

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.224 of 2017

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Pranab Kumar Roy & Ors

.... Appellant/s

Versus

Bibi Asmat Ara Begum

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 07-02-2017 Heard learned counsel Mr. (Dr.) Manoj Kumar for the
petitioners.

Perused the impugned order dated 04.11.2016 passed
by Subordinate Judge-X, Bhagalpur in Title Suit No.02 of 1991
whereby the learned court below rejected the application filed by
the petitioners praying for passing an order to the effect that the
suit has abated.

It appears that the plaintiff-respondent filed the suit for
specific performance of contract alleged to have been entered into
between the plaintiff and defendant no.2. The defendant no.1 has
purchased the suit property from defendant no.2. During pendency
of the suit the defendant no.2 died. The plaintiff filed application
praying for deleting the name of defendant no.2. The prayer was
allowed and the name of defendant no.2 was deleted. Thereafter
the plaintiff filed application for amendment praying for addition



of the legal representatives of defendant no.2. The court below rejected the application. Thereafter defendant no.1 has filed application for passing an order that the suit has abated as the legal representatives of defendant no.2 are necessary party, who have not been joined.

It appears that the learned court below held that since defendant no.1-petitioner has already purchased the entire suit property from defendant no.2, now the only contest is between the plaintiff and defendant no.1. Whatever right the defendant no.2 had got, vested in the purchaser i.e. defendant no.1. Therefore, in no case the plaintiff's suit can be abated.

The learned counsel for the petitioners submitted that this point may be decided at the subsequent stage of the suit. So far this prayer is concerned, it may be mentioned here that since I have already held that in no case the plaintiff's suit can be abated, this point is not available to the petitioners even at the final argument.

Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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