

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.125 of 2011

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Md. Kamruddin Khan @ Kamruddin Khan, Son of Late Makbul Khan,
Resident of Village, P.S. and P.O.- Habibpur, District-Bhagalpur.

.... Petitioner.

Versus

1. The State of Bihar.
2. a. Talmu Zamu @ Lucky.
b. Samar.
c. Sibli.
d. Beauty.
e. Sweaty.
All resident of village, P.S. and P.O. –Habibpur, District-Bhagalpur.
3. Bibi Ajmati Khanam, Wife of Md. Kadir Kham, Resident of Village,
P.S. and P.O.- Habibpur, District-Bhagalpur .

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Manish Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

17 09-11-2015

Heard the learned counsel for the petitioner.

The present revision application has been filed by one of the defendants assailing the impugned order dated 05.04.2011 by which the learned court below has dismissed the suit filed by the plaintiff in default.

The learned counsel for the petitioner has submitted that this defendant has filed a petition under Order 1 Rule 10 C.P.C. praying for his transposition in place of the plaintiff but the learned court below has passed the impugned order without disposing of the said petition considering the prayer of this petitioner for transposition.

After considering the submissions and perusal of the impugned order, it is manifest that the suit has been dismissed for want of prosecution. The learned counsel for the petitioner has accepted that the present petitioner was defendant no.2 in the suit and the relief in the suit was also prayed against the interest of this defendant in the suit property. In this view of the matter, this Court does not find substance in the submission on behalf of the petitioner that the learned court below ought to have considered and allowed his prayer for transposition of the plaintiff in the suit. It is evident that the petitioner-defendant against whom the relief was prayed in the suit could not have been transposed in place of the plaintiff and pursued the suit as against himself. In that view of the matter, this Court does not find any error of jurisdiction or material irregularity in the impugned order.

The revision application is, accordingly, dismissed with liberty to the petitioner to pursue the remedy available to him in accordance with law.

(V. Nath, J)

Nitesh/-

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