

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1014 of 2017

- 1.1. Kedala Prasad W/o Late Rajendra Prasad, Presently residing at Rourkela, Sundargarh Oddisa, Jagada P.B. No. 24 (Jhilpani).
- 1.2. Satish Prasad Son of Late Rajendra Prasad, Presently residing at Rourkela, Sundargarh Oddisa, Jagada P.B. No. 24 (Jhilpani)
- 1.3. Santosh Prasad Son of Late Rajendra Prasad, Presently residing at Rourkela, Sundargarh Oddisa, Jagada P.B. No. 24 (Jhilpani)
- 1.4. Sunil Kumar Prasad Son of Late Rajendra Prasad, Presently residing at Rourkela, Sundargarh Oddisa, Jagada P.B. No. 24 (Jhilpani)
- 1.5. Susil Kumar Prasad Son of Late Rajendra Prasad, Presently residing at Rourkela, Sundargarh Oddisa, Jagada P.B. No. 24 (Jhilpani).
- 1.6. Subash Kumar Prasad Son of Late Rajendra Prasad, Presently residing at Rourkela, Sundargarh Oddisa, Jagada P.B. No. 24 (Jhilpani).

... .. Petitioner/s

Versus

- 1.1. Malti Devi W/o- Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.2. Deep Kumar S/o- Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.3. Manoj Kumar S/o - Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.4. Dharmendra Kumar S/o- Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.5. Amit Kumar S/o- Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.6. Prasant Kumar S/o- Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.7. Sumit Kumar S/o- Late Jitendra Kumar Resident of Village- Pakariyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur.
- 1.8. Shobha Devi W/o- Om Prakash Bhagat, D/o- Late Jitendra Kumar Resident of Village and P.O.- Kamriyan, P.S.- Tiya, Dist.- Bhojpur.
- 1.9. Anju Devi W/o- Dayashankar Mali, D/o- Late Jitendra Kumar Resident of Village- Chirangi Chhapara, P.O.- Dokti Sarybhanur, Dist.- Baliya (U.P).
- 1.1 Rakhi Kumari W/o- Subodh Bhagat, D/o- Jitendra Kumar Resident of Village- Dumariya, P.S.- Shahpur, District- Bhojpur (Bihar).
2. Radha Shyam, Son of Late Chotan Bhagat Present address Radhe Shyam Raurkela, Sundargarh, Oddisa, J.B.- 96, Jagda (Jhilpani).
3. Sarwati Kunwar, Wife of Late Kedar Bhagat Resident of Village- Pakriyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur, Ara.
4. Kamlesh Kumar, Son of Late Kedar Prasad Resident of Village- Pakriyabar, P.O.- Chandwa, P.S.- Udwanthnagar, District- Bhojpur, Ara.



5. Umesh Kumar, Son of Late Kedar Prasad Resident of Village- Pakriyabar, P.O.- Chandwa, P.S.- Udwanatnagar, District- Bhojpur, Ara.
6. Ramesh Kumar, Son of Late Kedar Prasad Resident of Village- Pakriyabar, P.O.- Chandwa, P.S.- Udwanatnagar, District- Bhojpur, Ara.
7. Sudhir Kumar, Son of Late Kedar Prasad Resident of Village- Pakriyabar, P.O.- Chandwa, P.S.- Udwanatnagar, District- Bhojpur, Ara.
- 8.1. Kunti Kumari W/o Late Lalan Kumar Ram Nagar Colony, Chas- Bokara, Pin- 827001.
- 8.2. Sangita Devi W/o Bimal Bhagat Sector- 11/D Qr. No.- 2015, Post Office and P.S.- Sasaram, District- Rohtas (Bihar).
- 8.3. Reeta Devi W/o Tez Narayan Prasad Resident of Sasaram, P.S.- Sasaram, Bihar.
- 8.4. Neeta Devi W/o Vinay Bhagat C/o Bhuwali Bhagat, Bichali Road, Ara.
- 8.5. Heema Prasad W/o Ajay Prasad Resident of A-60, Sector- 4, Rourkela, District- Sundargarh (Odisha).
- 8.6. Puspa Devi Ramnagar Colony, Chas, Bokaro.
- 8.7. Suman Devi W/o Jitendra Bhagat Resident of Ramnagar Colony, Chas, Bokaro, Pin- 827001.
- 8.8. Lili Devi Wife of Sambhu Prasad J.B.- 96-769042 Jagda, Raurkela, District- Sundargarh (Odisha).
9. Mohan Kumar, Son of Visheshwar Bhagat Resident of Village- Pakriyabar, P.O.- Chandwa, P.S.- Udwanatnagar, District- Bhojpur, Ara.
10. Phul Kumar Devi, Wife of Sri Baban Bhagat Resident of Village- Ram Nagar, P.O.- Sedha, P.S.- Pira, District- Bhojpur, Ara.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh, Advocate Mr. Dharmesh Kumar Shrivastava, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 23-06-2025

Heard the learned counsels for the respective parties
and I intend to dispose of the present petition at the stage of
admission itself.

02. The petitioners are aggrieved by the order dated
12.12.2016 passed by the learned Sub Judge-V, Ara in Title suit



No. 1175 of 2014 whereby and whereunder, the learned Sub Judge disposed of the application dated 29.06.2016 filed by original plaintiff/respondent no. 1 under Order VI Rule 17 of the Code of Civil Procedure read with Section 151 of the Code and allowed certain amendments in the plaint.

03. Learned counsel for the petitioners submits that the original plaintiff/respondent no. 1 has filed Title Suit No. 1175 of 2014 claiming 1/6th share of the suit property. The common ancestor of the both the parties was one Ram Briksh Mali, who had four sons, namely Jhapashi Mali, Jamuna Mali, Bisheshwar Bhagat and Chhotan Bhagat. Plaintiff/respondent no. 1 and original defendant nos. 8 and 9/respondent nos. 8 and 9 are the three sons of Bisheshwar Bhagat. Learned counsel further submits that Schedule-I property of the plaint has been claimed as ancestral property and a partition to the tune of 1/6th share has been claimed by the plaintiff/respondent no. 1. Learned counsel further submits that the petitioners are aggrieved by the amendments sought for by the plaintiff/respondent no. 1. Learned counsel further submits that in the first amendment sought by the plaintiff/respondent, he has submitted that due to mistake of typist in relief portion, instead of 1/3 share, 1/6 share has been wrongly typed and sought



deletion of $\frac{1}{6}$ and substitution of same by $\frac{1}{3}$, but the same is apparently a false claim. If the common ancestor was having four sons, each son would get only $\frac{1}{4}$ th share and the father of plaintiff/respondent no. 1 could get $\frac{1}{4}$ th share only. Now, the plaintiff is having three brothers and his share would come to $\frac{1}{12}$ in the ancestral property. It is not the case of the plaintiff that he and defendant nos. 8 and 9 are claiming jointly. Even if for the sake of argument, it is taken that his claim is joint with his brothers, even then only $\frac{1}{4}$ th share could be claimed by the plaintiff and not $\frac{1}{3}$ rd. So, this amendment mentioned in para-1 of the amendment application regarding plaintiff claiming $\frac{1}{3}$ share is incorrect.

04. Learned counsel next submits that the amendment sought in para-2 of the application is that the property in Schedule-2 is the exclusive property of plaintiff and defendant nos. 8 and 9 and the defendant nos. 1 to 7 and 10 had no concern with the said property. Learned counsel further submits that plaintiff could have sought this relief at the time filing the plaint. Further, there is no document to support such claim. The said amendment would also change the nature of the suit as the suit would be converted from a suit of partition to a suit of declaration. Learned counsel, thus, submits that these



amendments have been wrongly allowed and the impugned order needs interference of this Court. The learned counsel has also opposed the other amendments allowed by the learned trial court, but not in convincing manner.

05. Learned counsel appearing on behalf of respondent nos. 1 and 3 to 7 contends that there is no infirmity in the impugned order. The amendments are quite routine in nature and do not change the nature of the suit. However, learned counsel could not apprise this Court how the plaintiff has been claiming 1/3 share as the same is contrary to the facts brought on record by the plaintiff in his plaint. Learned counsel further submits that so far as challenge of amendment sought in para-2 is concerned, the averments in this regard have already been made in paragraph-6 of the plaint and it is apparent only a relief in connection with the said paragraph-6 has been sought through the amendment and the same could not be denied.

06. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

07. Since the learned counsel for the petitioners has not been able to persuade this Court about infirmity in allowing amendment sought at Paras-4, 5, 6 and 7, the impugned order regarding these amendments need no consideration by this



Court. However, the learned counsel for the petitioners has very vehemently opposed the amendments sought in Paragraph Nos. 1 and 2 of the application, the amendment sought at Paras-1 and 2 of the application are taken for consideration at length by this Court.

08. So far as amendment allowed at Para-2 of the application is concerned, if there has already been averments made in the plaint and relief could not be sought by the plaintiff at the time of filing the plaint, allowing amendment seeking relief of declaration could not be said to be bad, if foundation is already present in the plaint.

So far as challenge to the amendment sought at Para-1 of the application is concerned, it relates to merits of the amendment. Law is clear that the merits of the amendments are not to be considered at the time of allowing or disallowing the amendment. But when it is apparent that there is absence of specific pleading with regard to claim of 1/3 share, the amendment is contrary to the pleadings. Since the claim of the plaintiff is against the facts pleaded and no basis of such amendment has been laid out, such amendment could not be allowed. On this short point, I am inclined to interfere with the impugned order dated 12.12.2016 on the point of allowing



amendment sought at para-1, even though same touches upon the merit of the amendment and hence, the amendment allowed at para-1 of the application is rejected and the impugned order dated 12.12.2016 is modified to that extent only. However, the plaintiff/respondent no. 1 may file appropriate application for making the position clear about his claimed share in the suit property, if so advised.

09. Accordingly, the present petition stands allowed in part.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2025
Transmission Date	NA

