

(2001) 12 PAT CK 0039
In the Patna High Court
Case No : L.P.A. No. 704 of 2001

Yogendra Nath Puri and Others

APPELLANT

Vs

Paras Nath Puri and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Citation : (2002) 1 PLJR 182

Hon'ble Judges : S.K. Chattopadhyaya, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Sidheshwari Pd. Singh and Krishna Kishore Sinha, for the Appellant;
Mahesh Nr. Parbat and Ved Prakash Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. This appeal is directed against the order dated 23.1.2001 passed by the learned single Judge in F.A. No. 232 of 1999 rejecting the prayer for amendment of the plaint at the appellate stage on the ground that already such prayer was rejected by this Court in Civil Revision filed by the Appellants against the order of the Court below rejecting their prayer for amendment of the plaint at the stage of preparation of final decree.
3. We have perused the order passed in C.R. No. 1333 of 2000 disposed of on 15.9.2000. While disposing of the revision application, liberty was given to the Appellants to move before the appropriate forum. While observing so, learned single Judge also observed that the appeal is continuation of the suit.
4. The appeal in question arises against the preliminary decree passed in the same suit and the matter is pending for preparation of final decree in the Court below. The amendments sought for by the Plaintiffs-Respondents are three which are described below:
 - (i) In Schedule II if the plaint, the figures "180" be struck off and in its place

"108" should be added;

(ii) In Schedule II of the plaint, the total area of plot Nos. 272, 273 and 274 is 7 katha 10 dhurs should be struck off and its place 11, katha 16 dhurs" should be added; and

(iii) In Schedule II at the bottom of the plaint, Khata No. 164, Survey Plot No. 95 area 10 katha 12 dhurs should be added as joint family property.

5. First two amendments are formal in nature. So far third amendment is concerned, there is prayer for addition of a plot on the ground that it is a joint family property.

6. There is no dispute that so far prayer for amendment is concerned, that can be allowed even at the appellate stage. In a suit for partition, every effort should be made to resolve all the disputes relating to partition so that the party may not be dragged to another litigation for one matter. In that view of the matter, we are of the view that the third amendment will also not change the nature of the suit nor will take the Defendants-Appellants by surprise.

7. In that view of the matter, all the three amendments sought for by the Plaintiffs-Respondents are allowed. However, in view of the serious objection raised by the Defendants-Appellants with regard to addition of the plot on the ground that that was not the joint family property, the Court hearing the appeal may consider to call for separate finding from the Court below after giving the parties opportunity to adduce additional evidence.

In the result, this appeal is allowed and the impugned order is set aside.