

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No. 40 of 1989

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Ram Barai Mahto & Ors.

.... Appellants

Versus

Most.Kismatia & Ors.

.... Respondents

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Appearance :

For the Appellants : Mr. Kamla Prasad Ray

For the Respondents : Mr. Kumar Uday Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

15 18-07-2017

This second appeal arises out of the judgment and decree passed by the courts below in a partition suit.

By order dated 11.01.2016, this Court had directed the appellants to take steps for fresh service of appeal notice upon respondent no. 1. The order was peremptory. The order was not complied by the appellants, hence, the appeal against respondent no. 1 was dismissed for default on 01.02.2016. The dismissal got finality.

Now office has placed the matter to decide whether this appeal would proceed in absence of respondent no. 1 or it will abate as a whole.

Learned counsel for the appellants submits that respondent no. 1 was a necessary party and co-sharer of the property, hence, dismissal of this appeal against respondent no. 1 would abate the whole appeal as no order can be passed in absence



of respondent no. 1 and the right to sue does not survive after dismissal of this appeal against respondent no. 1.

Rest of the respondents does not dispute the aforesaid submission, hence, this appeal stands abated as a whole.

(Birendra Kumar, J)

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