

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Revision No.167 of 2013**

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Mangal Singh Son Of Late Hari Nandan Singh Resident Of Village - Pahsara, P.S.  
- Nawkothi, District - Begusarai.

.... .... Petitioner

Versus

1. Ramdeo Singh Son Of Late Harakh Singh Resident Of Village - Pahsara, Pargana - Bhusari, P.S. - Nawkothi, Sub-Division - Manjhaul, District - Begusarai.
2. Ramchandra Singh Son Of Late Harakh Singh Resident Of Village - Pahsara, Pargana - Bhusari, P.S. - Nawkothi, Sub-Division - Manjhaul, District - Begusarai.
3. Shivchandra Pd. Singh Son Of Late Harakh Singh Resident Of Village - Pahsara, Pargana - Bhusari, P.S. - Nawkothi, Sub-Division - Manjhaul, District - Begusarai.
4. Ram Shankar Singh Son Of Late Harakh Singh Resident Of Village - Pahsara, Pargana - Bhusari, P.S. - Nawkothi, Sub-Division - Manjhaul, District - Begusarai.
5. Ram Sagar Devi Wife Of Ram Dular Singh Resident Of Village - Ramdiri, Pargana Malki, P.S. And District - Begusarai.
6. Mithilesh Devi Wife Of Kumar Shailendra Mishra Resident Of Village - Gokhle Nagar, Bisanpur, Pargana - Masjidpur, District - Begusarai.
7. Subodh Kumar Singh Son Of Late Ganesh Singh Resident Of Village - Pahsara, P.S. - Nawkothi, District - Begusarai.
8. Ram Pravesh Singh Son Of Late Ganesh Singh Resident Of Village - Pahsara, P.S. - Nawkothi, District - Begusarai.
9. Chunchun Singh Son Of Late Ganesh Singh Resident Of Village - Pahsara, P.S. - Nawkothi, District - Begusarai.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. BISHWA NATH CHAUDHARY  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 03-08-2016**

**V. Nath, J.**

Mr. B.N.Chaudhary, learned counsel for the petitioner is permitted to make correction in the provision of law as mentioned in the interlocutory application (I.A.No.4265/2014).

Heard Mr.Chaudhary, learned counsel for the petitioner in the interlocutory application (I.A.No.4265/2014) which

has been filed for substitution of the heirs and legal representatives of the deceased opposite party no.4.

After considering the averments made in the said interlocutory application, the interlocutory application is allowed and the heirs and legal representatives of the deceased opposite party no.4, as mentioned in paragraph-2 of the application are substituted in his place after expunging his name from the revision application.

Heard Mr.Chaudhary, the learned counsel for the petitioner on merits of this revision application.

The petitioner who is defendant in the suit for partition has filed this revision application assailing the impugned order passed in Miscellaneous Case No.15/1993 restoring the T.S.(Partition) No.42/1978.

Mr. Chaudhary, the learned counsel for the petitioner has strongly submitted that the learned court below has committed material irregularity in passing the impugned order only on the ground that the plaintiff has now become ready to contest the suit and further without considering the evidence as led by the defendants. The learned counsel for the petitioner has elaborated that earlier the suit was filed by Mostt. Dhana Kuer for partition but she died during the pendency of the suit and was substituted by Mostt. Kajima Devi who later on took the stand before the court that she did not want to

pursue the suit. It has been pointed out that in this situation the learned court below allowed the prayer of the defendant nos. 1 to 4 to be transposed in the category of the plaintiffs but later on the transposed plaintiffs also left the pairvi of the suit and the suit came to be dismissed for default by order dated 29.04.1993. It has therefore been submitted that the revision application is fit to be allowed and the impugned order is fit to be set aside.

After considering the submissions and perusal of the impugned order, it transpires that the suit has been filed for partition of the suit premises and apparently the plaintiffs and defendants at one stage appeared in the suit but later on the plaintiffs left the pairvi in the suit leading to its dismissal for default. It further transpires that the petition for restoration of the suit was filed within limitation and by the impugned order the learned court below after considering the facts and circumstances allowed the prayer for restoration of the suit after imposing cost of Rs.3000/-. During the course of submissions, it could not be shown on behalf of the petitioner as to how the petitioner will suffer material prejudice if the suit is disposed of after trial on merits. The matter manifestly concerns the right over immovable property and such matters as far as possible should be decided on merits after contest.

After considering the submissions and the perusal

of the impugned order, this Court finds that the impugned order is not fit to be interfered as there is no error of jurisdiction or material irregularity.

Accordingly, this revision application is dismissed.

**(V. Nath, J)**

Nitesh/-

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