

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.86 of 1982

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Most. Sunderwati Devi

.... Appellant/s

Versus

Gopal Rai & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lala Sachindra Kr.

For the Respondent/s : Mr. Ashok Kumar Sinha No.2
Mr. Ajoy Kumar Mathur

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

29 12-07-2016

Perused the office note dated 05.07.2016.

Heard learned counsel for the appellant as well as
learned counsel for the respondents on the office note.

It appears that the appeal has been dismissed against
respondent no.1(b).

From perusal of the record, it appears that the plaintiff-
appellant's suit for specific performance of contract has been
dismissed by the court below. In the said suit the sole defendant
was Ram Dulari Devi. During the pendency of the appeal the said
Ram Dulari Devi, who was the sole respondent, died and in her
place her legal representatives have been substituted. After
dismissal of the suit all of the respondents, who have been
substituted in place of the original defendant-respondent, have got
independent right in the property. Likewise, respondent no.1(b)

has also independent title in the property against whom the appeal has been dismissed. In other words, the judgment and decree passed by the court below dismissing the plaintiff's suit now cannot be varied, set aside or altered in absence of respondent no.1(b) as the judgment and decree became final against him. In such view of the matter at the instance of the appellant the suit for specific performance cannot be decreed as even after decree the sale deed cannot be executed by respondent no.1(b) as the judgment and decree has become final. In my opinion, the appeal has become incompetent. The plaintiff's suit for specific performance cannot be decreed for the part of the suit property excluding the interest of respondent no.1(b).

In view of the facts and circumstances of the case, this first appeal is dismissed as incompetent.

(Mungeshwar Sahoo, J)

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