

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.238 of 2014

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Ram Chandar Prasad & Anr.

.... Appellant/s

Versus

Babu Nawal Kishore Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Sinha No.-2

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

6 14-02-2017 Though this appeal was disposed of by order dated 31.1.2017, but the matter was placed under the heading 'To Be Mentioned' on 10.2.2017 at the instance of the appellants with the submission that the Interlocutory Application (I.A. No. 858 of 2015) praying for substitution of the deceased appellant No. 1 was pending and no order had been passed on the said application. Consequently by order dated 10.2.2017 a report was sought from the office.

Perused the office report wherein it has been pointed out that due to inadvertence the said Interlocutory Application could not be placed before the Bench for consideration before placing the matter for hearing under Order 41 Rule 11 CPC.

Learned Counsel for the appellants has submitted that he is representing the proposed heirs of the deceased appellant No. 1 as well as the other appellants on record and therefore is no legal impediment in allowing the prayer for substitution even at this stage in view of the earlier order holding this appeal as not maintainable and granting liberty to the appellants to seek appropriate remedy in



accordance with law. It has been submitted that in this backdrop no prejudice is caused to the proposed heirs.

After considering the submissions on behalf of the appellants and perusal of the averments made in the Interlocutory Application, it appears that I.A. No. 858 of 2015 has been filed within time praying for substitution of the deceased appellant No. 1. As such, the said Interlocutory Application is allowed and the heirs and legal representatives of the deceased appellant No. 1 as mentioned in para 3 of the said Interlocutory Application are substituted in his place after expunging his name from the memo of appeal. All the aforesaid heirs have duly appeared by filing Vakalatnama.

Further in view of the fact that due to inadvertence of the office of the Court, the Interlocutory Application (I.A. No. 858 of 2015) could not be considered at or before the passing the order dated 31.1.2017 disposing of this appeal, the said order dated 31.1.2017 is modified to the extent only to the expunging of the name of the deceased appellant No. 1 and substitution of his heirs as above directed.

(V. Nath, J.)

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