

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Partition Suit No.-45 of 2001, Registration No.-364/14

Ramchandra Jha & Others vs. Dayanand Jha & Others

22-02-2022

Case is called out and record is produced before me. Both plaintiff and defendant are represented through their learned counsels. Perused the case record. On perusal of the case record, it appears to the Court that today this suit is fixed for order on petition dated-10.01.2022 supported with an affidavit filed on behalf of the plaintiff. In this petition, it has been submitted that by the order dated-21.08.2019, your honour has been pleased to pass an order to the effect of summoning the substitute legal heirs of defendant no.-4. The plaint has been amended by order dated-29.07.2019. It is further submitted that during the pendency of the suit, due to pandemic of Covid-19, the Court was not running smoothly and as such no requisites could be filed for summoning the substituted defendants. On 19.10.2021, the widow of Krishna Kumar Jha died and her legal heirs Bishwanath Jha, son and daughter Nirmala Devi is already on record. Further submission of the plaintiff is that petitioner is filling the requisites against the substituted defendants. Thus in the interest of justice your honour be pleased to expunge the name of widow Krishna Bahadur Jha namely Janki Devi @ Pavitri Devi.

No rejoinder of the petition dated-10.01.2022 has been filed on behalf of the defendants.

Heard the learned counsel of the petitioner through V/C, but on several call nobody appeared on behalf of the defendant for hearing. On hearing and perusal of case record, it appears to the Court that this suit has been brought by the plaintiffs against eight defendants on 15.09.2001. After summons defendant no.-1 namely Dayanand Jha appeared in this suit on 10.10.2001 and filed the W.S. on 04.02.2002.

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Continued..... It further appears that despite summon and registered summon, but they refused to receive summon. Then presuming the service of summon against them Ex parte was initiated against them on 09.05.2006. It further appears that status quo was ordered to be maintained by the parties till disposal of the suit. It further appears that defendant no.-3 died and his legal heirs were substituted vide order dated-02.12.2006. On perusal of the case record, it further appears that issues were settled on 27.08.2008. Original documents and list of witnesses have been filed respectively on 15.09.2008 & 18.11.2008 and since 03.01.2009, this instant suit has been pending for plaintiff evidence. It further appears that plaintiff evidence was closed 10.05.2015 and since 25.05.2010, this suit has been running for defendant no.-1 evidence. Then defendant evidence was closed on 30.05.2011 and since 20.06.2011, this suit has been pending for argument. It further appears that during the course of trial defendant no.-2 namely Sitaram Jha died and his legal heirs have substituted vide order dated-19.02.2013. Ex parte proceeding was initiated against the substituted defendant no.-2 to 2D vide order dated-19.08.2014. It further appears that defendant no.-6 died then his name was deleted vide order dated-15.01.2015. It further appears that defendant no.-4 died during trial and his legal heirs have been substituted as Defendant No.-4,4a and 4b vide order dated-23.08.2019. But requisites of summons for substituted defendants couldn't be filed on behalf of the plaintiff within time and meanwhile substituted defendant no.-4 namely Janki Devi,w/o-Late Krishn Bahadur Jha died on 19.10.2021 by leaving behind her legal heirs Bishwanath Jha,son and daughter Nirmala Devi who are already on record and thus,this suit is not abated due to death of the Defendant No.-4 and right to sue survives.

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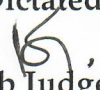
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Though, petition dated-10.01.2022 has been filed after two and half months later of her death, but considering the situations due to prevailing Covid-19, delay in filling the petition is condoned.

Considering the facts and circumstances as discussed above, petition dated-10.01.2022 filed on behalf of the petitioner/plaintiff is allowed in the interest of justice. Learned Counsel of the plaintiff is directed to struck off the name and address of deceased Defendant No.-4 from title page of the plaint within fifteen days from today. Thus, petitions dated-10.01.2022 filed on behalf of the plaintiff is disposed of as accordingly. Since this suit was pending at the stage of filling requisites of summons for substituted defendants; so plaintiff is directed to file the requisites of summons on next date.

Fixing on 21.03.22 for deletion of name of the deceased defendant no.-4 and for filling requisites of summon.

Dictated


Sub Judge-II
22.02.22