

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1723 of 2016

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Sitabi Rai & Ors

..... Petitioner/s

Versus

Ram Dular Rai & Ors

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

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10-02-2016

Heard learned senior counsel, Mr. S.S. Dwivedi, for
the petitioners.

This application under Article 227 of the Constitution of India has been filed by the defendant-petitioners for setting aside the order dated 14.12.2015 passed by Sub-ordinate Judge-3rd, Bhagalpur in Title Suit No. 376 of 2005 whereby the Court below held that the suit has not abated as a whole and added the legal representatives of the deceased plaintiff Nos. 2 to 5 and defendant no.5.

It appears that partition suit was filed by the branch of two sons of Prasanna Rai claiming 2/3rd share in the suit property. The defendants represent the first son Jhari Rai. During pendency of the suit, plaintiff nos. 2 to 5 representing the branch of Gunna Rai and Bulaki Rai who both died. Defendant No.5 one of the defendants represents in branch of Jhari Rai died. Application was filed by the defendants for passing an order to the effect that suit has abated. The Court below rejected the application and held that

even if the legal representatives are not added or substituted as party, the whole suit will not be incompetent because the branches of Prasanna Rai are being represented sufficiently.

The only grievance of the petitioners is that if this procedure is followed by the Court below then Order XXII of the C.P.C will become redundant.

Perused the order passed by the Court below even if the submission of the learned counsel for the petitioners is accepted then also it can be said that Order XXII shall apply and then in that case also, the Court has the jurisdiction to condone the delay and substitute the legal representatives. In other words the legal representatives have been brought on record whether under Order XXII or under Order I Rule 10 C.P.C. it is not material. Therefore, the Court below has only added legal representative recording a finding that all branches are sufficiently represented by the other defendants or plaintiffs. There is no question of interference of the impugned order in exercise of supervisory jurisdiction arising. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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