

District & Addl. Sessions Judge-II, Begusarai.

Present: Sanjay Kumar-III

Title Suit No.- 05 of 2022

(Arising out of Probate Case No.- 13 of 2021)

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Shyamla Devi.....Plaintiff

Vs.

Smt. Bimli Devi.....Defendant.

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Appearance :
 For the plaintiff : Sri Sudhakar Prasad, Adv.
 For the O.Ps : Sri Ranjan Kumar Prasad, Adv.

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10.07.2025

1. A petition dated 19.06.2024 was filed on behalf of the petitioner under Order 6 Rule 17 read with Section 151 of the C.P.C. Its rejoinder was filed on 08.10.2024. In its petition, it was prayed that para 09(a) is required to be inserted as due to certain typographical errors the same could not be inserted in the original Probate Petition.

2. In its petition, the learned counsel for the petitioner has submitted that unfortunately due to typographical error and misconception of law, a whole paragraph has been left to be added in the plaint, thus, it is desirable that para 9(a) shall be allowed to be added. The proposed amendment was with regard to death of the testator and leaving behind her legal heirs namely Samla Devi and Bimla Devi. Besides the extent of 1/3rd property of her deceased mother Smt. Maya Devi. According to the learned counsel the aforesaid amendment is nothing but expression of facts already narrated in probate application and thus would not cause any prejudice to any of the party. Since, there was a typographical error and mistake, misconception of law for which the petitioner shall not be allowed to suffer. With such prayer, the learned counsel has prayed that the aforesaid petition be allowed and he be permitted to incorporate the proposed amendment.

3. In its rejoinder, the learned counsel has submitted that the petitioner dated 28.05.2024 was not maintainable either in law and facts. The provision of law that is Order 6 Rule 17 of C.P.C in which the petition was filed is not maintainable as this suit was guided by Indian Succession Act, 1925. The proposed amendment has filed is vague, fruitless, fallacious and malicious. Lastly, this plaintiff has filed only to delay the disposal of the suit.

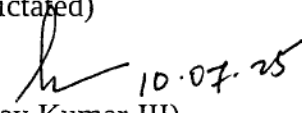
4. Heard and considered the submission of the parties, there is no doubt that earlier this suit was filed as probate petition no.- 13/2021 which was converted to Title Suit No.- 05/2022. Thus, the prayer of the petitioner is that due to typographical error, a whole paragraph was not incorporated in the original probate petition. The contents of the new paragraph proposed to be amended contents vital facts with regard to the real fact of the case. The learned counsel for the opposite party has made an objection that it was filed in the wrong provision of law but this court finds that, it is a well settled legal principle that a petition filed under the incorrect provision of law will not be dismissed simply because it was filed under the incorrect provision of law and if its contents are related to the suit's fact. No other material objection has been brought on record by the opposite party. It is also a settle principle of law that the court's must endeavor to decide a suit only after considering all the facts brought on record by both the parties and thereafter decides on merit.

For this reason, this court is of the view that the petition should be allowed for the just and proper decision of the case. However, it imposes Rs/- 500 as a cost upon the petition payable to the opposite party.

Accordingly, this petition is allowed.

Let the record put up on 10.09.2025 for further step.

(Dictated)

 10.07.25
(Sanjay Kumar-III)

District & Addl. Sessions Judge,
Begusarai.
10.07.2025