

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18624 of 2014**

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1. Md. Jamil @ Babu son of late Md. Rafique  
2. Ruby Khatoon wife of Md. Jamil Both petitioner No. 1 and 2 are resident of Mohalla - Nandan Bigha, P.O. and P.S. Tekari, Distt - Gaya.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.  
3. The District Magistrate, Gaya.  
4. The Deputy Collector Land Reforms, Tekari, Gaya.  
5. The Circle Officer, Tekari, Gaya.  
6. Md. Anis son of late Md. Rafique resident of Mohalla - Nandan Bigha, P.O. and P.S. Tekari, District - Gaya.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shailesh Kumar

For the Respondent/s : Mr. Sc2- Nawal Kishore Singh

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL ORDER**

5      01-11-2017                      Heard the counsel for the petitioners and counsel for the private respondents.

In this case the petitioner is challenging the order dated 02.07.2014 passed in Mutation Appeal Case No.15/M/2014.

Short fact of this case is that Md. Rafique was the common ancestor of the petitioners as well as respondent no.6. Prior to his death Md. Rafique transferred the entire land in question to his wife Bibi Jaibun Nisha through registered deed of gift and after his death Bibi Jainbun Nisha became the sole owner of the entire land left over by her husband Late Md. Rafique. As



per the claim of the petitioners, also there was none to look after the property of Bibi Jaibun Nisha, it is the petitioners who were looking after the interest of the Bibi Jaibun Nisha over the property which was gifted by her husband. Bibi Jaibun Nisha was blessed with her three sons and four daughters. Bibi Jaibun Nisha on 29.02.2008 executed a memorandum of oral gift with respect to rest part of her land in favour of the petitioner no.1, Md. Jamil and his brother, Anwar Hussain.

After her death all the share holders filed a partition suit before the Sub Judge-VI, in the District of Gaya which was registered as Partition Suit No.188 / 08 / 312 / 08. The suit was decided defining the share of the respective party and decree was prepared and after that an application was filed before the Circle Officer, Tekari, with a prayer to record their respective names in terms of the decree of the trial court. The decree was passed on the basis of the joint application filed by all the parties but the claim of the petitioners is that the signature in that application is completely forged and tampered one and they had never put their signature on that application and thus, they filed Partition Appeal No.53 of 2012 against the judgment and decree dated 20.12.2011 passed in the aforesaid Title Suit which is pending for final consideration. The Circle Officer has passed the order on the basis



of the Judgment and decree passed by the trial court. The grievance raised by the petitioners is that they were not heard before the order was passed in the mutation case.

It is well settled law that mutation does not create or extinguish any right in favour of any party but confers right to deposit rent to the revenue to the State. Share has been defined in the Judgment and decree any variation in the share made by the appellate court will govern the right and title of respective parties. In the event of any change in the share petitioners are at liberty to bring the same to the notice of the Circle Officer who will pass order in accordance with law. This Court is not giving any opinion regarding right, title and interest and it is made clear that the share will be governed only on the basis of the out come of the appellate Court's judgment and decree.

With this observation this application is disposed of.

**(Shivaji Pandey, J)**

AnilKrSinha/-

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