

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1180 of 2023

Guddu Pandey @ Binod Pandey Son of Late Bal Bachan Pandey @ Bal Chand Pandey, Resident of Village-Asharam Bhaluhi, P.s. Rudrapur, P.S. Kateyan, District-Gopalganj.

... .. Petitioner/s

Versus

1. Ramashray Choubey son of Late Laxuman Choubey, Resident of Village-Khutwaniya, P.O. and P.S. Kuchaikot, District-Gopalganj.
2. Bipin Bihari Choubey, son of Late Laxuman Choubey, Resident of Village-Khutwaniya, P.O. and P.S. Kuchaikot, District-Gopalganj.
3. Ram Ekbal Choubey, son of Late Laxuman Choubey, Resident of Village-Khutwaniya, P.O. and P.S. Kuchaikot, District-Gopalganj.
4. Keshav Kumar Choubey, son of Late Laxuman Choubey, Resident of Village-Khutwaniya, P.O. and P.S. Kuchaikot, District-Gopalganj.
5. Kamal Kanti Devi, Wife of Anil Kumar Pandey and daughter of Late Laxuman Choubey, resident of Village Ratanpur, P.O. Kuchaikote, P.S. Gopalpur, District-Gopalganj.
6. Paras Pandey, son of Late Birjhan Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
7. Birendra Pandey, Son of Late Bal Bachan Pandey @ Bal Chand Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
8. Shuddu Pandey, Son of Late Bal Bachan Pandey @ Bal Chand Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
9. Haresh Pandey, Son of Late Sheo Bachan Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
10. Ishwar Pandey @ Ishwar Chand Pandey, son of Late Lal Bachan Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
11. Gudia Daughter of Late Umesh Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
12. Umrawati Kunwar, Wife of Late Umesh Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
13. Munna Pandey, son of Late Umesh Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
14. Dina Nath Pandey, son of Late Lal Bachan Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
15. Yadu Nandan Pandey son of Late Ram Sundar Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
16. Mahima Pandey, son of Late Khenhar Pandey, Resident of Village-Asharam



Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.

17. Parashuram Pandey, son of Late Khenhar Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
18. Smt. Nawal Kishore Devi, Daughter of Khenhar Pandey, Resident of Village-Asharam Bhaluhi, P.O. Rudrapur, P.S. Kateya, District-Gopalganj.
19. Sabhapati Devi, Wife of Gyan Prakash Pathak and daughter of Jhotil Pandey, Resident of Village, P.O. and P.S.-Pataherwan, District Kushi Nagar (U.P.).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate Mr. Koshalendra Rai, Advocate
For the Respondent/s	:	Mr. Najeeb Ahmad, Advocate Mr.Lokesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 17-04-2025

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

2. The petitioner is aggrieved by the order dated 01.05.2023 passed by learned Munsif, Gopalganj in Final Decree Case No. 14 of 2016, whereby and whereunder the learned trial court rejected the prayer for recall of ex-parte order dated 12.09.2017 against the defendant/petitioner.

3. Learned counsel for the petitioner submits that the plaintiffs/respondents 1st set filed an application on 31.03.2016 before the learned trial court for preparation of final decree (numbered as F.D. Case No. 14 of 2016) in Partition Suit No. 478 of 1995. Earlier the suit was partially decreed by the



learned trial court in 2012, however, in Title Appeal No. 53 of 2012, vide the judgment and decree dated 27.01.2016, the suit was decreed in full by the court of learned Additional District Judge-8, Gopalganj granting preliminary decree in favour of the plaintiffs/respondents 1st set by giving them 1/6th share in the entire suit properties. Application was filed for preparation of final decree. Notice was issued to defendant but, learned counsel submits that, no notice was served upon the petitioner and substituted service through paper publication was resorted to, the defendant/petitioner did not get any knowledge and the matter was fixed for ex-parte proceeding vide order dated 12.09.2017. Learned counsel further submits that the defendant/petitioner filed an application on 23.02.2018 for recall of the order dated 12.09.2017 fixing the matter for ex-parte hearing. The said petition of the defendant/petitioner was dismissed as not maintainable vide order dated 15.05.2019. Learned counsel further submits that it could be seen from the order sheet dated 26.11.2019 that the final decree application was permitted to be amended and the said amendment was incorporated in the application for final decree on 05.12.2019. In this background, the petitioner filed an application on 27.01.2021 to recall the order dated 12.09.2017 fixing the



matter for ex-parte hearing of the final decree proceeding. Learned counsel further submits that the learned trial court did not take into consideration the legal provision that one an amendment has been incorporated by the plaintiff, fresh notice was required to be issued to the defendant. In this regard, learned counsel relied on a decision of this Court in the case of ***Bhageshwari Choudharain and another Vs. Pratap Narayan Choudhary and others***, reported in ***1994(1) PLJR 640***, wherein the learned Single Judge of this Court relying on a decision in the case of ***M/s. Jharkhand Mines & Industries Limited Vs. Nand Kishore Prasad***, reported in ***AIR 1969 Pat. 228*** held that it was incumbent upon the court to see that the notices of the amended plaint be served on the defendants of the suit. The Code of Civil Procedure casts a duty on the court to see that the defendants are made aware of any amendment in the plaint, whether the amendment be in regard to the addition of parties or in regard the contents thereof. Unfortunately, the learned trial court which passed the ex-parte order, did not direct any notices to be issued to the defendants with a view to make them aware about the amendment of the plaint and finding of the impugned order stands vitiated on account of aforesaid fact. Learned counsel further submits that on 15.03.2020 direction for



measurement of plot was issued to the learned Survey Knowing Pleader Commission by the learned trial court and on 21.03.2020, learned Survey Knowing Pleader Commission prayed for issuance of notice to the defendants. Learned counsel further submits that the case remained pending due to Covid-19 pandemic started from 27.03.2020 and thereafter, the application dated 27.01.2021 was filed. However, the learned trial court after hearing the parties dismissed the said application vide impugned order dated 01.05.2023, filed for recalling the order dated 12.09.2017. Learned counsel further submits that the learned trial court failed to consider that a hyper technical approach should not be adopted in the given facts and circumstances. It has also failed to consider that only two days prior to the petition of the petitioners for recall, the learned Advocate Commissioner had prayed to issue fresh notice to the defendants as regards left out/fresh plots. Learned counsel further submits that the petitioner being a co-sharer and having high stakes in the suit property, should not be denied the opportunity to participate in the final decree proceeding as the same would permanently jeopardize his property rights. Thus, learned counsel submits that the impugned order is not sustainable and the same may be set aside.



4. Learned counsel appearing on behalf of respondents 1st set submits that there is no infirmity in the impugned order and the same does not require any interference. Learned counsel further submits that the learned trial court has taken into consideration the conduct of the petitioner and mentioned the fact that the matter was proceeded ex-parte on 12.09.2017 and after passing of the ex-parte order defendant appeared on 11.10.2017 and submitted a petition supported with affidavit to stay the proceedings of the final decree case till the orders of the High Court, Patna. Again on 28.11.2017 and 07.12.2017, the defendant/judgment debtor submitted a petition stating therein that they have preferred Second Appeal Nos. 103 of 2016 and 234 of 2016 in the High Court and prayed to stay the proceedings of the final decree till the disposal of the second appeal. Learned counsel further submits that these facts go on to show that the petitioner was having knowledge of the final decree proceeding. So far as the amendment in the final decree proceeding application is concerned, the same is only formal in nature as bringing the relevant Mauza of the suit property on record. Moreover, the said amendment was sought in 2019 and the petitioner has been preferred Second Appeal No. 103 of 2016 which go on to show that the defendant/petitioner was



having knowledge way back in the year 2016. But the same has not been explained and these circumstances go on to show latches on part of the defendant/petitioner. Learned counsel further submits that there is no infirmity in the impugned order and the same may be affirmed.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. It is very much evident from the impugned order that the defendant/petitioner was having knowledge of final decree proceeding in 2016 itself when he filed second appeal. Thereafter, two applications were filed and were dismissed on account of the fact that they were not pressed for quite long time. Similarly, the submission made on behalf of the petitioner that on 26.11.2019, the final decree application was permitted to be amended and notice was required to be issued to the defendant/petitioner, this defect on part of the court or the plaintiff should not have come in the way of the petitioner for not moving the application for recall of the ex-parte order earlier. Therefore, to that extent I find no infirmity in the impugned order.

6. However, considering the fact that it is a partition suit and the defendant/petitioner being a co-sharer wants to



participate in the proceeding, I find for the ends of justice, the court should allow the participation of the defendant/petitioner in the final decree proceeding, of course, subject to imposition of heavy cost. Therefore, on this limited point, this Court would like to interfere with the order of the learned trial court and the order dated 01.05.2023 is set aside and application dated 27.01.2021 is allowed subject to payment of cost of Rs.25,000/- to be paid to the plaintiffs on the first day of hearing before the learned trial court and the learned trial court is directed to take the proceeding in all earnest without granting any unnecessary adjournment to the parties since the partition suit is of the year 1995.

7. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2025
Transmission Date	NA

