

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.165 of 2003

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SUDHIR KUMAR SAH

... .. Appellant

Versus

SANJAY KUMAR DHANDHANIA and ORS

... .. Respondents

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Appearance :

For the Appellant/s : Mr.Ashutosh Jha

For the Respondent/s : Mr.Umakant Prasad

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

14 24-04-2019 Heard Mr. Ashutosh Jha, learned counsel for the appellant and Mr. Bimlendu Mishra, learned counsel for the respondent nos.1 to 8.

2. From perusal of order dated 25.02.2019, it appears that the appellant was directed to file substitution petition of respondent nos.6, 7 and 8 within two weeks but the appellant failed to file the substitution petition within time and consequently the second appeal against respondent nos.6, 7 and 8 stood dismissed on 11.03.2019.

3. Now the office reported that whether this appeal will survive against respondent nos.1 to 5. It appears that the plaintiffs-respondents filed the suit for declaration that the entry of the name of defendants with regard to the suit property fully described in the schedule in the survey conducted under the Municipal Survey Act is wrong and the defendants have not



acquired any title with respect to the suit property by virtue of the said wrong entry. The plaintiffs further sought relief for declaration that the final publication of the entry with respect to the suit property is illegal, void and inoperative. The suit was decreed. The defendants-appellants filed Title Appeal No.51 of 1993 but the lower appellate court dismissed the appeal affirming the judgment of the trial court. Thereafter the appellant filed this second appeal. The judgment against respondent nos.6, 7 and 8 is inseparable. If the appeal against respondent nos.6, 7 and 8 stood dismissed due to non-compliance of peremptory order, the appeal against other respondents shall not survive as the judgment is inseparable.

4. Learned counsel for the appellant submits that, of course, the judgment is inseparable but the plaintiffs-respondents filed the suit in personal capacity as well as in representative capacity, therefore, this point may be heard at the time of final hearing of the second appeal but it appears that the plaintiffs are the members of joint Mitakshra Hindu family and the judgment in favour of the plaintiffs-respondents is inseparable. Once the appeal is dismissed against some of the respondents, the appeal against other respondents would not survive.



5. Accordingly, this second appeal, as a whole, is dismissed.

(Prabhat Kumar Jha, J)

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