

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.750 of 2016

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Bedana Devi @ Bedamo Devi

.... Petitioner/s

Versus

Sarita Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 09-02-2017 Heard the learned counsel, Md. Ataul Haque for the petitioner. In spite of service of notice in admission matter, nobody appeared on behalf of the respondents.

From perusal of the impugned order dated 06.11.2015 passed by learned Sub Judge II, Ara in Execution Case No.8 of 2011, it appears that the petitioner filed this execution case. During the pendency of execution case, the judgment-debtor died. The present petitioner being the decree holder filed substitution application and the legal representatives were substituted. When the legal representatives of the judgment debtor got themselves substituted in the title appeal, filed by the judgment debtor, the petitioner came to know the correct names of the legal representatives. Therefore, amendment application was filed by the petitioner for correcting the names of the legal representatives who had already been substituted but the executing court has



rejected this application.

Since the application was only in the nature of correction and there is no dispute that the judgment debtor has died and the names sought to be corrected have already been substituted in the title appeal, in my opinion, therefore, the court below has refused to exercise a jurisdiction vested in it by law and if the order is allowed to stand, it will naturally occasion failure of justice.

Thus, this writ application is allowed. The impugned order is set aside and the application filed by the petitioner under Order VI Rule 17 C.P.C. is hereby allowed. The petitioner shall make necessary correction according to the amendment application.

(Mungeshwar Sahoo, J)

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