

**IN THE COURT OF MUNSIF, TEGHRA, BEGUSARAI,
BIHAR**

Title Suit No. 85/1992

In the matter of:

Ram Bilash Barai & Ors.

..... **Plaintiffs**

Versus

Sri Thakur Ram Janki & Ors.
Defendants

.....

Presided over by:-
Shri Shailendra Kumar
Munsif, Teghra, Begusarai

Present: Ld. Counsel for the Plaintiffs: -*Sh. Satyendra Kr. Sinha*, Adv.
Ld. Counsel for the Defendants: *Sh. Raghuwar Prasad*, Adv.

ORDER

Pending adjudication of the captioned title suit, an application dated 16.08.2024 was filed on behalf of the Plaintiffs, under Order XXII Rule 3 of the Code of Civil Procedure, 1908, praying therein to “be pleased to delete the name of *Ram Bilash Barai* from plaint and substitute the name of legal heir in the plaint.”

Ld. Counsel for the Plaintiffs submits that *Ramdev Barai* son of Late *Jhari Barai*, Plaintiff no.5 left for heavenly abode on 02.07.2024, leaving behind his widow, *Sonia Devi* and two sons, namely, *Deepak Kumar Chaurasiya* and *Rajesh Kumar Chaurasiya*, and after the death of the abovenamed plaintiff, surviving widow and sons are necessary parties in the instant suit. Hence, in the interest of justice, abovenamed legal heirs are prayed to be substituted in the place of Plaintiff No.5.

Per contra, the Defendants filed a rejoinder dated 12.09.2024, in response to the instant application, wherein they vehemently opposed the application. It was submitted on behalf of the Defendants that according to Order XXII of the CPC, the heirs of the deceased Plaintiff have to file the application to be substituted in place of the deceased

Plaintiff and no other person can substitute the legal heirs of this Plaintiff. Further, it was submitted that instant application has been wrongly illegally filed without authority for the substitution of the legal use, which is not tenable in law. Hence, the instant application is liable to be dismissed.

Heard Ld. Counsel for the Plaintiffs. Perused the record. From perusal, it appears pertinent to refer Order XXII Rule 3 of the Code of Civil Procedure, 1908 which reads as:

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.-

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.”

From the reading of above provisions, it appears that the law mandates to substitute the legal heir/s of the deceased Plaintiff. Furthermore, perusal of the application reveals that the application and accompanied affidavit are signed and sworn in, respectively, by *Upendra Chaurasiya*, for which, the Defendants raised an objection. However, a careful reading of the abovementioned provision highlights that the law doesn't require application from the legal heirs of the deceased Plaintiff rather it requires an application.

Therefore, in the light of above facts, discussions and keeping in view the provisions above mentioned, this Court is inclined to allow the instant application, in the interest of justice. The legal heirs, (i) *Sonia Devi*, (ii) *Deepak Kumar Chaurasiya* and (iii) *Rajesh Kumar Chaurasiya*, of *Ramdeo Barai*, the Plaintiff No.5 herein, are being substituted.

With this order, the instant application is being disposed of.

Put up on **14.11.2024**.

Munsif
Teghra, Begusarai
28.10.2024

