

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6941 of 2016

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Sanjay Kumar Gupta & Ors

.... Petitioner/s

Versus

Gyanendra Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 04-05-2016

Heard learned counsel, Mr. N.C. Verma, appearing
for the petitioners.

2. By the impugned order dated 10.03.2016, the
learned Sub-Judge-IV, Danapur, allowed the substitution
application in Title Partition Suit No. 78 of 1993.

3. The objection of the petitioners is that no limitation
application was filed nor any prayer was made for condoning
the delay nor any explanation was there, nor the court below
passed any order setting aside the abatement or condoning the
delay. The court below has also not heard the present petitioners
and allowed the substitution application. In support of his
contention, learned counsel for the petitioners relied upon a
decision of the Supreme Court reported in **AIR 2010 SC Page**
3043.

4. Perused the order passed by the court below. It appears that the deceased had three sons and three daughters. Three sons are already on record and application has been filed for bringing the three daughters on record. The court below, therefore, has allowed the application.

5. So far the submission that the suit has abated is concerned, it may be stated here that after the death of the plaintiff No.1, his legal representatives i.e. three sons were on record. Therefore, there is no question of abatement of the suit arises as the estate of the deceased-plaintiff was sufficiently represented by his three sons. Moreover, so far objection is concerned, the daughters are not making any objection. The defendants are objecting the order on the technical ground only that the court below has not set aside the abatement and has not condoned the delay.

6. In view of the factual position, discussed above, as has been discussed by the court below, it will be deemed that the court below passed the order after setting aside abatement and condoning the delay, if any. So far the decision relied upon by the learned counsel for the petitioners is concerned, in that case, Supreme Court found the explanation for condoning the

delay was wrong and false, therefore, the Supreme Court rejected the limitation application. I, therefore, find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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