

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

13-09-2022

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-06.09.2022 & 13.09.2022 on behalf of the plaintiff U/O-XXII, Rule-4(4) & U/O-I, Rule-10 of the Civil Procedure Code, 1908 herein after referred as the C.P.C. In this petition, it has been submitted that defendant no.-16 namely Uma Kant Sahu died on 15.08.2022. The present suit is fixed for ex-parte against aforesaid defendant on 21.08.2014. Thus, case of defendant no.-16 come in the purview of Order XX, Rule-4(4) of the C.P.C. It is therefore, prayed that your honour be pleased to order exempt the plaintiff from substitution of legal representatives of the deceased defendant no.-16 namely Uma Kant Sahu in the interest of justice.

Another petition dated-13.09.2022 has also been filed on behalf of the plaintiff U/O-I, Rule-10 of the C.P.C. In this petition it has been submitted that Shiv Kant Sahu, the father of the petitioner was originally defendant no.-17 in the suit. Shiv Kant Sahu died on 09.03.2021 and he had filed Written Statement on 04.02.1991. The plaintiff had filed a petition U/O-XXII, Rule-4(4) of the C.P.C. with prayer to exempt the plaintiff to substitute the legal representative of defendant no.-17. The provision U/O-XXII, Rule-4(4) of the C.P.C. is not applicable in this case and legal heirs of the deceased defendant are necessary parties to this suit. Therefore, your honour would graciously be pleased to substitute the petitioner in place of defendant no.-17.

No rejoinder of the petition dated-06.09.2022 & 13.09.2022 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 the petition U/O-XXII, Rule-4(4) & U/O-I, Rule-10 of the C.P.C. supported with an affidavit have been filed on behalf of the plaintiff. It appears to the Court that defendant no.-16 namely Uma Kant Sahu died on 15.08.2022 and suit has been fixed for ex-parte hearing against

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continued.....

him. So plaintiff is exempted from substituting his legal heirs. So far as the petition dated-13.09.2022 is concerned, it appears to the Court that petitioner Anil Kumar Prasad, s/o- Late Shiv Kant Sahu is legal heir of deceased defendant no.-17 who died on 09.03.2021. So in the interest of justice petition dated-13.09.2022 filed on behalf of the plaintiff is allowed.

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-06.09.2022 filed on behalf of the plaintiff U/O-XXII, Rule-4(4) of the C.P.C. is allowed. Learned counsel of the plaintiffs is directed to struck off the names of deceased defendant No.-16 from array of the defendants on the title page of plaint within 15 days. Further, plaintiff is also directed to substitute the name of legal heir of defendant no.-17 in the array of defendants in plaint. Thus, petitions dated- 06.09.2022 & 13.09.2022 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on for deletion of the name of deceased defendant no.-16 and substitution of legal heir of defendant no.-17.

Dictated

Sub Judge-II

13.09.22