

IN THE HIGH COURT OF JUDICATURE AT PATNA

FIRST APPEAL No. 48 of 2005

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HARI PRASAD and ORS

... ... Appellant/s

Versus

RAMANAND PRASAD and ORS

... ... Respondent/s

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Code of Civil Procedure---First Appeal---Withdrawal of Appeal---application to withdraw the instant appeal on the ground that the appellants do not want to proceed with this appeal as the dispute between the appellants and respondent Nos. 1 & 2 has been resolved by way of compromise---argument on behalf of contesting respondent No.3 that withdrawal should not be permitted unless the said compromise petition is filed in this court as the appellants and the respondent Nos. 1 and 2 entered into a compromise without impleading her in the compromise petition and that possession of the joint family property which has been allotted to her has not been given so far.

Findings: appellant cannot be forced to continue with the appeal if he or she desires to withdraw the same and the exception is cross appeal if filed by the respondent or availability of any question arising out of the subject matter of appeal raised by the respondent which is to be decided against the appellant or other respondent(s)--- respondent No.3 has not filed any cross appeal in the present matter and has not shown any substantive question for deciding the same against the appellants or respondent Nos. 1 & 2--- appellants cannot be forced to continue with in this appeal and the respondent No.3 has not shown any proper ground to be transposed as appellant in place of the original appellants---withdrawal application allowed. (Para- 1, 2, 5)

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... .. Appellant/s

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RAMANAND PRASAD and ORS

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raj Kishore Prasad, Adv.
For the Respondent No. 1 & 2 : Mr. Anil Kumar, Adv.
For the Respondent No.3 : Mr. Rabindra Pd. Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

34 20-01-2025

I.A. Nos. 06 of 2024 and 08 of 2024

I.A. No. 08 of 2024 has been filed by the appellants with a prayer to withdraw the instant appeal on the ground that the dispute in between the appellants and respondent Nos. 1 & 2 has been resolved by way of compromise and in this regard, specific statement has been made in the I.A., so, now the appellants do not want to proceed with this appeal.

2. Learned counsel for the respondent No.3 submits that the appellants should not be permitted to withdraw the instant appeal unless the said compromise petition is filed before this court as the appellants and the respondent Nos. 1 and 2 entered into a compromise without impleading the respondent No.3 in the compromise petition and the said respondent No.3 is an old lady and is suffering from cancer. It is further submitted



that possession of the joint family property which has been allotted to the respondent No.3 has not been given so far.

3. Learned counsel for the respondent Nos. 1 & 2 has no opposition to the aforesaid prayer made by the appellants.

4. Heard both the sides and perused the relevant materials.

5. It is a settled proposition of law that appellant cannot be forced to continue with the appeal if he or she desires to withdraw the same and the exception is cross appeal if filed by the respondent or availability of any question arising out of the subject matter of appeal raised by the respondent which is to be decided against the appellant or other respondent(s). So far as the instant matter is concerned, the respondent No.3 has accepted in her I.A. No. 06 of 2024 that the said respondent is entitled to 33 1/3 percent share of the joint family property, which was subject matter of the partition suit, and the said share has been allotted to her. It is also an admitted position that the preliminary decree and final decree have been prepared in respect of the subject matter of the partition suit and the respondent No.3 has not filed any cross appeal in the present matter and has not shown any substantive question for deciding the same against the appellants or respondent Nos. 1 & 2, so, in



such a situation, the appellants cannot be forced to continue with in this appeal and the respondent No.3 has not shown any proper ground to be transposed as appellant in place of the original appellants, so, I find no force in I.A. No. 06 of 2024 so it stands dismissed whereas I find force in I.A. No. 08 of 2024 and the same stands allowed and the appellants are permitted to withdraw the instant appeal and consequently, the instant appeal F.A. No. 48 of 2005 stands dismissed as withdrawn.

6. The present order will not affect the rights of respondent No.3 to challenge the final decree by way of appeal, if she so desires.

(Shailendra Singh, J)

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