

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Partition Suit No.-63 of 1984, Registration No.-537/14

Choudhary Rameshwar Rai & Others vs. Amola Choudharain & Others

26-05-2022

Wakaltan hazari have been filed on behalf of plaintiff and defendants. On perusal of the case record, it appears to the court that today this case is fixed for order on petition dated-27.10.2021 on behalf of the plaintiff U/O-XXII, Rule-4(4) of the Civil Procedure Code, 1908 herein after referred as the C.P.C. In this petition, it has been submitted that Shiv Kant Sahu, s/o-Ram, Rup Sahu, defendant No.-17 died 09.03.2021. The present suit has been proceeding ex- parte against aforesaid defendant vide order dated-21.08.2014. Now, there is no necessary to of substitution of legal representatives of aforesaid deceased defendant no.-17 in this suit. It is therefore, prayed that your honour be pleased to order exempt the plaintiff from substitution of legal representatives of the deceased defendant no.-17 namely Shiv Kant Sahu in the interest of justice.

No rejoinder of the petition dated-27.10.2021 has been filed on behalf of the defendants. But learned counsel of the defendants orally opposed the prayer of the plaintiff.

Heard the learned counsel of the plaintiff, but nobody turned up on behalf of the defendant for hearing despite repeated call. On hearing and perusal of case record, it appears to the court that a petition U/O-XXII, Rule-4(4) of the C.P.C. supported with an affidavit has been filed on behalf of the plaintiff. It appears to the Court that this suit partition has been brought by the plaintiffs against 38 defendants on 09.04.1984. On perusal of the case record, it appears that since 1985 to 27.03.2009, this instant suit has been pending for appearance of the defendants. On 16.05.2009, issues have been settled and record was fixed for filling original documents and list of the witnesses. It further appears that this instant suit has been dismissed for default twice (09.04.1986 & 14.03.2011) for non prosecution by the plaintiff and both times it has been restored by the Court in its original file.

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continued.....

Meanwhile, several defendants died and their legal representatives have been either substituted or proceedings U/O-XXII, Rule-4(4) of the C.P.C. has been initiated. On perusal of the case record, it further appears that ex- parte proceedings was initiated against the defendant no.-17 by the order dated-21.08.2014.

Considering the facts and circumstances as discussed above, the Court is inclined with the contentions of the learned counsel of the plaintiff. Thus, petition dated-27.10.2021 filed on behalf of the plaintiff U/O-XXII, Rule-4(4) of the C.P.C. Learned Counsel of the plaintiffs is directed to struck off the names of deceased defendant No.-17 from array of the defendants on the title page of plaint within 20 days. Thus, petitions dated- 27.10.2021 filed on behalf of the plaintiff is disposed of as accordingly. Further, it appears to the Court that since institution of the suit fate of this record is not so good and conduct of the plaintiffs is also seems negligible. As a result, such and extremely old case has been reeling in the Court on different stages, like appearance, filling original documents for almost 38 years. So, plaintiff is directed to file the original documents on next date, otherwise proper order will be passed.

Fixing on 14.6.22..... for deletion of the name of deceased defendant no.-17 and filling original documents.

Dictated

Sub Judge-II

28.05.22