

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.971 of 1977

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Most.Sudama Devi & Ors.

.... Appellant/s

Versus

Lachhina Devi & Ors.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. B.N.Mandal
Mr. Birendra Mohan Singh
Mr. Ajay Chandra
Mr. S.C.Surya
Mr. Syed Asgharr Najmi
Mr. Om Prakash Singh
Mr. Manoj Kumar Choudhary

For the Respondent/s : Mr. Prakash Chandra Gupta
Mr. Panditjee Pandey
Mr. V.K.Sinha
Mr. Anand Verma

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

44 31-07-2017 Perused the office note dated 28.07.2017.

The learned counsel for the respondent submitted that respondent No.4 was defendant No.4 in the Court below and he had contested the suit by filing contesting written statement along with other contesting respondents. Now, on the dismissal of the appeal against the legal representatives of the deceased respondent No.4, the judgment and decree impugned becomes final against them. In such circumstances, in their absence, neither the judgment and decree can be set aside nor can be varied nor modified. Therefore, the whole appeal is become incompetent.



From perusal of the memo of appeal, it appears that respondent No.4 was the defendant No.4 in the Court below which would be evident from the decree under appeal. At paragraph 4 of the impugned judgment, it is clearly mentioned that the defendant No.2 to 9 and 10 have contested the suit. It means that the defendant No.4 had also contested the suit. Nobody appeared on behalf of the appellant.

In view of the above facts and submission of the learned counsel, Mr. Ranjan Kumar Dubey, for the respondent, this appeal has become incompetent now. Thus, this First Appeal is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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