
(1934) 12 PAT CK 0014
In the Patna High Court
Case No : Appeal No. 179 of 1930

Churaman Mahto and others

APPELLANT

Vs

Bhatu Mahto and others

RESPONDENT

Date of Decision : 05-12-1934

Acts Referred:

Citation : (1934) 12 PAT CK 0014

Final Decision : Dismissed

Judgement

Mohammad Noor, J.—This is an appeal by the plaintiffs whose suit for partition was dismissed on the ground that the village was partitioned by some private arrangement. During the pendency of the appeal, the respondent No. 21, who was defendant No. 21 in the Court below, died and no substitution of his heir having been made within the time allowed by the law the appeal stood abated against him. An application for setting aside the abatement was rejected on 10th May 1934. Therefore, it is clear that so far as that respondent is concerned, the appeal has abated. Now the question is whether the appeal, can {proceed against the remaining respondents, It being a partition suit, no decree can be passed for partition in the absence of a single co-sharer of the village.

2. In my opinion the appeal has abated in its entirety. I would therefore dismiss it with costs.

Dhavle, J.

3. I agree. My learned brother referred in the course of the argument to (sic) singh v. Raghunand Singh, 1925 Pat 590= 88 I C 669, one of the cases which were dealt with in Jainarayan Ojha v. Hari Ojha, 1033 Pat 464= 146 I C 322= 12 Pat 78. The case from 1925 Pat. 590 is an instance of the operation of the rule in both ways; that it was a mortgage suit makes no difference, for the same principle obviously applies to partition suits. Where the death of one of the respondents does not make the representation of the interests involved incomplete, there is no abatement and the appeal can proceed; but where such

death makes the representation incomplete, an abatement of the appeal as a whole takes place. In the present case a brother of the deceased respondent is undoubtedly on the record, but though it was a joint family, it is impossible to hold that the brother completely represents that family in view of the admitted fact that the deceased respondent has left a son, who is not on the record and who cannot now be brought on the record in view of the order passed by my learned brother Wort and myself on 15th March last.