

Misc Case No.03/2010  
(T.A. No.13/2008)

(C.I.S. No.01/2016)

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18.01.2017 The petitioner and the OPs are present by filing haziras through their respective lawyers.

The case record is taken up for hearing of the instant misc case.

No written objection is filed by the OPs.

At this stage, Ld. Advocate for the petitioner (appellant) submits that he filed this misc case under Order 22 Rule 9 CPC for setting aside the order of abatement. According to him, in the instant case the said application was filed by the petitioner under wrong impression, but in fact the appeal was filed in connection with a partition suit, but the question of abatement does not arise in a partition suit. So, Ld. Advocate for the petitioner prays for allowing the misc case and for fixing a date for hearing of the appeal.

On the other hand, Ld. Advocate for the OPs/ respondents submits that the misc case be allowed subject to payment of cost. He also submits that the date may be fixed for hearing of the appeal.

Perused the misc case as well as materials on record. I find that the instant appeal has arisen in connection with a suit for partition. The instant misc case has been filed under order 22 Rule 9 CPC praying for setting aside the abatement in respect of respondent no.4 namely Subhas Sahu. I find that both the parties submit that the misc case be allowed and the case be proceeded for hearing of the appeal. In view of the submissions of the parties and their consent, I find that there is no legal impediment to allow the said misc case.

Hence, it is ORDERED

that the misc case be and the same is disposed of on consent of the parties.

Let the case be restored to its original file and  
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the matter be fixed for S.R./appearance if any i.d. hearing of the appeal.

B.C-I is directed to comply the order and note in the register accordingly.

Dictated and corrected

A.D.J. Rampurhat

Additional District Judge,  
Birbhum at Rampurhat