

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.718 of 2017

1. Sachchida Nand Singh son of Late Ram Pyar Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Masrakh, District-Saran.
2. Gupteshwar Singh,
3. Sanjeev Singh, All Sons of Late Ram Pyar Singh,
4. Mosmat Kanti Kuer, Wife of Late Ram Pyar Singh, All residents of village - Bahadurpur, P.O. Kawalpura, P.S. Masrakh, District - Saran

... .. Petitioner/s

Versus

1. Vashishtha Narayan Singh Son of Late Ram Ekbal Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Masrakh, District-Saran.
- 2.1. Mosmat Motijhari Devi W/o Late Prabhu Nath Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
- 2.2. Anil Singh, S/o Late Prabhu Nath Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
- 2.3. Anuj Kumar Singh, S/o Late Prabhu Nath Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
- 2.4. Pramila Kuer, W/o Baban Singh and D/o Late Prabhu Nath Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
3. Sunil Kumar Singh,
4. Santosh Kumar Singh, Sons of Late Ram Subhag Singh,
6. Sunita Devi,
7. Sulekha Devi,
8. Sangeeta Devi,
9. Savita Devi, Daughters of Late Ram Subhag Singh,
10. Dharmendra Kumar S/o Late Ram Naresh Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Sandip Kumar, S/o Late Ram Naresh Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Rina Devi D/o Late Ram Naresh Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Babita Devi, D/o Late Ram Naresh Singh, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Rahul Kumar, S/o Late Narendra Kumar, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Khusbu Devi, D/o Late Narendra Kumar, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Rani Devi, D/o Late Narendra Kumar, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
10. Rubi Devi, W/o Late Shailendra Kumar, resident of Village-Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.



10. Yash Kumar (Minor), S/o Late Shailendra Kumar, resident of Village-
9. Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
11. Rabindra Singh,
12. Birendra Singh, Sons of Late Ramji Singh,
13. Asha Singh Widow of Late Uday Pratap Singh, resident of Village-
1. Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
13. Udayan Pratap Singh, son of Late Uday Pratap Singh, resident of Village-
2. Bahadurpur, P.O. Kawalpura, P.S. Mashrakh, District-Saran.
14. Sanjay Singh, Both Sons of Late Ram Lochan Singh,
15. Om Prakash Singh, Son of Late Mahendra Singh, All residents of village -
Bahadurpur, P.O. Kawalpura, P.S. Masrakh, District - Saran
16. Subhanti Devi,
17. Devanti Devi,
18. Tunna Devi,
19. Jhunna Devi,
20. Munna Devi,
21. Madhu Devi, Daughters of Late Narendra Kumar Singh,
22. Navin Kumar Singh,
23. Pravin Kumar Singh, Sons of Late Shatrughana Singh, Sl. No. 16 to 23 all
Residents of village - Bahadurpur, P.O. Kawalpura, P.S. Masrakh, District -
Saran

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Navin Nikunj, Adv. Mr. Koshalendra Rai, Adv.
For the Respondent/s	:	Mr. Satish Chandra Mishra, Adv. Md. Nurul Hoda, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 17-02-2025

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

2. The petitioners are aggrieved by the order dated
24.01.2017 passed by learned Sub Judge-II, Chapra in Partition
Suit No. 236 of 2014 whereby and whereunder the petition filed
on behalf of the plaintiffs dated 29.03.2016 for making formal



amendments in the plaint has been rejected.

3. Learned counsel for the petitioner submits that the impugned order is not sustainable as the same has been passed without consideration of the facts and law. The learned trial court went into the merits of the amendment while refusing the application for amendment and the same is not permissible. Learned counsel further submits that the impugned order has mentioned that facts once admitted cannot be withdrawn but there is no such withdrawal of the admission. Learned counsel further submits that the amendments were sought prior to the commencement of trial and this fact was also not appreciated by the learned trial court. Learned counsel further submits that the amendments are quite formal in nature as the petitioner has sought for insertion of certain plots in the Schedule of suit property and at the same time seeking deletion of certain plots from the same Schedule. Further, amendment has been sought about correction of typographical error in one of the Khesra Nos. 1478 to 478. Another amendment is about deletion of repetition of Khata No. 93 Khesra No. 1329 Rakwa 8 Katha 1 Dhur mentioned at two places and deletion from one such place.

4. Learned counsel appearing on behalf of the respondents vehemently contends that there is no infirmity in the impugned order and the same does not need interference.



Learned counsel submits that the petitioners who are plaintiff before the learned trial court have been trying to insert in the suit certain plots which have already been partitioned way back in 1964 in favour of the ancestors of the defendants/respondents and they have their pucca houses on the said part of land and no useful purpose would be served in bringing these plots in the Schedule of the plaint as ultimately the case of the plaintiffs on this account would fail. By not incorporating the said plot in the Schedule at the time of filing of the plaint, the plaintiffs tacitly acknowledged the earlier partition and the right and title of the defendants over the said plot of land. Thus, learned counsel submits that the present petition is devoid of merits and the same be dismissed.

5. I have given my thoughtful consideration to the rival submission of the parties.

6. Admittedly, the amendment have been sought prior to the commencement of trial. From the perusal of the petition filed for amendment, I find that the plaintiffs want to insert two plots in the Schedule of the suit property while deleting two plots from the Schedule. At the same time, third amendment is with regard to correction in Khesra No. 1478 to 478 and the fourth amendment is about repetition of Khata No. 93 Khesra No. 1329 Rakwa 8 Katha 1 Dhur at two places and deletion from one such



place. The challenge to the amendment is mainly on the ground that the property sought to be introduced in Schedule is the property of the defendants which they got through an earlier partition but it is the settled law that merits of the amendment could not be seen at the time of consideration of amendment petition.

Hon'ble Supreme Court in the case of ***Sampath Kumar Vs. Ayyakannu and Anr.*** reported in **(2002)7 SCC 559** has held that the merits of averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment.

On the same lines, in the case of ***Rajesh Kumar Aggarwal and others vs. K.K. Modi & Ors.*** reported in ***AIR 2006 SC 1647***, the Hon'ble Supreme Court held as follows:

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness of falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

7. Further perusal of the record shows the amendments



are quite formal in nature and should not cause any prejudice to the other side. I do not find withdrawal of any admission. Moreover, trial is at the preliminary state and is yet to commence and endeavour of the Court should be towards determination of real controversy between the parties. Therefore, in my considered opinion, the learned trial court committed an error of jurisdiction while rejecting the amendment application of the petitioner.

8. Therefore, the impugned order dated 24.01.2017 is set aside and the application dated 29.03.2016 filed by the petitioners seeking amendment is allowed. Accordingly, the present petition stands allowed.

9. However, the learned trial court is directed to give ample opportunity to the defendants to file additional/amended written statement to rebut/controvert the contention of the plaintiffs/petitioners.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.02.2025
Transmission Date	N/A

