

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.569 of 2025

1. Nand Kishor Singh son of Rajendar Singh, Resident of Village Mohammadpur Buzurg @ Lakhanpur, Ward No. 7 P.S. Desari District Vaishali.
2. Shiv Nath Singh son of Rajendar Singh, Resident of Village Mohammadpur Buzurg @ Lakhanpur, Ward No. 7 P.S. Desari District Vaishali.

... .. Petitioner/s

Versus

1. Most. Bedameya Devi wife of late Jai Mangal Singh resident of Alipur Banvira P.O. Supajan Bakhari P.S. Raja Pakar District Vaishali.
2. Sanjeet Kumar Patel son of Late jai Mangal Singh resident of Alipur Banvira P.O. Supajan Bakhari P.S. Raja Pakar District Vaishali.
3. Ram Shrestha Singh son of Late jai Mangal Singh resident of Alipur Banvira P.O. Supajan Bakhari P.S. Raja Pakar District Vaishali.
4. Shambhu Prasad Singh son of Late jai Mangal Singh resident of Alipur Banvira P.O. Supajan Bakhari P.S. Raja Pakar District Vaishali.
5. Panwa Devi wife of Sita Ram Singh and Daughter of late Jai Mangal Singh resident of Alipur Banvira P.O. Supajan Bakhari P.S. Raja Pakar District Vaishali.
6. Krishna Devi wife of Indradeo Singh D/o Late Jaimangal Singh, resident of Village Mohjamma P.O Lakshmipur P.S. Mahua District Vaishali.
7. Kumari Sunita Sinha wife of Shivnath Singh D/o Late Jaimangal Singh resident of Village Alipur Vanveera P.O. Supajan Bakhari P.S. Rajapakar District Vaishai.
8. Sushila Sinha wife of Devendar Singh D/o Late Jaimangal Singh, resident of Village Chosema, P.O. Lakshmipur P.S. Jandaha District Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ratan Kumar Sinha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 12-08-2025

The record taken up on mentioning being made on behalf of the petitioners.

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



3. The petitioners are aggrieved by the order dated 08.01.2025 passed by the learned Civil Judge (Junior Division), Mahnar, Vaishali in Title Suit No. 49/1984 whereby and whereunder the learned trial court allowed the amendment petition filed by the plaintiffs/respondents.

4. The learned counsel for the petitioners submits that the amendment has been sought at a very belated stage as the suit was filed in the year 1984 and the written statement was filed on 07.07.1986. After closure of evidence, the record was put up for argument in the year 2013, still the plaintiffs did not seek any amendment till that time and when the argument has been continuing in the matter, in order to fill up lacuna in their case, the amendment has been sought. No due diligence has been shown. Therefore, the amendment is hit by Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'the Code'). The learned counsel further submits that earlier the plaintiffs have been claiming that Sita Mahto was their grandfather. Now they are denying this fact. The plaintiffs want to delay the disposal of the suit and only, for this reason, they have filed the amendment application, but the learned trial court wrongly allowed the said amendment petition.

5. Perused the records.

6. Perusal of record shows in paragraph 4 of the plaint,



an averment has been made that the grandfather of the plaintiffs was one Sita Mahto, who purchased the suit land on 17.02.1917. This averment has been denied by the defendants in their written statement that Sita Mahto was the grandfather of the plaintiffs. Now by way of amendment, the plaintiffs have sought to incorporate the fact that Sita Mahto was the brother of the grandfather and he died issue-less.

7. Since the suit has been filed in the year 1984, the proviso to Order 6 Rule 17 of the Code would not be applicable in view of Section 16 (2) (b) of the Amending Act, 2002 which provided that the proviso would not be applicable on pleadings filed before the date of amendment, i.e., 01.07.2002. Therefore, the plaintiffs were not supposed to show due diligence for belated filing of amendment after commencement of trial.

8. In the case of ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & Ors***, AIR 1957 SC 363, the Hon'ble Supreme Court has observed "...We think that the correct principles were enunciated by Batchelor, J. in his judgment in the same case viz. *Kisandas Rupchand case* [(1920) LR 47 IA 255] when he said at pp. 649-650: "All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ..."



9. In the present case, since the averment is already there about Sita Mahto being the purchaser of suit land on 17.02.1917 and the plaintiffs claiming the land through him, now the plaintiffs want to amend the pleadings to the effect that Sita Mahto was not their grandfather, rather he was the brother of the grandfather and died issue-less and in this manner, the petitioners came into title and possession of the suit land.

10. Since the facts were already on record, it cannot be said that defendants/petitioners were taken by surprise by introduction of these facts as they themselves also denied the relationship of grandfather and grandson between Sita Mahto and the plaintiffs. Therefore, allowing amendment could not be said to be causing any injustice to the defendants. However, it is a material fact that the amendment has been sought after 40 years and, therefore, for putting the defendants to so much inconvenience, the learned trial court ought to have compensated the defendants by way of imposition of cost which it did not and to that extent the order needs modification.

11. In the light of aforesaid discussion, I do not find any infirmity in the impugned order so far as allowing the amendment part is concerned. Therefore, the impugned order dated 08.01.2025 is affirmed subject to payment of cost of Rs. 25,000/-(twenty five thousand only) to be paid by the contesting plaintiff to the



contesting defendant on the first date before the learned trial court after passing of this judgment.

12. However, the contesting defendant will be given ample opportunity to rebut/controvert the claim of the plaintiffs sought to be brought through amendment by way of filing amended written statement/additional written statement.

13. Considering the fact that the suit is of the year 1984, the learned trial court will look into the matter and take up expeditious steps for its disposal.

14. With the aforesaid observations/directions, the instant petition stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.08.2025
Transmission Date	NA

