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1. Shre
resident

.... Petitioners.

1. Shree Narain Narain Bharthuar, Son of Late Surya Narain Bharthuar, All are resident of Mohalla- Katchhari Raod, Barh, Post Office and Police Station- Barh, District- Patna. at present 3124, Alok Bihar, Noida, Sector-50, Uttar Pradesh, Pin- 201301.
2. Shri Shardendu Sinha
3. Sri Bhartendu Narain Singh Both are sons of Late Purnendu Narain Sinha, Resident of Rose Garden, First Floor, Kidwaipuri, Boring Road, Patna, Police Station- Kidwaipuri, Town & District- Patna.
4. Sri Jai Prakash Sinha, Son of Late Surya Narain Bharthuar, C.W.B.S.R.T.C., Veterinary College, Police Station- Shiekhpora, District- Patna.

.... Opposite parties.

For the Petitioner/s : Mr. Shashi Dhar Jha
For the Respondent/s : Mr.

2 02-03-2016 Heard Mr.Jha, learned counsel for the petitioner
both in the interlocutory application (I.A.No.1415/2016) and also
on merits of this revision application.

By the impugned order the learned court below has allowed the prayer of the plaintiff in a suit for partition to withdraw the suit after imposing a cost of Rs.8,000/- to the defendants.



Mr.Jha, the learned counsel for the petitioner has submitted that the learned court below has acted without jurisdiction in passing the impugned order permitting the plaintiff to withdraw the suit. It has been contended that in a suit for partition every party is plaintiff and defendant and therefore the plaintiff could not have the right to withdraw the suit. It has, however, been accepted by the learned counsel that the defendant-petitioners has challenged the entitlement of the plaintiff to have a share in the suit property and has claimed his exclusive title and possession over the same. It has been argued that the plaintiff after withdrawal has started selling away the suit property which in fact belongs exclusively to the defendant-petitioners.

After perusing the impugned order and considering the submissions, it is manifest that the sole plaintiff filed a suit for partition wherein the defendant-petitioners have appeared and contested the claim of the plaintiff for partition claiming the suit property to be their exclusive property. It is well settled that the plaintiff is the dominus litis in the suit and has absolute right to withdraw the suit in view of the provisions of Order 23 Rule 3 C.P.C which is circumscribed only by the conditions mentioned therein. The defendant-petitioner might have an exclusive claim over the suit property and they might have been

aggrieved by the alienations made by the plaintiff after the withdrawal of the suit but that cannot be a ground to interdict the impugned order as the defendant-petitioners have independent cause of action to proceed against the plaintiff or any other person who might have derived interest from the plaintiff for the suit property by seeking appropriate remedy including filing a suit in accordance with law. This Court, therefore, does not find that the learned court below has committed error of jurisdiction or illegality in allowing the prayer of the plaintiff to withdraw the suit.

The revision application is, accordingly, dismissed with aforesaid observation.

(V. Nath, J)

Nitesh/-

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