

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.570 of 2016

1. Shashi Sharma son of Late Bhagwat Mistry, Resident of village - Maraiya Pipralatif, P.O. Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.1. Ram Bilas Sharma Son of Late Kamleshwari Sharma, Resident of village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.2. Sagar Sharma, Son of Late Kamleshwari Sharma, Resident of village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.3. Ugresh Sharma, Son of Late Kamleshwari Sharma, Resident of village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.4. Nandan Kumar Sharma, Son of Late Kamleshwari Sharma, Resident of village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.5. Mukesh Kumar Son of Late Kamleshwari Sharma, Resident of village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.6. Chandan Kumar, Son of Late Kamleshwari Sharma, Resident of village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District - Khagaria.
- 2.7. Sajo Devi, Wife of Umesh Sharma and D/O Kamleshwari Sharma, Resident of village- Dhamseni, P.S. - Saurbazar, Distt. - Saharsa.
- 2.8. Sudha Devi, Wife of Rajesh Sharma and D/o Kamleshwari Sharma Resident of Village- Patarpur, P.S. Balia, District - Begusarai.
3. Bahadur Mistry @ Rambahadur Sharma son of Late Ramrup Mistry
4. Jai Jai Ram Mistry son of Late Ramrup Mistry
5. Rajendra Sharma Son of Late Sahdeo Mistry All residents of Village Maraiya Pipralatif, P.O. Pipralatif, P.S Parbatta, District Khagaria.

... .. Petitioner/s

Versus

- 1.1. Shambhu Sharma Son of Late Ramswaroop Sharma, Resident of Village - Maraiya Pipralatif, P.O. - Pipralatif, P.S. Parbatta, District- Khagaria.
- 1.2. Fudo Devi daughter of late Ramswaroop Sharma and Wife of Manoj Sharma, Resident of Village- Shishwan, P.O. Mushkipur, P.S. - Gogri, District- Khagaria.
- 1.3. Kusum Devi, daughter of Late Ramswaroop Sharma and Wife of Dhoran Sharma, Resident of village Jairampur, P.S. - Bihpur, District - Bhagalpur.
- 1.4. Aho Devi, Wife of Balmiki Sharma, X
- 1.5. Arun Sharma, son of Balmiki Sharma, X
- 1.6. Pawan Sharma, Son of Balmiki Sharma, village- Maraiya Pipralatif, P.O. Pipralatif, P.S. Parbatta, District - Khagaria.
- 1.7. Devta Devi, daughter of Balmiki Sharma, Wife of Pawan Sharma wife of Balmiki Sharma, resident of P.O. and P.S. - Khagaria Town, District - Khagaria.
- 1.8. Samta Devi, daughter of Balmiki Sharma, Wife of Suman Sharma, resident of village and P.O. Charhar, P.S. Kharik, District- Bhagalpur.



2. Shardanand Sharma Son of Late Ramswaroop Sharma Resident of Village Pipralatif, Paragana Farakiya, P.O. Maraiya, P.S Parbatta, District Khagaria.
3. Arun Sharma Son of Late Balmiki Sharma.
4. Pawan Sharma Son of Late Balmiki Sharma.
5. Sunil Sharma Son of Late Lakhan Sharma.
6. Arun Sharma Son of Late Lakhan Sharma.
7. Nami Sharma Son of Late Lakhan Sharma.
8. Dayanand Sharma Son of Late Lakhan Sharma.
9. Pankaj Sharma Son of Late Lakhan Sharma.
10. Surendra Sharma, Son of Late Mattu Mistry
11. Umesh Sharma Son of Late Chhedi Sharma
12. Mohan Sharma Son of Late Bhumi Sharma.
13. Ganga Sharma son of Late Mahavir Mistry All residents of Village Pipralatif Paragana Farakiya, P.O. Maraiya, P.S Parbatta, District Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Amarendra Nath Verma
For the Respondent/s : Mr.Ram Shankar Kumar

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

17 23-09-2025 Heard learned counsel for both the parties.

2. The instant application has been filed by the petitioner for setting aside the order dated 07th of June, 2016 passed in Title Appeal No. (S.T.A.) 01 of 2005 by the learned Third Additional District Judge, Khagaria refusing to amend the petitioner's (plaintiff-appellants) application seeking a very formal amendment in the plaint merely on the ground that the date of the judgment was not stated in the amendment-petition notwithstanding the fact that the memo of appeal and the impugned judgment readily available in the records of the case clearly mentioned in the same thereby impairing the cause of



justice.

3. Learned counsel for the petitioner submits that the Title Suit No. 51 of 1997 was filed by him for partition of the suit property which was dismissed and appeal is pending before the Appellate Court i.e. Appeal No. 01 of 2005. Subsequently, after ten years, filing of appeal i.e. dated 29.09.2015 he filed an application under Order 6 Rule 17 of CPC Under Section 151 of CPC for certain amendment in the plaint. He wants amendment regarding the facts about earlier judgment in Title Suit No. 263 of 2017 which was filed amongst the ancestors of both the parties and those facts, he wants to incorporate vide amendment in para No. 10 A in the plaint. The judgment and decree has already been filed in suit on behalf of defendant which has been marked as Exhibit C and D during course of trial.

4. This fact is sufficient to show that plaintiff was in full know of the fact about the aforesaid Title Suit No. 263 of 2017 and now he cannot say that he had no knowledge about the aforesaid judgment and decree passed in Title Suit No. 263 of 2017.

5. Learned counsel further submits that in the aforesaid amendment he has pleaded a new story of reunion amongst the parties, but in proposed amendment there is no date



of reunion.

6. So, if the amendment is allowed, it will be of no help because no date is mentioned regarding reunion. Moreover, no party can be allowed to set up a new case at the stage of appeal. The last para of the impugned order reads as under:-

“The present appeal has been filed against the judgment dt. 24.02.2005 and decree passed in Title Partition Suit No. 51/97. The plaintiff/appellants is referring the judgment passed in T.S.No. 263/1917 but has not stated about the date of the judgment of the said title suit and the result of its appeal, if any. The instant amendment petitioner appears to be vague one, hence rejected. Put up on 15.07.2016 for further proceeding.”

7. Keeping in view the aforesaid facts, it appears that there is a deliberate delay on the part of the plaintiff/petitioner and the impugned order is legal and justified as there is no illegality and impropriety in it.

8. Accordingly, the present Civil Miscellaneous application stands dismissed.

(S. B. Pd. Singh, J)

Ankit Kumar/-

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