

(1999) 12 PAT CK 0081
In the Patna High Court
Case No : F.A. No. 557 of 1979

Shri Rameshwar Sao and Others

APPELLANT

Vs

Widow of deceased Respondent 1 and Others

RESPONDENT

Date of Decision : 09-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Limitation Act, 1963 — Section 5

Citation : (2000) 2 PLJR 533

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Chandra Shekhar Pd. Singh, Atul Kr. Pandey and Brij Mohan Singh,
None, for the Respondent

Judgement

P.K. Deb, J.—None appears for and on behalf of the Appellants although on last two occasions, they sought for adjournment and the case has been adjourned on the prayer of the Appellants' counsel.

2. The admitted fact remains that Appellant No. 2 Ayodhya Sao died on 14.01.1994 and prayer for substituting the heirs, as mentioned in paragraph-1 of the Petitioner in I.A. No. 7071 of 1998 has been made on 06.07.1998. The petition was definitely not within time and, as such, the appeal has abated against Appellant No. 2 Ayodhya Sao. In that petition, there is a mention to the effect that Appellant No. 2 had already sold away his share of lands and, as such, he was not interested in prosecuting with the appeal. When objection was raised regarding abatement of the appeal then another Petitioner was filed u/s 5 of the Limitation Act for condonation of delay. Then there was further prayer to the effect that the transferees should be made parties in the appeal as contemplated under Order 1, Rule 10 of the CPC and they be transposed as Respondents in the appeal but the transferees have not made any prayer under Order 1, Rule 10 of the Code of Civil Procedure. On the face of it, when the appeal has abated in respect of Appellant No. 2, the question does not arise of applicability under

Order 1, Rule 10 of the CPC when the transferees are not coming with such prayer and such prayer cannot be entertained in view of the abatement being made. It has, further, been sub-mitted that this Appellant No. 2 was one of the Defendants in the suit and the suit has been decreed in favour of Plaintiffs-Respondents and the property for which the decree has been granted, is not divisible regarding the shares of the Defendants rather the decree was in respect of the whole of the property without having any division of shares amongst the Defendants.

3. In that way, right to sue of the other Defendants who are Appellants in the case, did not survive. In that view, the whole appeal has been abated. I have already mentioned that when transferees have not come up and when the appeal has abated as a whole, there is no question of entertaining any prayer under Order 1, Rule 10 of the CPC made by the surviving Appellants.

4. The appeal stands abated as a whole.