

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1795 of 2017

- 1.1. Bharat Rai H/o Late Jashoda Devi, S/o Late Banka Rai Resident of Village Gopalpur Parsauni, P.O. Gopalpur, P.S. Gopalpur, District- Gopalganj.
- 1.2. Kavita Rai D/o Late Jashoda Devi, W/o Shatrughan Rai Resident of Village Khadauli, P.O. Balua, P.S. Guthani, District- Siwan, at present resident of village Gopalpur Parsauni, P.O. and P.S. Gopalpur, Dist. - Gopalganj.
- 1.3. Deji Ray D/o Late Jashoda Devi, W/o Rajkumar Rai, Resident of Village Modipatti, P.O. Meha, P.S. Baghauchghat, District- Deoria, Uttar Pradesh, at present resident of village Gopalpur Parsauni, P.O. and P.S. Gopalpur, Dist. - Gopalganj.

... .. Petitioner/s

Versus

1. Chandra Shekhar Rai, Son of Surendra Rai
2. Surendra Rai Son of Ashwani Rai
Both Residents of Village Chailwa, P.O. and P.S. Gopalpur, District Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate
For the Respondent/s	:	Mr. Shubhesh Pandey, Advocate Mr. Amit Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 31-07-2025

Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The present petitioner has been filed for setting aside the order dated 08.03.2017 passed by the learned Civil Judge (Senior Division)-X, Gopalganj in Title Suit No. 729 of 2014 whereby and whereunder the application of the plaintiffs/ petitioners dated 09.09.2016 filed under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred to as ‘the Code’)



seeking amendment has been partly allowed.

3. The learned counsel for the plaintiffs/petitioners submits that proposed amendment has been rejected by the learned trial court holding that the said amendment was not bonafide and the issue of partition was the pertinent fact in deciding the case. The learned counsel further submits that, by way of amendment, the petitioners have sought to bring the fact on record that no partition had taken place between Jageshwar Rai and Tapeswar Rai and similarly, no partition took place amongst the sons of Tapeswar Rai, namely Jagdish Rai and Dilip Rai. Jagdish Rai had one son, Harkesh Rai and the original plaintiff Jashoda Devi was the daughter of Harkesh Rai. The amendment has been sought prior to commencement of trial as the issues have not been framed. Therefore, learned counsel submits that the impugned order could not be sustained.

4. The learned counsel appearing on behalf of the respondents vehemently opposes the submission made on behalf of the petitioners. The learned counsel submits that the plaintiff had admitted in the plaint that a partition between Jageshwar Rai and Tapeswar Rai had taken place and further stated that both of them after partition came into possession of their respective shares and it has also been mentioned that the



property of Jageshwar Rai was not included in the suit property. If partition had not taken place, then such property would also constitute part of the suit property. Similarly, it has further been admitted that Tapeswar Rai died leaving behind two sons, namely Jagdish Rai and Dilip Rai and on the property of Tapeswar Rai, both the sons came into possession jointly and after some time, another partition took place in between two sons and both of them came into possession of their respective shares. Now, by way of amendments, the plaintiff want to withdraw the said admission, which cannot be allowed.

5. I find merit in the submission of learned counsel for the respondents. A bare reading of paragraphs 2 & 3 of the plaint shows that if the amendment is allowed and word '*Bantwara*' is deleted, both the paragraphs become meaningless. Moreover, from the un-amended paragraph, it is very much clear that there is specific admission of the plaintiff about partition taking place between Jageshwar Rai and Tapeswar Rai and, thereafter, between sons of Tapeswar Rai, namely Jagdish Rai and Dilip Rai. The learned trial court has rightly considered that the plaintiff has been claiming the suit land by way of registered gift deed from her father and whether the gifted properties were allotted to her father Harkesh Rai, or her



grandfather or great-grandfather, is a vital point in the case and, in such circumstances, the fact of partition is very decisive in the case. This finding of the learned trial court cannot be faulted. Moreover, once the petitioners admitted partition, they are not allowed to withdraw the said admission.

6. In the light of aforesaid discussion, I do not find the impugned order suffers from any infirmity as the same has been passed after due consideration and, therefore, the same is affirmed.

7. Accordingly, the instant petition is dismissed being devoid of any merit.

8. However, it is made clear that anything said or observed here is only for the purpose of the disposal of the present petition and would not cause prejudice to the case of the parties.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2025
Transmission Date	NA

