

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.774 of 2016

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1. Chandradeo Mishra, Son of Late Aklu Mishra resident of Village-
Panchhore, P.S.- Riga, District Sitamarhi.

.... Appellant/s

Versus

1. Nachari Mishra
 2. Shatrughan Mishra
 3. Bharat Mishra
 4. Sushil Mishra
 5. Anil Mishra Sons of late Mahendra Mishra
 6. Smt. Kunti Devi Daughter of late Mahendra Mishra, Wife of Shri Dhrub Narain Jha, Village+Post- Sahbazpur, P.S. Riga, District Sitamarhi.
 7. Smt. Munni Devi Daughter of late Mahendra Mishra, Wife of Shri Chandra Mohan Mishra Village- Majhaulia, P.S. Bathnaha, District Sitamarhi.
 8. Shail Devi, Wife of Harishchandra Pathak, Daughter of Late Aklu Mishra, resident of Village- Bhasar, P.S. + District- Sitamarhi
 9. Bablu Mishra
 10. Arun Mishra All sons of late Jagtran Devi, Wife of Basudeo Mishra resident of Village- Singhwara, P.S. Riga, District Sitamarhi.
 11. Kamal Kant Mishra
 12. Manoj Mishra null null
 13. Sanjeev Jha both sons of Godawari Devi, Wife of Khobhari Jha Village- Athari, p.S. Runnisaidpur, District Sitamarhi.
 14. Jaishankar Jha null null
 15. Pramod Mishra, son of Kishori Mishra, resident of Village- Panchhor, P.S- Riga, District- Sitamarhi.
 16. Pramod Kumar Verma, Son of Anand Prasad Verma (Security Officer).
 17. Arvind Kumar Srivastava (Electrician), Son of Sita Saran Srivastava.
 18. Jitendra Pandey (Security Guard), son of Kedar Pandey.
 19. Birendra Prasad Gupta (Fitter), Son of Shyam Prasad Gupta.
 20. Pawan Kumar Singh (Manufacturing Attendant).
 21. Jitendra Singh Son of Atal Bihari Singh (Security Supervisor)
- Defendants (Respondents) 6 to 11 are staffs of Distillery Unit, Riga Sugar, Company Limited, P.O. + P.S.- Riga, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Mishra, Sr. Adv.
Mr. Arvind Kumar Jha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER



5 12-03-2018 Heard both sides.

The petitioner is aggrieved by the order dated 04.07.2016 passed by the learned Additional Sub-Judge, Sitamarhi in Partition Suit No. 34 of 1999.

The petitioner is the plaintiff. The petitioner filed a petition to substitute the legal heirs of defendant nos. 3 and 4 with a petition for condoning the delay and setting aside the abatement, but the learned Sub-Judge first dismissed the petition for substitution on the ground of limitation and the fact that the petitioner had knowledge about the death of his sister, but he did not file petition for substitution of the legal heirs of his sister.

From the order impugned itself, it appears that the petitioner had filed a petition for limitation and a suit for partition in which legal heirs of the sister are necessary party and therefore, learned Sub-Judge has committed jurisdictional error and has failed to exercise jurisdiction vested in him by law.

Thus, the order dated 04.07.2016 passed in Partition Suit No. 34 of 1999 as well as order of abatement is set aside. Substitution Petition is allowed. Accordingly this Civil Misc. stands allowed.

(Prabhat Kumar Jha, J.)

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