

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.2199 of 2017**

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1. Digri Mahto @ Umashankar Singh and Ors S/o late Sri Narayan Mahto@ late Shiv Narayan Singh
2. Bachcha Kumar @ Virat Gaurav Minor
3. Bachchi Kumari @ Dipika Kumariminor
4. Vijay Laxmi @ Vijay laxmi Kumari Minor Petitioner no. 2 to 4 are minor son and daughter of Digri Mahto @ Umashankar Singh and under their n
5. Shima Kumari D/o Digri mahto@ Umashankar Singh
6. Pratima Kumari D/o Digri Mahto@ Umashankar Singh
7. Purnima Kumari@Munni Kumari D/o Digri mahto@ Umashankar Singh
8. Anand Kumar @ Santara S/o Digri Mahto@ Umashankar Singh All 1 to 8 are resident of Village-Chapatahi, P.S., Piro, District Bhojpur at Ara.
9. Chinta Devi @ Chintariya Devi D/o Sri Narayan Mahto, W/o Manager Mahto R/o Village- chapatahi, P.S. Piro, District- Bhojpur at Ara, at Present R/o Village- Pasaur, P.S. Charpokhari, District Bhojpur at Ara.

... .. Petitioner/s

Versus

- 1.1. Manoj Kumar Son of Late Kunti Devi, R/v Chapatahi, P.S. - Piro, District-Bhojpur at Ara at present R/o village Dharauli, P.S. Bagen (Brahampur), Dist. - Buxar.
- 1.2. Santosh Kumar Son of Late Kunti Devi, R/v Chapatahi, P.S. - Piro, District-Bhojpur at Ara at present R/o village Dharauli, P.S. Bagen (Brahampur), Dist. - Buxar.
- 1.3. Mukesh Kumar Son of Late Kunti Devi, R/v Chapatahi, P.S. - Piro, District-Bhojpur at Ara at present R/o village Dharauli, P.S. Bagen (Brahampur), Dist. - Buxar.
- 1.4. Ravi Kumar Son of Late Kunti Devi, R/v Chapatahi, P.S. - Piro, District-Bhojpur at Ara at present R/o village Dharauli, P.S. Bagen (Brahampur), Dist. - Buxar.
2. Ranjit Kumar S/o Digri Mahto@ Umashankar Singh
3. Rajendra Prasad @ Lalin Kumar S/o late Shyam Lal Mahto
4. Tapeshwar Mahto S/o late laldhari Mahto
5. Ram Ekbal Mahto S/o late Laldhari Mahto
6. Kripal Mahto S/o late Laldhari Mahto Respondent no. 1 to 6 R/o Village-chapatahi, P.O. Chhawarahi, P.S. Piro, District Bhojpur at Ara.
7. Devanti Devi D/o late Shyam Lal Mahto, W/o Hira Lal Mahto
8. Shanti Devi D/o late Shyam Lal Mahto, W/o Babu Lal Mahto Both 7 and 8 are R/o Village- chapatahi, P.S. Piro, District- Bhojpur at Ara , at Present Depura tola, P.O. Anirpur, P.S. Nawanagar, District Buxar.



9. Malti Devi D/o late Shyam Lal Mahto, W/o Radhey Shyam Mahto R/o Village- chapatahi, P.S. Piro, District- Bhojpur at Ara at Present R/o Village- Baraki Haradiya, P.O. Baraki Haradiya, P.S. Jagdishpur, District Bhojpur at Ara.
10. Shushila Devi D/o late Shyam Lal Mahto, W/o Mantu Mahto R/o Village- chapatahi, P.S. Piro, District- Bhojpur at Ara, at Present R/o Village- Jamuao, P.O. Jamuao, P.S. Piro, District Bhojpur at Ara.
11. Pan Lashiya Devi W/o Chiteshwar Mahto R/o Village Atapur, P.O. Atapur, P.S. Jagdishpur, District Bhojpur at Ara.
12. Lallan Mahto S/o late Ram Gahan Mahto
13. Baban Mahto S/o late Ram Gahan Mahto Both 12 and 13 R/o Village- Belwaniya, P.O. Belwaniya Bihya, District Bhojpur at Ara.
14. Sri Ram Singh S/o Yadu Nandan Singh
15. Surendra Singh S/o Yadu Nandan Singh
16. Ajay Singh S/o Yadu Nandan Singh All 14 to 16 are R/o Village- Chapatahi, P.S. Chhawahari, P.S. Piro, District Bhojpur at Ara.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ramchandra Singh, Advocate  
Mr. Mahendra Prasad, Advocate  
Mr. Shankar Kumar, Advocate  
Mr. Jitendra Kumar Singh, Advocate  
For the Respondent/s : Mr. Ravindra Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH**  
**ORAL JUDGMENT**

**Date : 13-01-2026**

Heard learned counsel for both the parties.

The present civil miscellaneous has been filed for setting aside the impugned order dated 24.08.2017 passed by learned Sub-Judge, Piro, Bhojpur in connection with Title Suit No. 490 of 2006 whereby and whereunder the petition dated 20.11.2013 for appropriate order on the point of *res judicata* has has been rejected and held therein that



the issue of *res judicata* shall be decided along with other issues of the suit.

Learned counsel for the petitioners submits that the petitioners being defendants in Partition Suit No. 490 of 2006 have filed two sets of petitions dated 19.06.2013 and 20.11.2013 pleading therein that the present suit is barred by *res judicata* since the matter has been decided previously in Partition Suit No. 51/67 of 1961-62.

Learned counsel for the petitioner further submits that the suit properties mentioned in the present suit with respect to Old Khata No. 229 was already suit property in Partition Suit No. 51/67 which has been decided on merits previously, hence the present suit is barred by the principle of *res judicata*. He also submits that parties are also same.

During course of argument, learned counsel for the petitioners has submitted that prior to filing of this Suit, the father of the plaintiffs has died who had filed Title Suit No. 314 of 1999 but from the impugned order, it appears that relief No. 1 of present suit was not decided in the above suit also. So, at this score also, the petition of plaintiffs is also not tenable.



Learned counsel appearing on behalf of the respondents submits that apart from Old Khata No. 229, there are another old khata also which are Old Khata No. 19 and 230 having old plot nos. 335 and 1068.

From perusal of the reliefs sought for in the plaint of Suit No. 490/2006, it appears that first relief was sought for that the judgment and decree passed in Title Suit No. 51/67 of 1961-62 be declared as illegal, inoperative, fraudulent and not binding upon the plaintiffs and the same be declared as null and void.

After taking into consideration the suit properties mentioned in above two suits i.e. Partition Suit No. 51/67 of 1961/62 and Partition Suit No. 490 of 2006, it appears that only ten plots of C.S. Old Khata No. 229 is tallying with earlier Partition Suit No. 51/67 and rest two plots pertaining to Khata No. 19 and 230 did not find mention in earlier Suit No. 51/67. So, it cannot be said that the entire suit properties of this case was decided in earlier suit i.e. Partition Suit No. 51/67. Moreover, the first relief sought for in the present plaint has not ever been decided in the earlier suit. So, the principle of *res judicata* does not apply



in this case and learned Trial Court has rightly observed that the issue of *res judicata* shall be decided along with other issues of the suit.

Accordingly, I do not find any illegality and impropriety in the impugned order dated 24.08.2017 passed by learned Sub-Judge, Piro, Bhojpur in connection with Title Suit No. 490 of 2006.

Hence, Civil Miscellaneous No. 2199 of 2017 stands dismissed.

**(S. B. Pd. Singh, J)**

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/01/2026
Transmission Date	N/A

