

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.39 of 2002

In

First Appeal No.195 of 1976

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Uma Shankar Rai & Ors

.... Petitioner/s

Versus

Shail Kumari Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Kumar Ishwar

For the Respondent/s : Mr. A.B.Mathur

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

44 30-11-2015 Heard the learned counsel for the petitioner and the learned counsel, Mr. Md. Sufia on behalf of the respondent No.45. None appeared on behalf of the other respondent.

This review application has been filed by the appellants for review of the order dated 7.8.2001 passed by this Court in First Appeal No.195 of 1976 whereby the First Appeal has been held to be incompetent as a whole and accordingly, the same has been dismissed. The learned senior counsel for the appellant submitted that on the death of respondent No.1, his legal representatives were substituted. Out of them respondent No.1(a) died and the appeal has been dismissed against the said respondent No.1(a) but the other legal representatives of the deceased respondent No.1 are already on record as respondent No.8 was the husband of respondent No.1(a) and their children are already on record. So



far respondent No.8, 24 and 26(a) are concerned, they are the defendant-respondent herein and they have not challenged the impugned Judgment and Decree. The non-contesting respondents are plaintiff respondent No.1 to 7. Moreover some heir of respondent No.8 also on record as respondent Nos.8 to 11, therefore, also the appeal will not abate. Likewise some of the heirs of respondent No.24 is concerned, is the purchaser and, therefore, no substitution was necessary as he is the purchaser from the appellant. So far 26(a) is concerned, on the death of respondent No.26, his legal representatives were substituted and out of the same, respondent No.26(a) has died, therefore, the estate of the deceased respondent No.26 is being sufficiently represented by other legal representatives. Therefore, also the appeal will not become incompetent as a whole. So far appellant No.4 is concerned, the learned counsel submitted that his name should have been deleted as he died without any issue. The learned counsel appearing on behalf of the respondent did not dispute this fact.

Perused the record. It appears that the only contesting respondents are plaintiff respondent No.1 to 7. The defendants No.8 onwards were the defendant in the Court below. They are not aggrieved by the impugned Judgment and Decree. In view of

Order 41 Rule 33 CPC, if the appeal will be allowed, the Court can pass the decree in favour of the non-appealing respondent also. If the appeal will be dismissed then also the non-appealing respondents will have no grievance because they have not challenged the impugned Judgment and Decree.

In view of the above position, in my opinion, the order dated 07.08.2001 appears to be an error apparent on the face of the record and, therefore, the order dated 07.08.2001 is liable to be reviewed accordingly. This review application is allowed and the order dated 07.08.2001 is set aside. The office is directed to list the First Appeal under the appropriate heading.

(Mungeshwar Sahoo, J)

Sanjeev/-

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