

## IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.103 of 2016

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Surendra Prasad Singh, Son of Jamuna Prasad Singh, R/o Village-Rajwara, P.O.-  
Barauni, P.S.-Barauni, District-Begusarai.

.... .... Petitioner

Versus

1. Surendra Thakur.
2. Vishwanath Thakur.  
Both Son of Late Rachha Thakur, R/o Village-Rajwara, P.O.-Barauni, P.S.-  
Barauni, District-Begusarai.
3. Dulari Devi @ Bachchi Devi, Wife of Late Ram Shankar Gope, R/o Village-  
Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.
4. Nanubati Devi @ Arhulwa Devi, Wife of Ram Chalitra Gope, R/o Village-  
Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.
5. (a) Ram Dev ydav.  
(b) Rama Nanad Yadav.  
(c) Mikku Yadav.  
All sons of Ram Saran Gope, R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni,  
District-Begusarai.
6. Gulabi Devi, Wife of Late Ramashray Gope.  
(a) Ram Shrest Gope.  
(b) Ram Gyan Gope.  
(c) Ramanuj Gope.  
(d) Mritunjay Gope.  
All Sons of Ramashary Gope.  
All R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.
7. (a) Nanad Kumar Sharma, Son of Late Braj Kishroe Sharma.  
(b) Manoj Sharma, Son of Braj Kishore Sharma.  
(c) Poonam Pandey, D/o Braj Kishore Sharma.  
All R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.
8. Smt. Bela Rani Sharma, Wife of Late Braj Kishore Sharma, R/o Village-  
Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.
9. Sharda Devi Wife of Late Rajendra Singh.  
(1) Kiran Kumari.  
(2) Shahsi Kumari.  
(3) Nisha Kuamri.  
All daughter of Late Rajendra Prasad Singh.  
All R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.
10. (a) Umesh Jha.  
(b) Surendra Jha.  
(c) Rajendra Jha.  
All Sons of Late Muneshwar Jha @ Bhuneshwar Jha, R/o Village-Malti P.O.-  
Barauni P.S.-Phoolawari District Begusarai.
11. Sadan Singh.
12. Sambhu Singh.  
Both Sons of Late Ram Dev Singh, R/o Babwan Gaon, P.O.+ P.S.-Barahiya,  
District-Lakhisarai.
13. (a) Shanti Devi.  
(b) Shila Devi.  
(c) Jhunjun Devi.



(d)Saraswati Devi.

All daughters of Late Sanichar Sharma, R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.

14. (a) Harey Ram Sharma.

(b)Kishore Sharma.

(c) Shri Nath Sharma.

All sons of Late Shri Dev Sharma, R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.

(d) Munni Devi.

(e) Guddi Devi.

Both D/o Late Shri Dev Sharma, R/o Village-Rajwara, P.O.-Barauni, P.S.-Barauni, District-Begusarai.

.... .... Opposite Parties.

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**Appearance :**

For the Petitioner/s : Mr. Laxmi Narayan Das

For the Respondent/s : Mr.

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

**ORAL JUDGMENT**

**Date: 10-04-2017**

Heard Mr. Das , learned counsel appearing for the petitioner.

The present revision application has been filed challenging the order by which the learned court below has allowed the prayer of the defendant in the suit under Order 9 Rule 13 C.P.C.and has set aside the ex parte judgment and decree in the suit.

Mr. Das, learned counsel for the petitioner has raised a limited submission that the learned court below could have exercised the jurisdiction only when the judgment and decree would have been passed ex parte. Elaborating the submissions, it has been contended that the defendants appeared in the suit and filed their written statement and thereafter the issues were framed and suit proceeded. It has however been not disputed by the learned counsel



for the petitioner that the defendants did not participate in the hearing of the suit and had even cross examined the witnesses of the plaintiff. There is also no averment or material either in the court below or in the present revision application that after filing of the written statement, the defendants participated in the hearing of the suit till the end. In view of this factual background, the recourse to Order 17 Rule 2 and 3 C.P.C.was to be taken and the provisions of Order 9 C.P.C. would be attracted in that situation.

This Court, therefore, does not find substance in the submission on behalf of the petitioner that the learned court below has committed error of jurisdiction or material irregularity in passing the impugned order.

The revision application is accordingly dismissed.

**(V. Nath, J)**

Nitesh/-

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