

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.14 of 2017

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Sonelal Rai & Ors

.... Appellant/s

Versus

Suraj Rai & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

- 3 30-01-2017 1. Heard the learned counsel for the petitioner.
2. Perused the impugned order dated 08.08.2016 passed by Sub Judge III, Samastipur in Partition Suit No.277 of 2002.
3. It appears that partition suit was filed by the sole plaintiff. The defendant No.4 died in the year 2011. The sole plaintiff also died on 19.03.2012 on which date, an order was passed to the effect that the suit has abated. Subsequently, the legal representatives of the sole plaintiff filed application for substitution of the deceased sole plaintiff and also the legal representatives of the deceased defendant No.4. The defendant-petitioner objected the prayer on the ground that the application is time barred and no limitation application has been filed and not prayer for setting aside abatement. By the impugned order dated 13.04.2012, the Court below allowed the substitution application and directed that the names of the legal representatives of the deceased sole plaintiff be substituted. Thereafter, recall application was filed by



the defendant-petitioner alleging that the order may be recalled. Since the suit as abated, the Court below could not have allowed the substitution application. By the impugned order, the Court below rejected the prayer made by the petitioner.

4. So far the submission of the learned counsel that unless the order abating the suit is set aside is concerned, the Court had no jurisdiction to substitute the legal representatives, particularly when no limitation was filed. In my opinion, the grounds raised by the petitioner on technical ground. When the Court below has allowed the substitution application impliedly it will mean that the Court below has set aside the order of abatement. So far abatement of the suit is concerned, the suit abated because of non-substitution of the legal representatives of defendant No.4, therefore, the suit as a whole will not abate. The suit will abate against the deceased respondent No.4.

5. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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