

In the Court of Civil Judge (Senior Division) – I, Patna City
Title Partition Suit No. 135 of 2014

Smt. Renuka Sharma..... Plaintiff

vs.

Vijay Narayan Sharma (Deceased) (**Through Lrs.**) & Others..... Defendants

Dt-20/06/2026

Order on Petition under Order VI Rule 17 read with Section 151 of the Code of
Civil Procedure, 1908

Heard Learned counsel for the plaintiff and learned counsel for the contesting defendants (defendant nos. 1, 1A, 1B and 3) heard. Perused the amendment petition dated 12.02.2026, the rejoinder filed by the contesting defendants and the record of the case.

Brief Facts

The plaintiff filed the present partition suit in the year 2014 claiming 1/7th share in the ancestral and joint family properties of Late Kumar Narayan Singh @ Kumar Narayan Sharma as described in Schedule-I of the plaint. By the present petition under Order VI Rule 17 C.P.C., the plaintiff seeks two categories of amendments: (i) substitution of "1/5th share" in place of "1/7th share" wherever mentioned in the plaint and the relief portion, consequent upon the expunction of Defendant No. 5 (the mother of the plaintiff) and Defendant No. 6 (the unmarried sister of the plaintiff) from the array of parties vide order dated 25.03.2025, both having died during the pendency of the suit; and (ii) substitution of the existing Schedule-I with a detailed New Schedule-I containing fuller and more specific descriptions and particulars of the ancestral and joint family properties, including properties whose details were allegedly not fully known at the time of filing of the suit in 2014 and came to the knowledge of the plaintiff only subsequently during the pendency of the suit.

The plaintiff submits that the trial has not yet commenced and issues have not been framed. The contesting defendants oppose the petition contending, inter alia, that: (a) the amendment petition is belated and filed to delay the proceedings; (b) the New Schedule-I introduces properties already partitioned among the male co-sharers during the lifetime of the father, prior to the statutory cut-off date of 20.12.2004; (c) some properties in the New Schedule-I are self-acquired properties of the defendants; (d) the amendment changes the fundamental nature and character of the suit; (e) the properties are described without boundaries, which is a legal infirmity; and (f) the plaintiff has failed to demonstrate due diligence.

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Points for Consideration

(i) Whether the amendment seeking substitution of 1/5th share in place of 1/7th share is liable to be allowed?

(ii) Whether the proposed New Schedule-I is liable to be permitted by way of amendment of the plaint?

Discussion and Findings

Point (i) Change of share from 1/7th to 1/5th: It is not in dispute that Defendant No. 5 and Defendant No. 6 stood expunged from the array of parties by order dated 25.03.2025 consequent upon their deaths during the pendency of the suit. Their legal representatives (Defendant Nos. 1 to 4 and the plaintiff herself) were already on record. When two of the original seven co-heirs cease to be separately represented and their shares devolve upon the remaining parties, the arithmetic of partition necessarily stands altered. The substitution of 1/5th share in place of 1/7th share is plainly a consequential and arithmetically necessitated correction. It neither introduces a new cause of action nor changes the nature or character of the suit. The contesting defendants have raised no substantive objection to this limb of the amendment. Accordingly, this amendment is unconditionally liable to be allowed.

Point (ii) — Amendment of Schedule-I (New Schedule-I): Order VI Rule 17 C.P.C. provides that the Court may at any stage allow either party to alter or amend its pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The proviso to Rule 17 qualifies this power: after commencement of trial, no application for amendment shall be allowed unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

On record, it is stated and not effectively controverted that the trial has not yet commenced and issues have not been framed in the present suit. The proviso to Order VI Rule 17 is therefore not attracted and the Court is required to apply the general principle of allowing amendments that are necessary for determining the real controversy between the parties.

The settled legal position on amendment of pleadings is that courts should be liberal in granting amendments before commencement of trial, particularly in partition suits

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where the complete details of joint family properties may not be fully known to all co-heirs. Mere delay in making an amendment application is not, by itself, a sufficient ground for rejection, provided no irreparable prejudice is caused to the opposite party. The question is whether the amendment seeks to introduce a genuinely different or inconsistent cause of action, or merely supplies better particulars and fuller descriptions of properties already broadly described in the original plaint.

On examining the original Schedule-I of the plaint and the New Schedule-I annexed to the amendment petition, this Court finds that the New Schedule-I substantially relates to the same areas and localities (Mohalla J.N. Singh Lane/Choudhary Tola, Mauja Sandalpur, Mauja Ranipur, and Mokama-Ghoswari) that were broadly mentioned in the original Schedule-I. The New Schedule-I provides specific holding numbers, plot numbers, survey numbers, khata numbers, areas, ward and sheet numbers. This is in the nature of supply of fuller particulars and a more specific description of properties already broadly claimed. It also includes additional parcels of property in the same localities which the plaintiff claims were not within her knowledge at the time of filing of the suit, the documents being in the custody of the defendants.

The contesting defendants' objection that the properties in the New Schedule-I were partitioned among the co-sharers prior to 20.12.2004 and that some are self-acquired properties of the defendants, these are defences on merits which go to the proof of the plaintiff's case after amendment, and cannot be a ground for refusing the amendment itself at the threshold. The question whether an oral/khangee partition effected prior to 20.12.2004 is valid and binding upon the female Class-I heirs including the plaintiff, and whether such partition is recognised under the proviso to Section 6(1) of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005, are weighty questions of law and fact that can only be determined at trial after framing of issues. These contentions of the defendants are kept open for adjudication at the appropriate stage.

Regarding the objection that the properties are described without boundaries, this is a deficiency in the schedule which the plaintiff may supply by way of a more complete description in the amended plaint. It cannot be a ground for wholesale rejection of the amendment petition.

This Court also notes that the amendment does not change the nature of the suit, which remains a partition suit in respect of ancestral and joint family properties. The plaintiff has not sought to convert the suit into one of a different character. No irreparable prejudice will be caused to the defendants since they shall have liberty to file an

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additional written statement in response to the amendments. The defendants are already in possession of the very documents sought to be brought on record and are fully aware of the nature of the properties.

For the foregoing reasons, both points are answered in favour of the plaintiff. The amendment petition is liable to be allowed, subject to costs.

Order

The petition under Order VI Rule 17 read with Section 151 C.P.C. is hereby **allowed** subject to the following terms:

1. The plaintiff shall amend the plaint incorporating (a) the substitution of "1/5th share" in place of "1/7th share" wherever occurring in the plaint and the relief portion; and (b) the New Schedule-I in place of the existing Schedule-I be filed, within **fourteen (14) days** from today.
2. Upon filing of the amended plaint, the contesting defendants shall be at **liberty to file an additional written statement** in response to the amendments within thirty (30) days thereafter.
3. All **rights and contentions** of the defendants, including their plea regarding oral/khatee partition prior to 20.12.2004, the nature of the properties, third-party rights and the plea of due diligence, are expressly kept **open** and shall be adjudicated at the appropriate stage.
4. The amendment shall relate back to the date of the original plaint in the manner provided by law.

Date: **20**.06.2026



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Patna City, Patna