

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1224 of 2016**

Suresh Harijan & Ors

... .. Appellant/s

Versus

Basukin Sah & Ors

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. advocate Mr. Manoj Kumar Jha
For the Respondent/s	:	Mr. S. S. Dwivedi, Sr. advocate

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER**

8 04-12-2018 Heard Sri Ganpati Trivedi, the learned senior counsel for the petitioners, and Sri S. S. Dwivedi, the learned senior counsel for the respondent.

The petitioners are the plaintiffs. The petitioners filed this Civil Misc. petition against the order dated 04.03.2016 by which the learned 4th Additional District Judge, Bhagalpur ordered for abatement of entire Title Appeal No. 1 of 2001 on account of non filing of substitution petition after death of some of the appellants and the respondents.

The sole ground on which the learned senior counsel for the petitioners assailed the impugned order is that on account of death of some of the appellants, such as Badami Devi and others, some substitution petitions were filed but since 2005 the court remained vacant and for the first time on 04.03.2016 the



Presiding Officer asked learned counsel for the appellants to inform about the death of appellants and respondents. Consequently, the learned counsel for the appellants furnished the names of the appellants and respondents, who died during the pendency of appeal, and on such the learned Additional District Judge ordered for abatement of entire appeal. The entire appeal shall not abate as many of the appellants and respondents are still alive. Therefore, the abatement of entire appeal on account of death of some of the appellants and respondents without providing sufficient opportunity to the appellants the order is illegal and bad.

On the other hand, the learned senior counsel for the respondents submits that plaintiffs filed the suit for declaration of title and confirmation of possession over the suit land. The suit was dismissed and in view of prayer made on behalf of the plaintiffs even if one of the appellants is dead and no substitution petition was filed on account of non severance of the judgement and decree the entire appeal shall abate and the order of trial court was confirmed but I do not find any substance in the submission of learned senior counsel for the respondents.

From perusal of the order dated 04.03.2016, it appears



that the learned Additional District Judge ordered for abatement of the entire appeal on account of non filing of substitution petition of appellants and respondent, who died during the pendency of the appeal. The learned Additional District Judge has not averred in the entire order as to how the appeal on account of death of some of the appellants and respondents shall abate. Thus, I find that the learned Additional District Judge has committed jurisdictional error by dismissing the entire appeal as the appeal shall abate on account of non substitution of the legal heirs of some of the appellants and respondents, who died during the pendency of the appeal. In my view, the entire appeal shall not abate. Accordingly, the order dated 04.03.2016 passed in Title Appeal No. 1 of 2001 is set aside. This Civil Misc. petition is allowed.

The matter is remitted to learned Additional District Judge-IV, Bhagalpur for passing order afresh in accordance with law on the point of abatement of appeal on account of death of some of the appellants and respondents.

(Prabhat Kumar Jha, J)

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