

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.113 of 2011

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Md. Tajammul Hussain & Ors

.... Petitioner/s

Versus

Begum Khudaija & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Bihari Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

7 31-01-2014

Heard the learned counsel, Mr. Abinash Kumar

appearing on behalf of the petitioners on I.A. No.8720 of 2011.

This application has been filed for substitution of the
legal representatives of the petitioner no.2.

The learned counsel for the petitioners submitted that
petitioner no.2 has died.

In view of the above fact and the submission of the
learned counsel, the application is allowed. The legal
representatives of the petitioner no.2 are substituted in place of the
deceased petitioner no.2 after deleting his name. The learned
counsel is filing vakalatnama on behalf of the newly substituted
petitioners.

Heard the learned counsel for the petitioners.

By the impugned order dated 25.03.2011, the lower appellate Court has allowed the Misc. Appeal No.18 of 2005 and set aside the trial court order dated 07.09.2005 passed in Misc. Case No.1 of 2003.

It appears that the title suit was decreed ex parte. Thereafter, the respondent filed application under Order 9 Rule 13 C.P.C. The said application was dismissed finding that in fact, summons was served on the applicant of the Misc. Case. The appeal was filed before the lower appellate Court. The lower appellate Court considering the materials and evidences again set aside the trial court order.

In view of the above finding of fact based on the evidence, this Court cannot reappreciate the evidences and substitute its own finding of fact. It may be mentioned here that the revisional jurisdiction, no doubt is a part of appellate jurisdiction but in exercise of revisional jurisdiction under section 115 of the C.P.C., the Court has no jurisdiction to reappreciate the evidences. In other words, the revisional jurisdiction cannot be equated with that of the power under the appellate jurisdiction. Moreover, when substantial justice has been done by the appellate Court, the same should not be interfered with in revisional jurisdiction.

In the result, I find no jurisdictional error in the impugned order passed by the appellate Court. Therefore, this revision application is dismissed.

Saurabh/-

(Mungeshwar Sahoo, J)

