

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.316 of 2017

1. Smt. Aarti Devi Wife of Sri Premchand Banwali, resident of village - Senma, P.O. Senua, P.S. Lotan, Distt. - Sidharth Nagar, Uttar Pradesh, Presently Mohalla - Sothi Tola, P.S. Lumbini, Distt. - Rupandehi, Nepal
2. Smt. Sandhya Devi, Wife of Sri Chandrika Prasad, resident of village - Phulwaria, P.O. Sugauli, Distt. - East Champaran

... .. Petitioner/s

Versus

1. Ramashankar Pd. Son of Late Nakched Ram, Legal Heir sons and daughter of Saraswati Devi (Since Died), resident of Mohalla - Lal Bazaar Bettiah, P.S. and P.O. - Bettiah, Dist- West Champaran.
2. Nikhil Kumar Son of Late Nakched Ram, Legal Heir sons and daughter of Saraswati Devi (Since Died), resident of Mohalla - Lal Bazaar Bettiah, P.S. and P.O. - Bettiah, Dist- West Champaran.
3. Nitin Kumar Son of Late Nakched Ram, Legal Heir sons and daughter of Saraswati Devi (Since Died), resident of Mohalla - Lal Bazaar Bettiah, P.S. and P.O. - Bettiah, Dist- West Champaran.
4. Rashmi Devi Son of Late Nakched Ram, Legal Heir sons and daughter of Saraswati Devi (Since Died), resident of Mohalla - Lal Bazaar Bettiah, P.S. and P.O. - Bettiah, Dist- West Champaran.
5. Archana Devi @ Baby, Wife of Manoj Kumar Banwali, resident of Mohalla - Dwardevi Chowk, P.S. and P.O. Bettiah, Distt. - West Champaran.
6. Ayush Kumar Son of Manoj Kumar Barnwal Resident of Mohalla - Killa, P.S. and P.O. - Bettiah, Dist - West Champaran.
7. Anikit Kumar Son of Manoj Kumar, Resident of Mohalla - Killa, P.S. and P.O. - Bettiah, Dist - West Champaran.
8. Gauri Shankar Sah, Son of Rajendra Sah, Resident of village - Rupdih, P.O. Barwat Sena, P.S. Muffasil Bettiah, Distt. - West Champaran
9. Baliram Prasad, Son of Babulal Prasad, Resident of village - Rupdih, P.O. Barwat Sena, P.S. Muffasil Bettiah, Distt. - West Champaran.
10. Anil Kumar Dubey, Son of Jakeshwar Nath Dubey, Resident of village - Rupdih, P.S. Barwat, P.S. Muffasil Bettiah, Distt. - West Champaran
11. Suleman Mian Son of Kudrat Mian, Resident of village - Barwat Sena, P.S. Muffasil Bettiah, Distt. - West Champaran
12. Nemullah Mian Son of Kakchhed Mian, Resident of village - Barwat Sena, P.S. Muffasil Bettiah, Distt. - West Champaran
13. Madan Sah Son of Ramchandra Sah, Resident of Village - Laiya Tola, P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist - West Champaran.
14. Mukurdhun Sah Son of Ramchandra Sah, Resident of Village - Laiya Tola, P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist - West Champaran.
15. Kashi Sah Son of Ramchandra Sah, Resident of Village - Laiya Tola, P.O. -



- Pipra Pakari, P.S. - Muffasil Bettiah, Dist - West Champaran.
16. Bachacha Sah Son of Ramchandra Sah, Resident of Village - Laiya Tola, P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist - West Champaran.
 17. Mahammad Mian Son of Junwali Mian, Resident of village - Rupdih, P.O. Barwat Senta, P.S. Muffasil Bettiah, Distt. - West Champaran
 18. Gaffur Mian Son of Late Karamat Mian, Resident of Village and P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist - West Champaran.
 19. Sukuli Mian Son of Late Karamat Mian, Resident of Village and P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist - West Champaran.
 20. Nand Kishore Sah, Son of Kodo Sah, Resident of village - Rupdih, P.O. Barwat Sena, P.S. Muffasil Bettiah, Distt. - West Champaran
 21. Chandrika Sah Son of Gaya Sah, Resident of Village - Laiya Tola, P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist- West Champaran.
 22. Ramashish Sah, Son of Gaya Sah, Resident of Village - Laiya Tola, P.O. - Pipra Pakari, P.S. - Muffasil Bettiah, Dist- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bibhuti Narayan, Advocate
For the Respondent/s : Mr. Aditya Nath Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 18-03-2025

Heard learned counsel for the parties.

2. The present petition has been filed against the order dated 09.11.2016 passed in Partition Suit No. 89 of 2009 by learned Sub Judge-VI, Bettiah, West Champaran, whereby and whereunder the petition filed by the petitioners under Order 6 Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure (hereinafter in short 'the Code') has been dismissed.

3. Learned counsel for the petitioners submits that the petitioners have filed Title Partition Suit No. 89 of 2009 in the court of learned Sub Judge – 1st, Bettiah, West Champaran for



partition of the suit land and also seeking declaration that Will dated 04.03.2009 is null and void. During pendency of Partition Suit No. 89 of 2009 defendant no. 2 died and her name was deleted. But inadvertently her two grandsons and one granddaughter who were her heirs/legal representatives could not be added in her place though other heirs/legal representatives were already on record. Thereafter, petitioners filed a petition under Order 6 Rule 17 and Order 1 Rule 10 of the Code for making amendment in the suit and for adding respondent nos. 2, 3 and 4 as legal representatives of defendant no. 2 in the plaint and adding subsequent facts mentioned in paragraphs 2, 3 and 4 of the proposed amendment petitions. However, the prayer was not considered by the learned trial court and the petition has been rejected. The said order is under challenge before this Court.

4. Learned counsel for the petitioners further submits that the impugned order is not sustainable. The heirs/legal representatives of defendant no. 2 are necessary parties and without adding them as defendants, any order passed by the learned trial court will affect the right and title of all the parties. Similarly, the amendment sought is not going to change the nature of the suit and same is with regard to subsequent



development and the learned trial court should have allowed the amendment sought.

5. Learned counsel appearing on behalf of respondent nos. 1, 5, 6 and 7 vehemently opposes the submission made on behalf of the petitioners. Learned counsel submits that instead of filing an application under Order 22 Rule 4 of the Code with prayer for condoning the delay in filing the application and setting aside the abatement, the petitioners have chosen a convenient way which is not permissible under law. It is settled proposition of law that where substitution has to take place under Order 22 Rule 4 of the Code, there is no applicability of the provisions of Order 6 Rule 17 or Order 1 Rule 10 of the Code. The petitioners could have filed their petition under Order 22 Rule 4 of the Code but concealing the facts, they have been trying to grab an order under Order 1 Rule 10 of the Code. Defendant no. 2 died in the year 2010 but no application was filed within the period of limitation under Order 22 Rule 4 of the Code for her substitution and the suit has abated. Learned counsel further submits that even the amendment could not be allowed for the simple reason that suit has abated as necessary and proper parties have not been added in the partition suit and the amendments are with regard to the rights of the legal



representatives of deceased respondent no. 2. If they are not made parties, any amendment with regard to their right could be without any substance. Learned counsel further submits that the amendment at para 1 and 2 are with regard to cause title and deletion of party which is simply not permissible. Consequent amendments at para 3 and 4 are with regard to the share of the parties. Without any clarification as to how the shares have changed, it is a vague pleading. Therefore, there is no infirmity in the impugned order.

6. Having regard to the rival submission and on perusal of record, I find some merit in the submission of learned counsel for the respondents. If the petitioners failed to move appropriate application under Order 22 Rule 4 of the Code for substitution of legal representatives of deceased defendant no. 2, they are not allowed to circumvent the process of law and get legal representatives impleaded by invoking provisions of Order 6 Rule 17 and Order 1 Rule 10 of the Code. Therefore, the impleadment of legal representatives under the provisions of Order 1 Rule 10 of the Code could not be allowed. So far as the proposed amendments are concerned, since the amendments are intricately connected with the right and title of the legal representatives of defendant no. 2 as well as other parties and



as the suit stands abated against defendant no. 2, even the proposed amendments cannot be allowed.

7. For the reasons mentioned above, I do not find any infirmity in the impugned order and the same is affirmed. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2025
Transmission Date	NA

