

In the Court of Addl. District Judge-II, Benipur(Darbhanga)

Title Appeal 21 of 1999

Order

22.08.2024

Today the case is fixed for order on petition dt. 28.02.2023 filed by respondent No. 3 and 5 to 8. Rejoinder of which filed by appellant on 10.08.2023 and Respondent No. 2 on same date.

The petitioner/respondent through its petition submitted that in case in hand appellant No. 2 Ram Chandra Mallik as well as his heirs viz Smt. Usha Devi, Shankar Mallik and Karishma Kumari have been died between 2012 to 2016 and their name was not substituted. He further submitted that Respondent No. 4 Narayan Mallik, Respondent No. 9 Sushila Devi, Respondent No. 12K wife of Kishori Sah, Respondent No. 13 Most. Dulari Devi, Respondent No. 13D Smt. Hariya Devi, Respondent No. 13E Smt. Sukhiya Devi, Respondent No. 13C Most. Ramiya, Respondent No. 13A Satya Narayan Sah and Respondent No. 22 Bhagwat Yadav have been expired between 2011 to 2019 and their names were also not substituted. So he requests that as the current appeal has earlier been abated partly and as few parties have compromised the case and as all the above-mentioned parties have been died and the time of 90 days have been elapsed, the suit may be abated.

The appellant vehemently opposed this petition and submitted that the petition filed by the respondent is baseless and is not true in substance. That name of respondent Ramavtar Mallik and his son Ram Chandra Mallik have already been expunged from

the case, hence seeking abatement on this basis is not valid at all. That likewise name of respondent No. 12, 12Ka and 13 have also been expunged earlier. That as far as Naryan Mallik, Smt. Sushila Devi(Respondent No. 9), Wife of Kishori Sah(12Ka), Most. Dulari Devi(Respondent No. 13), Sri Satyanarayan Sah(Respondent No. 13A) and Sri Bhagwat Yadav(Respondent No. 22) is concerned, they all have died during this appeal 21/99, but as their father is on the record, the substitution of those is already considered to be done. That fact of compromise as mentioned by the respondent/petitioner is totally wrong.

That it is further necessary to be mentioned that in Partition Suit 108/77, defendant No. 14 and 15 died in year 1996 and 1998 respectively, but the same were not substituted and the suit ought to have been abated earlier itself. That likewise in that Partition Suit 108/77 Shivajee Sah died in 1998, Ganesh Sah died in 1994, Shyama Sahu died in 1996 and Ram Chandra Sah died in 1990, but their legal heirs were also not substituted and the case was decreed. So clearly the petition filed by respondent is totally baseless and is liable to be rejected.

While Respondent No. 2 through its rejoinder supported the version of rejoinder of appellant in context with para 1 of the petition of the petitioner. He also supported the fact with respect to respondent No. 12, 12K and 13Kh as mentioned by the appellant in rejoinder. He further submitted that for all rest respondents he has no knowledge.

Heard submissions of both parties and perused the record. At the very outset, it is pertinent to mention that in the scheme of Civil

Procedure Code, the respondent/defendenat has no locus standi to directly request to the court to abate the suit/ appeal unless this fact has come and established in the record that the concern person has been died 90 days ago and the right to sue has not been survived. That it is also apposite to mention that abatement runs automatically if all parameters require for same have been established.

In case in hand, the respondent mentioned about many parties, so the court require to look all individually for proper disposal of this petition. That when court looked into petition filed by respondent with regard to Ram Chandra Mallik, this court in conjoint reading with the rejoinder of appellant found that the name of this party was expunged by the predecessor Presiding Officer vide a order dt. 26.05.2015 mentioning that his estate is well represented through his brothers who is also respondent in this case and that order was final till date. So the fact of death of Ram Chandra Mallik and his legal heirs is not considerable here. As far as point raised with respect to respondent No. 4 Narayan Mallik is concerned, the petitioner is itself submitting that his name was expunged vide order dt. 30.08.2018 and this fact is also verified through the order-sheet. Clearly when the name is expunged, the court has considered that the Estate of that person is well represented and again it is pertinent to mention here that this order was not challenged. On point of respondent No. 9 Sushila Devi, from perusal of record it is apparent that her husband Bharat Mallik is already on the record as respondent No. 2 so there is no reason to abate the case against her, and accordingly her name may be

expunged as her property is well represented. Now let us see fact with regard to respondent No. 12Ka. That her son is already on the record as respondent No. 12, so again the suit shall not abate against this respondent and OC to expunge her name. Now let us see the prospective of the petition with regard to respondent No. 13, 13A, 13D and 13E. That all these died leaving behind respondent No. 13C who represented their case till 2013. But in 2013 she also died and despite of knowledge of this fact on 28.02.2023 itself when the petitioner filed this petition, the appellant did not substitute her name, so the suit against her is also abated. Now at last, let us see prospect of respondent No. 22. That the petitioner submitted that he died in 2009 itself, the appellant did not objected the fact of his death but merely submitted that his name has already been expunged though from perusal of record, statement of appellant appears false and there is no substitution petition for him on record. So accordingly the case against this respondent is also hereby abated and his name is also hereby expunged.

In the light of discussions made hereinbefore the petition is accordingly **disposed off**. List this case on _____ for argument of appellant.

(Dictated and Corrected)

(Rishi Gupta)

Addl. District Judge-II,

Benipur