

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.454 of 1986

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Braj Nandan Singh

.... Appellant/s

Versus

Bhagwan Pd.Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kr.Jha

For the Respondent/s : Mr. Sukumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

14 19-03-2015 Heard the learned counsel, Mr. Shambhu Prasad Yadav, on behalf of the respondent and the learned senior counsel, Mr. Anil Kumar Jha, on behalf of the appellant on the interlocutory application No.5620 of 2014.

This interlocutory application has been filed on behalf of the legal representatives of the deceased respondent No.2 for being substituted in place of the respondent No.2 on the ground that the appellant is not taking any step for substitution. The learned senior counsel on behalf of the appellant has got no objection. Accordingly, this interlocutory application is allowed. The legal representatives of the deceased respondent No.2 are substituted in place of deceased after deleting his name. All of them have appeared by filing Vakalatnama.

It appears that this First Appeal was listed for hearing and



when it was taken up for hearing on 12th March, 2015, the First Appeal was adjourned on the ground that the learned senior counsel, Mr. Anil Kumar Jha, had gone to Kolkata for medical check-up. The First Appeal is taken up for hearing today. The learned senior counsel appearing on behalf of the appellant submitted that in spite of repeated letters to the pairwikar and the appellants, no instruction has been received to press the First Appeal. The learned counsel appearing on behalf of the newly substituted respondents submitted that in fact the sole appellant, Brajnandan, has died 5-6 years ago.

From perusal of the record, it further appears that the substitution application filed by the appellant for substitution of the legal representatives of the deceased respondent No.1 has also been dismissed for non-compliance of the Court's order. Therefore, order has already been passed to the effect that the incompetency matter shall be considered at the time of final hearing.

In view of the above facts that the appeal has already been abated against the respondent No.1 and in view of the submission that the sole appellant has also died 5-6 years ago which is not disputed by the appellant, the appeal has abated against the appellant also. Now, therefore, the whole appeal is become

incompetent to proceed. Accordingly, this First Appeal is abated
as a whole and is accordingly dismissed as abated.



(Mungeshwar Sahoo, J)

Sanjeev/-

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