

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**First Appeal No.462 of 1978**

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Khursid Mian & Ors.

.... .... Appellant/s

Versus

Abdul Latif Mian & Ors.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Jagannath Jha, Adv.

For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL ORDER**

12 14-11-2017

1. Perused the office note.

2. Appellants have filed this appeal against the judgment and decree dated 13.04.1978 passed by 4<sup>th</sup> Additional Sub-Judge, Bettiah in T.S. No. 202 of 74/206 of 1971 whereunder the suit filed by respondent 1<sup>st</sup> party was partly decreed against the present appellants. The plaintiff-respondent 1<sup>st</sup> party is son of Jummon Mian from 1<sup>st</sup> wife whereas the defendants 1<sup>st</sup> party who are appellants before this Court are heirs of Lal Mohammad Mian who was son of Jumman Mian from 2<sup>nd</sup> wife.

3. On perusal of record it appears that in view of Order no. 7 dated 11.05.2015, the appellants no. 1, 2, 6 and 7 were transposed as respondents. The office has reported vide order dated 13.07.2017 that the appellant no. 3 has died and appellant nos. 4 to 8 could not be traced out. The appellant no. 5 did not receive notice. The notice on appellant no. 5 has been declared



validly served vide order dated 14.07.2017. The appellant no. 5 in spite of direction given on 20.07.2017 has not taken step for substitution of appellant no. 3 who is dead. The surviving appellant has left taking interest in prosecuting this appeal. All the appellants are descendants of Lal Mohammad and they jointly fought the suit. Their interest in the suit properly appears indivisible and so on account of death of sole appellant, the appeal has abated.

4. In view of above facts, this appeal stands disposed of.

**(Sanjay Kumar, J)**

Mahesh/-

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