

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.235 of 2008

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Dwarika Sharan Mahto son of late Sheodutta Mahto resident of village-
Mahthu, P.S.-Obra, District-Aurangabad.

.... Appellant/s

Versus

1. Radha Ram son of late Dwarika Ram.
2. Manrajia Devi wife of late Tilak Ram both residents of village-
Mahthu, P.S. Obra, District-Aurangabad.
3. Mandodari Devi, wife of Lakhan Ram, resident of village-
Daudnagar, Tola P.S. Daudnagar, District-Aurangabad.
4. State of Government through collector, Aurangabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar
Mr. S.K.Bhatnagar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

9 16-04-2015 Nobody appears on behalf of the appellant. The
learned counsel for the respondent nos. 1 and 3 is present.

Perused the office note from which it transpires that
this appeal has abated as against deceased respondent no. 2 and
the matter has now been placed for consideration as to whether the
appeal will become incompetent after its abatement against the
respondent no. 2.

The plaintiff in the suit is the appellant in this appeal
against the judgment and decree of affirmance.

From the perusal of the judgments of both the courts

below, it transpires that the deceased respondent no. 2 was one of the defendants in the suit and has contested the suit by filing written statement. The suit has been dismissed and thereafter the appeal preferred by the plaintiff-appellant has also been dismissed. There is no material on record to show that the relief sought for in the suit was severable as against the deceased respondent no. 2, rather it appears that the claim of the plaintiff as against all the respondents was same.

In this view of the matter, after the abatement of this appeal against the respondent no. 2, the proceeding further in the appeal may result inconsistent order and decree.

As such, this appeal is held to be incompetent and is dismissed accordingly.

(V. Nath, J)

Devendra/-

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