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**(1986) 02 PAT CK 0017**  
**In the Patna High Court**  
**Case No : A.F.A.D. No. 42 of 1977 (R)**

Arjun Ram Keshri

APPELLANT

Vs

Sheo Charan Ram and Others

RESPONDENT

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**Date of Decision :** 21-02-1986

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(k)

**Citation :** (1986) 34 BLJR 445

**Hon'ble Judges :** Satyeshwar Roy, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Satyeshwar Roy, J.—In this appeal, defendant No. 3, has challenged the validity of the order, dated 23.12.1976 of the court below by which it held that the appeal as a whole has abated on that ground the appeal was dismissed.

2. The short facts which are required to be noticed are that: a title suit was filed by Yogmaya Debi (Yogmaya for short) with regard to the suit property for declaration of title and recovery of possession in the court of Munsif, Giridih in 1964. After the death of Yogmaya her legal representatives were substituted in her place. The suit was filed against Narsingh Halwai and his son-in law Bhuneshwar. The value of the suit was raised to Rs. 5,000/- and the plaint was returned by the Munsif for presentation before proper court. When the plaint was filed in the court of the Subordinate Judge, that was registered as Title Suit No, 98 of 1965. Defendant No. 1 (Narsingh) having died, his daughter Rakhamani Devi was substituted in his place on 11-9-1967.

On 21-8-1967 plaintiffs and defendant Nos. 1 and 2 had entered into an agreement by which they agreed to transfer their respective shares to Uma Devi alias Parviti Devi and Naurangi Devi, wife of Bansi Ram for Rs. 13,500/- and Rs. 6,500/- respectively, the total consideration being Rs. 20,000/- On 11-9-1967 a compromise petition was filed by the parties whereby they agreed that the

plaintiffs had 11 annas share in the suit property and the defendants had 5 annas interest in the same. The original plaintiff in pursuance of the agreement executed a sale-deed on 24-11-1967, but the defendants who were parties in the agreement did not execute the sale deed; rather defendant No. 1 filed an objection to the recording of the compromise. The trial court after hearing the parties on 12-2-1969 ordered for recording the compromise. The plaint thereafter was amended and the purchasers, namely, Uma Devi alias Parvati Devi and Naurangi were substituted as plaintiffs and prayer was made for specific performance of contract for sale against defendant Nos. 1 and 2 to the extent of 5 annas interest in the suit property.

Against the order dated 12-2-1969, of the trial court, ordering for recording the compromise, defendant No. 1 filed Miscellaneous Appeal No. 21 of 1969. The District Judge dismissed the same. Against that order civil revision application No. 842 of 1969 was filed, but that was dismissed.

The suit was ultimately decreed in whole by the trial court holding that the plaintiffs, i.e. the two aforesaid ladies were entitled to a decree for specific performance of contract with regard to the 5 annas interest. It also held that defendant No. 3, the auction-purchaser of the property in execution of a decree of compromise given by Giridih Municipality, which had intervened during the pendency of the suit, did not acquire any valid title. Thereafter defendant No. 3 filed an appeal valuing it at Rs. 7,800/- being the value of the suit. The learned District Judge accepted the valuation. However, the plaintiffs who were respondents in that appeal made an application challenging the jurisdiction of the District Judge to entertain the appeal as the value of the appeal ought to have been Rs. 20,000/-. The Additional District Judge, 2nd court, by order dated 17th July 1975, held that it had no jurisdiction to entertain the appeal. That order was challenged in Civil Revision Application No. 801 of 1976. H.L. Agarwal, J, who heard the civil revision application aforesaid held that the plaintiffs who were respondents in Miscellaneous Appeal No. 21 of 1969 were not, entitled to challenge the value of the suit as they themselves put the value of the suit at Rs. 7,700/-. He allowed the civil revision application, setting aside the order of the Additional District Judge and directed that the appeal should be heard on merit. This civil revision application was disposed of on 6-4-1976.

3. When the appeal was thereafter listed for hearing on 18-6-1976 the respondents filed an application in the court below in which they stated that Naurangi Devi having died on 22-12-1975 and as no substitution of her legal representatives was prayed for, the appeal against her abated and as the decree was not severable, the appeal has become not maintainable. A rejoinder to that application was filed by the appellant. The court below held that Naurangi Devi had died on 22-12-1975. It further held that as her legal representatives were not substituted and as the decree was not severable with that of Uma Devi, the appeal had abated. It accordingly dismissed the appeal. That order is the subject matter of this appeal.

4. A preliminary objection was raised on behalf of the respondents with regard to the maintainability of the appeal it was contended that an appeal would lie under Order XLIII, Rule 1(k) of the Civil Procedure Code. Whether a second appeal is maintainable on a miscellaneous appeal, the ultimate decision is not going to be effected in any way. It is, therefore, not necessary to decide the question whether a miscellaneous appeal was maintainable on a second appeal.

5. Some facts which at this stage must be held to be correct are that civil revision application No. 801 of 1975 in which Naurangi Devi was one of the opposite parties was disposed of on 6-4-1976. According to the finding of the lower appellate court, Naurangi Devi died on 22-12-1975, i.e., during the pendency of the civil revision application. None of the parties brought to the notice of this Court the facts that Naurangi Devi had died and the civil revision application proceeded against her also as if she was alive. The factum of death of Naurangi Devi and its effect on the pending was for the first time agitated by the respondents in the court below on 18-6-1976. The question that falls for decision is, therefore, whether the lower appellate court was competent to dismiss the appeal as having abated, if not what was the procedure it should have followed.

6. According to the appellant, the, proper procedure for the court below was to report this matter to this Court because the death of Naurangi, Devi had taken place during the pendency of the civil revision. According to the respondents since on 22-12-1975 Naurangi Devi had died and as no step was taken for substitution of her legal representatives, the court below was correct in holding that the appeal had abated so far she was concerned. The earliest case on the question in issue brought to my notice is of Abdul Aziz and Others Vs. Lakhmi Chandra Majumdar and Others, From the facts of this case, it appears that during the pendency of the second appeal in the High Court one of the respondents had died, but no step was taken for substitution of his legal representatives and the appeal proceeded as if all the parties were on record. The appeal was allowed and the case was remanded to the lower appellate court after remand the lower appellate court was informed about the death of one of the respondents-defendants and it was contended that the legal representatives would not be bound by the order of the High Court. The lower appellate court declined to hear the appeal on the ground that the earlier decree of the lower appellate court had been affected by the High Court in the second appeal with regard to those persons only who were on record and not with regard to the persons who were dead. With these reasonings, the lower appellate court restored the earlier decree which has been set aside by the High Court. When the matter was brought to the High Court it held that the lower appellate court could not have regarded the order of the High Court setting aside the earlier decree and remanding the earlier appeal as if it was null and void, but ought to have reported the matter to the High Court for such action as might have been deemed necessary. The High Court set aside the order and recalled the file to the High Court for placing before the Bench that had heard the earlier appeal.

7. The law so laid down in Abdul Aziz's case (supra), in similar circumstance was followed by this Court in Khewan Singh v. Raja Ram, in Second Appeal No. 833 of 1947 decided on 20th April, 1951 and in Bhagwat Prasad Vs. Bansi Mahton, . No decision contrary to the decisions noticed above was brought to my notice by the respondents. Following the precedent noticed above, it must be held in this case that in view of the fact that Naurangi Devi having died on 22-12-1975 during the pendency of the civil revision application No. 801 of 1975, the Additional District Judge, who was in seisin of the appeal after remand and was informed about the death of Naurangi Devi during the pendency of the civil revision application ought not to have disposed of that matter on merit; but should have reported it to the High Court for appropriate order.

8. I, therefore, allow this appeal, set aside the order of the court below and recall the file to this Court for placing civil revision application No. 801 of 1975 before the Bench, which had decided the civil revision application on previous occasion for appropriate orders.