

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.487 of 2009

Sri Nath Yadav, Son of Chandradeo Yadav, Resident of Village Jaso, P.S. Buxar (Industrial) District-Buxar, At present resident of Mohalla-Turha, Toli Buxar, P.S.- Buxar(T) Dist. Buxar

... .. Appellant/s

Versus

Nirmal Kumar Srivastava, son of Late Sidhnath Lal, resident of Mohalla Turha Toli, Buxar, P.S. Buxar (Town), District- Buxar

... .. Respondent/s

with
SECOND APPEAL No. 265 of 2009

Sri Nath Yadav, Son of Chandradeo Yadav, Resident of Village Jaso, P.S. Buxar (Industrial) District-Buxar, At present resident of Mohalla-Turha, Toli Buxar, P.S.- Buxar(T) Dist. Buxar

... .. Appellant/s

Versus

Nirmal Kumar Srivastava, son of Late Sidhnath Lal, resident of Mohalla Turha Toli, Buxar, P.S. Buxar (Town), District- Buxar

... .. Respondent/s

Appearance :

(In SECOND APPEAL No. 487 of 2009)

For the Appellant/s : Mr. Rabindrajee Sahay, Advocate

For the Respondent/s : Mr. Hari Narayan Singh, Advocate

(In SECOND APPEAL No. 265 of 2009)

For the Appellant/s : Mr. Mallika Mazumdar, Advocate

For the Respondent/s : Mr. Hari Narayan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

39 17-04-2025

Heard learned counsel for the parties.

Re: I.A. No. 6 of 2023 in Second Appeal No. 487 of 2009

2. This interlocutory application has been filed by sole respondent under Order 22 Rule 3(2) of the Code of Civil Procedure for vacating the stay order dated 05.09.2011 as well



as for passing an order for abatement against the sole appellant.

3. Learned counsel for the respondent submits that further proceeding of Execution Case No. 2 of 2005 pending in the court of learned Additional Munsif-8, Buxar, has been stayed vide order dated 05.09.2011. It is further submitted that during the pendency of this appeal, sole appellant died on 21.08.2018, but no steps have been taken by the heirs of the appellant. The present appeals itself abate on account of non-substituting the heirs of appellant within the statutory period of 90 days.

4. On the other hand, learned counsel for the proposed heirs of appellant submits that a *Vakalatnama* on behalf of the heirs of deceased appellant has been filed on 06.02.2024. It is further submitted that a proper application with regard to the substitution and setting aside abatement against the sole appellant has to be filed in the present case. Learned counsel prays for time so that the heirs of the sole appellant could pursue the present appeal.

5. Considering the aforesaid facts and submissions made by the parties and also from the averments made in this interlocutory application filed by the respondent, it is apparent that the appellant Sri Nath Yadav died on 21.08.2018. This



interlocutory application has been filed on 14th June, 2023 after service of copy of the said interlocutory application. Moreover, the heirs of deceased sole appellant appeared through his counsel on 6th February, 2024. Despite that no steps have been taken for substitution and setting aside abatement against the sole appellant.

6. In such view of the matter, the appeal is abated against the sole appellant.

7. Since the appeal is already abated, the stay order dated 05.09.2011 stands vacated.

8. I.A. No. 6 of 2023 is allowed.

9. Accordingly, Second Appeal No. 487 of 2009 and Second Appeal No. 265 of 2009 are abated on account of death of the sole appellant as no steps have been taken by the heirs of deceased sole appellant.

(Khatim Reza, J)

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