

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

**Civil Writ Jurisdiction Case No.9677 of 2013**

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Sri Basudeo Mishra, S/O Late Yamuna Mishra, Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur At Present Residing At Mohalla- Shankar Nagar, P.O- Ramana, P.S- Mithanpura, Town, Muzaffarpur, District- Muzaffarpur.

.... .... Petitioner

Versus

1. Sri Anand Bhusan Mishra, S/O Late Satyadeo Mishra, Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
2. Reeta Mishra, W/O Sri Basudeo Mishra, Resident Of Village- Rajwara @ Manika Bishunpur Chand, At Present Residing At Mohalla- Shankar Nagar, P.O- Ramana, P.S- Mithanpura, Town, District- Muzaffarpur, District- Muzaffarpur, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
3. Ratna Sagar Devi W/O Late Satyadeo Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
4. Smt. Soni Kumari W/O Sri Jitendra Kumar Singh And D/O Late Satyadeo Mishra Resident Of Village- Manifulkanha, P.O- Manifulkanha, P.S- Kanti, Anchal- Kant, District- Muzaffarpur.
5. Smt. Suman Kumari W/O Ranjit Kumar And D/O Late Satyadeo Mishra Resident Of Village- Larua, P.O- Larua, P.S- Sarai Ranjan Anchal, District- Samastipur.
6. Smt. Beena Devi W/O Late Binay Kumar Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
7. Sri Subhash Kumar S/O Late Binay Kumar Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
8. Sri Vikash Kumar S/O Late Binay Kumar Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
9. Moni Kumari D/O Late Binay Kumar Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
10. Shweta Kumari D/O Late Binay Kumar Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division, East Muzaffarpur, District- Muzaffarpur.
11. Mostt. Radha Mishra W/O Late Krishnadeo Mishra Resident Of Village- Rajwara @ Manika Bishunpur Chand, P.O- Musahari, P.S- Musahari, Sub Division- East Muzaffarpur, District- Muzaffarpur.
12. Anjana Mishra W/O Jitendra Ojha And D/O Late Krishnadeo Mishra Resident Of Village- Khabra, P.O- Khabra, P.S- Sadar Town, Muzaffarpur, District- Muzaffarpur.

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr.

For the Respondents : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL JUDGMENT**  
**Date: 01-07-2016**

Heard learned counsel for the petitioner.

Virtually it happens to be lapses at the part of the Court who, inspite of having a petition on 06.08.2005, did not pass any order. Furthermore, inspite of having presence of defendant no. 3 since before and further, after his death, the information did not come before the Court at the end of learned counsel representing defendant no. 3 in terms of Order 22 Rule 10 of Code of Civil Procedure is another circumstance which could have been seen by the learned Lower Court while perceiving the petition dated 06.08.2005. Furthermore, the nature of the suit also speaks about further latitude being a partition suit wherein presence of plaintiff as one of the heir is there and as such, right to sue survives and in the aforesaid background, having at the stage of argument, the learned Lower Court rightly allowed the petition of substitution.

Accordingly, the instant petition is rejected.

**(Aditya Kumar Trivedi, J.)**

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