it is clear that the authority cited by the petitioners is not of any help to the cause of the petitioners. Accordingly, the instant petition fails and the same is rejected.

6. However, it is made clear that the petitioners could always avail the remedy, to assert their rights/claims before the appropriate forum in accordance with law.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	25.06.2024
Transmission Date	-