

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.539 of 2016

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Md. Zulfekar & Anr

.... Appellant/s

Versus

Raj Kumar Paswan & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Durga Nand Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 05-09-2016

Heard learned counsel for the petitioners.

Perused the impugned order dated 27.02.2016 passed by Subordinate Judge-V, Darbhanga in Partition Suit No.148 of 2008 whereby the court below has allowed the substitution application filed by the plaintiff-respondent for substitution of the legal representatives of the deceased defendant no.15.

The only grievance of the petitioners is that the substitution application was time barred but the plaintiff neither filed the application for setting aside abatement and limitation application for condoning the delay but by the impugned order the court below has allowed the substitution application.

From perusal of the impugned order, it appears that this point was raised before the court below. The court below held that it is in the interest of justice to allow the substitution application and substituted the legal representatives.

In my opinion, the court has the jurisdiction to allow the substitution application and if in the order sheet it is not mentioned that the abatement is set aside then also it will mean that impliedly the abatement has been set aside. Further only substitution application has been filed, therefore, it neither caused prejudice to the petitioners nor it occasioned failure of justice. Therefore, it is not a case for interference in supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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