

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**First Appeal No.793 of 1980**

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Ranjit Kr.Singh & Ors

.... .... Appellant/s

Versus

Balram Mishra & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Kamlapati Singh  
Mr. Ravindra Kr.Singh  
Mr. Ishwari Singh

For the Respondent/s : Mr. Sanjay Kr. Srivastava  
Mr. S.K.Das

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**  
ORAL ORDER

26 24-08-2016

Perused the office note dated 23.08.2016.

It appears that respondent No.1 has died in the year 2009 but instead of direction to the appellants to file substitution application, no substitution application was filed. Therefore, on 26.02.2016 order has been passed according to Order 22 Rule 9 Sub-Rule 3 C.P.C. to the effect that the appeal has already abated against the deceased-respondent No.1.

From perusal of the record, it appears that respondent No.1 was one of the plaintiff in the court below. The suit was filed for declaration of title of the plaintiffs over the suit land and confirmation of possession and further for declaration that the defendants have got no right, title, interest and possession. The

suit has been decreed in favour of the plaintiff-respondent Nos. 1 and 2. It further appears that respondent No.1 is different and respondent 2 is different plaintiff. In other words, they are not connected to each other.

In such circumstances, in absence of respondent No.1 or his legal representatives, the impugned judgment and decree, which is in the favour of the plaintiff-respondent No.1 cannot be either set aside or altered or modified. Now, therefore, the first appeal has become incompetent to proceed. Thus, this first appeal is dismissed.

(Mungeshwar Sahoo, J)

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