

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.752 of 2024

1. Umesh Mishra Son of Late Bishwanath Mishra, Presently residing at Mohalla - Shantipuri, P.O. - Motihari, P.S. - Motihari, District - Motihari, Pin - 845401.
2. Pramila Devi, Wife of Late Brajesh Mishra @ Mukhu Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.
3. Vikash Ranjan Mishra, Son of Late Brajesh Mishra @ Mukhu Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.
4. Shashi Ranjan Mishra, Son of Late Brajesh Mishra @ Mukhu Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.
5. Saraswati Devi, Wife of Late Dinesh Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.
6. Sushil Kumar Mishra, Son of Late Dinesh Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.
7. Sunil Kumar Mishra, Son of Late Dinesh Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.
8. Santosh Kumar Mishra, Son of Late Dinesh Mishra, Resident of village Shahbajpur, P.O.- Bishunpura, P.S. - Bihta, District - Patna.

... .. Petitioner/s

Versus

1. Rameshwar Prasad Sinha Son of Late Guru Prasad Sinha, Resident of Village- Sadisopur Kulwan Chak, P.S.- Bihta, District - Patna. Presently Resding at 498, Shivajee Nagar, Baghambar Gaddi, Alapur, Prayagraj (Allahabad).
2. Rajni Kant Sinha Son of Late Guru Prasad Sinha, Resident of Village- Sadisopur Kulwan Chak, P.S.- Bihta, District - Patna. At Present Residing in Sadispour House, Frazer Road, P.O.- GPO, P.S. - Kotwali, District- Patna.
3. Kamala Kant Sinha, Son of Late Guru Prasad Sinha, Resident of Village- Sadisopur Kulwarn Chak, P.S.- Bihta, District - Patna. At Present Residing in Sadispour House, Frazer Road, P.O.- GPO, P.S. -Kotwali, District- Patna.
4. Bibhu Sharan Lal, Son of Bimal Bihari Lal, Resident of Village - Sadisopur KulwanChak, Pargana- Maner, P.S. - Bihta, P.O.- Bihta, District- Patna.
5. Vikash Sharan Lal, Son of Binod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
6. Ashish Sharan Lal, Son of Late Vijay Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
7. Anand Sharan Lal, Son of Late Vijay Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
8. Ambar Sharan Lal, Son of Late Vijay Bihari Lal, Resident of Village-



- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
9. Rajnish Ravomdra Lal, Son of Late Ravindra Bihar Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 10. Manish Kumar, Sonof Narendra Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 11. Nitish Kumar, Son of Narendra Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 12. Harendra Bihari Lal, Son of Late Anami Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 13. Binay Bihari Lal @ Binu Jee, Son of Late Anami Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 14. Kasitji Sharan Lal, Son of Satendra Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 15. Rohit Saran Lal, Son of Binay Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 16. Rahul Saran Lal, Son of Binay Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 17. Simant Son of Late Shankar Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 18. Sabal Sanchi Saran Lal, Retired Executive, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 19. Kamal Saran Lal, Son of Sabal Sanchi Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 20. Kushum Daughter of Shri Krishan Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 21. Niloo, Daughter of Shri Krishan Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 22. Madhuri, Daughter of Shri Krishan Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 23. Sanjivan Saran Lal, Son of Shwamy Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 24. Samiran Saran Lal, Son of Shwamy Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
 25. Lal Arjun Deo Aran Lal Maharshi Son of Samiran Sharan Lal Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta,



District - Patna.

26. La Prabudh Rishiraj, Son of Samiran Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
27. Aman Sharan Lal, Son of Shwamy Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
28. SitalShran lal, Son of Late Samarith Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
29. Sanjal Saran Lal, Son of Late Samarith Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
30. Shekhar Sharan Lal, Son of Late Samarith Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
31. Abinashi Sharan Lal, Son of Late Samarith Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
32. Anand Sharan Lal, Son of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
33. Santosh Sharan Lal, Son of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
34. Dhiraj Sharan Lal, Son of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
35. Navin Sharan Lal, Son of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
36. Kumari Sadhana Sharan Lal, Daughter of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
37. Kumari Kumud Saran Lal, Daughter of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
38. Kumari Tripathi, Daughter of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
39. Kumari Deepa, daughter of Pramod Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
40. Sant Saran Lal, Son of Alok Bihar Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
41. Alok Saran Lal, son of Alok Bihari Saran Lal Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
42. Radha Raman Bihari Lal, Son of Late Surendra Saran Lal, Resident of



- Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
43. Ashok Raman Bihari Lal, Son of Late Surendra Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
44. Rajesh Bihar Lal Son of Radha Raman Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
45. Slok Bihari Lal Son of Ashok Bihari Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
46. Arun Sharan Lal, Son of Late Anom Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
47. Sidharth Sharan Lal, Son of Arun Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
48. Shambhu Sharan Lal, Son of Sant Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
49. Ranbir Saran Lal, Son of Sant Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
50. Kailash Saran Lal, Son of Sant Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
51. Deepak Saran Lal, Son of Sant Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
52. Dushyant Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
53. Prabhat Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
54. Sumant Saran Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.
55. Hemant Sharan Lal, Resident of Village- Sadisopur Kulwan Chak, Pargana- Maner, P.S.- Bihta, P.O. - Bihta, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Dr. Ranjit Kumar, Advocate
Mr.Rishikesh Ojha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 22-08-2024 The record has been taken up on mentioning being
made on behalf of the petitioners.

2. The learned counsel for the petitioners submits that
the present petition has been filed for setting aside the order



dated 05.06.2024 passed by learned Additional District Judge-IV, Patna in Misc. Case No.39/2018. The learned counsel further submits that the petitioners have filed Misc. Case No.09/2012 in Execution Case No. 01/2009, initiated for executing the judgment and decree of Title Partition Suit Nos. 93 of 1950 & 36 of 1954 by learned Sub Judge, IV, Patna. In the decree, *Khata* Nos. 267 and 282 were neither the subject matter of aforesaid title partition suit nor have been mentioned in the final decree of the aforesaid suit. However, at the time of execution, the other side has included the entire land of *Khata* Nos. 267 and 282 in Execution Case Nos.01/2009 & 03/2012. But this fact could not be mentioned in the Misc. Case No.09/2012 which was subsequently rejected by the learned executing court vide order dated 07.04.2018 and Misc. Appeal No.39/2018 was preferred against the said rejection order and in the said Misc. Appeal No.39/2018, an application for amendment under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure has been moved. But the learned appellate court rejected the said amendment petition vide impugned order dated 05.06.2024 on the ground that some new facts were sought to be added after 12 years from the date of institution of Misc. Case No.09/2012 and there is no explanation.



3. Perused the record.

4. If *Khata* Nos. 267 and 282 were not the part of subject matter of suit for which decree has been issued in Title Partition Suit Nos.93 of 1950 and 36 of 1954, I fail to understand how the execution could be sought against the above-noted two *Khata* Nos. 267 and 282 because the executing court is not allowed to go beyond the decree and to add or subtract anything from the decree while executing the decree.

5. At this stage, learned counsel for the petitioners seeks permission to withdraw the present petition to approach the learned executing court again to bring to its notice the aforesaid fact since the same could not be brought to the notice of the learned executing court during proceeding of Misc. Case No.09/2012.

6. Permission is accorded.

7. Accordingly, the present petition is dismissed as withdrawn with liberty as aforesaid. If this matter is brought to the notice of learned executing court by moving appropriate application, it would take due notice of the fact and pass orders after consideration of all the facts available on record.

(Arun Kumar Jha, J)

V.K.Pandey/-

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