

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.130 of 1992

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 05.02.1992 and 21.02.1992 passed by the learned Additional District Judge, Balangir in Title Appeal No.5/9 of 1987-1989 reversing the judgment and decree dated 07.11.1986 and 24.11.1986 respectively passed by the Sub-Judge, Sonepur in T.S. No.21 of 1971.

Bati Meher

....

Appellant

-versus-

Smt. Laxmi Meherani & Others

.....

Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellants - Mr. N.C. Pati
(Advocate)

For Respondents - Mr. R.K. Mohanty
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 11.10.2022 : Date of Judgment:20.10.2022

The Appellant by filing this Appeal under Section 100 of the Code of Civil Procedure (for short called as ‘the Code’) has assailed the judgment and decree passed by the learned Additional District Judge, Balangir in Title Appeal No.5/9 of 1987-89.

The Respondent Nos.1 to 7 as the Plaintiffs had filed the suit i.e. Title Suit No.21 of 1979 in the Court of Sub Ordinate Judge, Sonepur. The suit is for declaration that they have the title over the suit land by setting aside the registered sale deed dated 04.03.1978 executed by

Respondent No.8 (Defendant No.2) in favour of Respondent No.1(Defendant No.1) as invalid.

2. The Trial Court having dismissed the suit, the Respondent Nos.1 to 7 being the unsuccessful Plaintiffs had carried the Appeal under Section 96 of the Code. The First Appellate Court has allowed the said Appeal and thereby the judgment and decree passed by the Trial Court in the original suit have been set aside and the said sale deed (Ext.A) has been held to be not binding on the Plaintiffs. Consequently, the right, title and interest of the Respondent Nos.2 to 7 (Plaintiff Nos.2 to 7) with that of Respondent No.8 (Defendant No.2) has been declared and the Appellant (Defendant No.1) has been directed to deliver vacant possession of the suit schedule property to the Respondent Nos. 2 to 7 (Plaintiffs) and in the event of failure on the part of the Appellant (Defendant No.1) to deliver the possession of the suit land to the Respondent Nos.1 to 7(Plaintiff Nos.2 to 7), the possession can be taken through process of the Court.

This is how this Appellant who is the Defendant No.1 in the suit and Respondent No.1 in the First Appeal has come up with the Second Appeal.

3. At the outset of the hearing, learned counsel who was appearing on behalf of the Appellant submitted that the Appellant (Defendant No.1) has died since long and despite several attempts, no contact has been established with his legal representatives for their substitution in this Appeal to pursue the same further. He further submitted that even as on date, no such instruction in the matter has been received.

Learned counsel for the Respondents submitted that in view of the death of the Appellant (Defendant No.1) when his legal representatives

are not coming forward to be substituted to pursue the Appeal, the same is liable to be dismissed as had abated since long and therefore, the judgment and decree passed by the First Appellate Court have attained finality and as such, are to stand.

4. Keeping in view the submission as above, the Appeal stands dismissed as to have abated. No order as to cost.

**(D. Dash),
Judge**



Priyajit