

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.679 of 1984

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Badri Sah & Ors

.... Appellant/s

Versus

Nirmala Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bishwanath Pd.
Mr. K.M.Kr.Sinha
Mr. Gopal Pd.
Mr. Dharendra Nath

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

19 09-05-2018 The appellants have filed this appeal against the judgment dated 11.08.1984 and decree dated 21.08.1984 passed by 2nd Additional Subordinate Judge, Darbhanga in Partition Suit No.03 of 1979/15 of 1981. The suit was filed by the respondents 1st party claiming 1/8th share in the suit property mentioned in Schedule I and II of the plaint. The appellants are brothers of respondents 1st party. The suit was decreed on contest. The appellants being full brother of the plaintiffs filed this appeal jointly. The appeal notices were issued against the respondent nos.1 to 4 under ordinary process which were returned unserved and so the appellants were directed to take steps for fresh service of appeal notice on respondent nos.1 to 4 under registered cover with A/D. The said order was peremptory and on account of non-



compliance of such order, the appeal against the respondent nos.1 to 4 stood dismissed.

It appears that as per order dated 09.10.2015, the appellants were noticed for engaging another lawyer on their behalf as the advocates, who had filed the appeal, had left practicing in the court. The process server reported that appellant no.1 is traceless and he has left his residence without any address. The process server further reported that the appellant no.2 has died and appellant no.3 has refused to accept the notice. The appellants were directed to take steps for substitution of appellant no.2 and also to file fresh vakalatnama within two weeks.

Thus, I find that on account of death of appellant no.2 for whom no substitution petition has been filed and further that on account of dismissal of appeal against all the respondents, this appeal has become incompetent and is accordingly dismissed.

(Sanjay Kumar, J)

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