

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Revision No.11 of 2016**

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1. Bhola Mandal

2. Brahmdeo Mandal Both are sons of Late Buchay Mandal Resident of village - Ranitalab, P.O. - Fatehpur, Police Station - Industrial Area, Barari, District - Bhagalpur. .... Petitioner/s

Versus

1. Hari Prasad Mistri
2. Smt. Shanti Devi
3. Smt. Shyama Devi
4. Smt. Tetari Devi
5. Smt. Sarswati Devi All Sons and Daughters of Late Shital Mistri
6. Ghanshyam Mistri (Bishwakarma)
7. Sitaram Mistri (Bishwakarma)
8. Kailash Prasad (Bishwakarma)
9. Hari Lal Bishwakarma
10. Rekha Devi All Sons and Daughters of Late Ramrati Devi Resident of Village - Rani Talab, Police Station - Sabour (Industrial Area), District - Bhagalpur.
11. Mostt. Bharti Devi Wife of Late Jai Prakash Mistry
12. Anjani Devi D/o Late Jai Prakash Mistry
13. Manu Devi D/o Late Jai Prakash Mistry
14. Manoj Kumar Bishwakarma S/o Late Jai Prakash Mistry
15. Anoj Kumar Bishwakarma S/o Late Jai Prakash Mistry
16. Gopal Bishwakarma S/o Late Jai Prakash Mistry
17. Shambhu Bishwakarma S/o Late Jai Prakash Mistry Residents of Jhausagarhi, Refugee Colony, Police Station - Jhausagarhi, District - Deoghar.
18. Smt. Parol Devi wife of Ghoran Mistri Resident of Bhawanipur, Police Station - Naugachhiya, District - Bhagalpur.
19. Smt. Shakuntala Devi wife of Ramji Mistri R/o Bhousaganj, P.O., P.S. and District - Lakhisarai.
20. Lukhari Devi Wife of Suresh Mistri Resident of Village - Goshganj, Police Station - Lakhisarai, District - Lakhisarai.
21. Smt. Jhalo Devi Wife of Yogendra Mistri Resident of Pahleza, Police

Station - Pahleza, District - Patna.

22. Suresh Prasad Choudhary son of Brij Lal Choudhary Resident of village  
- Monochak, Police Station - Kahalgaon, District - Bhagalpur.

23. Smt. Dropadi Devi Wife of Om Prakash Mandal

24. Om Prakash Mandal Son of Rupan Mandal Both are residents of Village  
- Fatehpur, Tola Rani Talab, Police Station - Sabour, District -  
Bhagalpur. .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Anil Kumar Singh  
For the Respondent/s : Mr.

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

2      02-02-2016      Heard the learned counsel for the petitioners on the  
point of admission as well as the condonation of delay.

This revision application has been filed against the order passed by the executing court below rejecting the prayer on behalf of the petitioners for stay of the further proceeding of the execution case. As there has been delay of 84 days in filing this revision application, the interlocutory application (I.A. No. 860 of 2016) has been filed on behalf of the petitioners praying for condonation of delay.

The learned counsel for the petitioners has made his submission both on merits of the revision application and also in support of the prayer for condonation of delay.

After considering the submission on the point of limitation and in view of the averments made in the interlocutory

application (I.A. No. 860 of 2016), the delay in filing this revision application is condoned.

The facts have not been disputed that a partition suit no. 257 of 1986 was filed wherein these petitioners were also impleaded as defendants and the sale deed executed by the defendant no. 1 of that suit in favour of these petitioners was also under challenge. The said suit was decreed granting relief for half share to the plaintiffs in the suit property and further holding that the sale deed executed by the defendant no. 1 in favour of the petitioners (defendants in that suit) would be valid to the extent of the share of their vendor (defendant no. 1). No appeal was filed against the said decree. The final decree was accordingly prepared carving out the share of the plaintiffs in the suit property. The plaintiffs filed the T. Ex. Case No. 01 of 2004 for execution of the final decree and were put in possession over the land of their share in accordance with the decree.

The petitioners, in the meantime, filed T.S. No. 215 of 2002 for declaration of their title over their purchased land and for further declaration that the defendants (plaintiffs of T.S. No. 257 of 1986) had lost their right by lapse of time. After the decree in this suit, the petitioners filed petition in T.Ex. Case No. 01 of 2004 for excluding their purchased property from the execution



case as they were in possession over the same. By order dated 22.11.2010 (Annexure-2) the executing court rejected the petition. The C.W.J.C. No. 8232 of 2011 filed by the petitioners against the order by the executing court also stood disposed of with direction to the executing court not to exceed the limitation of the judgment and decree under execution. Again another petition was filed by the petitioners before the executing court praying for the same relief. This petition was also dismissed by order dated 21.07.2012 (Annexure-4) by the executing court, and the C.W.J.C. No. 19970 of 2012 filed by the petitioners against this order also came to be dismissed by this court on 11.12.2014. It appears that the petitioners again filed petition on 01.03.2014 before the executing court now praying to carve out the land purchased by them from land of the share of their vendor defendant 1<sup>st</sup> party. By the impugned order the executing court has rejected the petition holding that the proceeding of execution has been complete after delivery of possession to the plaintiff-decree holders.

After considering the submissions, and the aforesaid facts in the background, it is manifest that the execution proceeding for execution of the final decree has been closed after full satisfaction recording the fact of delivery of possession in favour of the decree holder. This fact has been admitted by the

petitioners as is apparent from the impugned order. The fact that the petitioners have obtained a decree in their favour in another suit would not by itself be sufficient for the executing court to recall the order of delivery of possession and that too when a regular appeal is admittedly pending against the said decree. The prayer of the petitioners before the executing court to carve out the land purchased by them from the share of defendant 1<sup>st</sup> party is definitely misconceived and beyond the jurisdiction of the executing court. This Court, therefore, does not find any error of jurisdiction or material irregularity committed by the learned court below in rejecting the petition of the petitioner.

The revision application is, accordingly, dismissed with liberty to the petitioners to pursue the remedies which may be available to them in accordance with law.

**(V. Nath, J)**

Devendra/-

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