

**In the Court of the Sub Judge-II, Benipur**

***Present:- Pranav Kumar Bharti***

**Partion Suit No.-06 of 2016, Registration No.-09/16**

***Masmt. Bhola Devi vs. Masmt. Mundrika Devi & others***

**24-05-2022**

Plaintiff is in attendance while defendants are absent. On perusal of the case record, it appears to the Court that today this case has been fixed for order on petition dated- 23.12.2020 filed on behalf of the petitioners U/O-XXII, Rule-3, U/O-I, Rule-10 & u/s-151 of the Civil Procedure Code, 1908 herein after referred as the C.P.C. In the petition dated-23.12.2020, it has been submitted that Plaintiff of the suit namely Masmt. Bhola Devi died on 27.09.2020 by leaving behind her two sons and a daughter-in-law. Further submission of the petitioners is that they want to contest this suit in place of their mother and that's why they want to be substituted in place of their mother as plaintiff in this suit. Therefore, it is prayed that name of Plaintiff Masmt. Bhola Devi be deleted and substitute her legal heirs/ representatives in place of her in the plaint in the interest of justice as mentioned in the foot of the petition.

No rejoinder of the petition dated- 23.12.2020 has been filed on behalf of the defendants, so they are debarred from filling the same.

Heard the learned counsel of the plaintiff, but on repeated call, nobody turned up on behalf of the defendants. On hearing and perusal of case record, it appears to the Court that this instant partition suit has been brought by the deceased plaintiff Bhola Devi against the five defendants on 18.02.2016. After admission, defendants were summoned and defendant no.-1 to 4 and 5 respectively appeared in the suit on 31.07.2017 & 27.08.2017. It further appears that W.S. was filed on behalf of the defendant no.-5 on 06.11.2017, but defendant no.-1 to 4 didn't file the W.S. and they were debarred from filling the W.S. on 05.01.2018. Later on they filed the W.S. on same day and issues were settled on 06.11.2018. Since 12.12.2018, this suit has been pending for plaintiff evidence and altogether three P.Ws. have been adduced on behalf of the plaintiff till 17.03.2020 and after pandemic of Covid-19 while this suit was pending for plaintiff evidence, a petition U/O-XXII, Rule-3, U/O-I, Rule-10 & u/s-151 of the C.P.C. supported with an affidavit has been filed on behalf of the plaintiff.

**continue.....**

**Partion Suit No.-06 of 2016,Registration No.-09/16**

*Masmt. Bhola Devi vs. Masmt. Mundrika Devi & others*

**24-05-2022**

continued..... It also appears that sole plaintiff of the suit namely Masmt. Bhola Devi died on 27.09.2020 by leaving behind her two sons and a daughter-in-law. It further appears that petitioner no.-1 & 2 are the sons of the deceased plaintiff while petitioner no.-3 is the daughter-in-law of the plaintiff. They are the legal representatives of the deceased plaintiff namely Masmt. Bhola Devi and they want to contest this suit in place of deceased plaintiff. The petition is filed within time as stipulated in the Article -120 of the Limitation Act.

Considering the facts and circumstances as discussed above, the Court is of opinion that the suit is not abated due to death of deceased Plaintiff namely Masmt. Bhola Devi and right to sue survives to the surviving legal heirs/representatives as her legal heirs are alive. Therefore, the petitions dated-23.12.2020 filed on behalf of the plaintiff/petitioners is allowed. Learned Counsel of the plaintiffs is directed to struck off the name of deceased plaintiff from array of the plaintiff and substitute the name of her legal representatives on the title page of plaint as given on the foot of the petition, dated-23.12.2020 within twenty days from today. Thus, petitions dated- 23.12.2020 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on .....28-06-22 for deletion of the name of deceased plaintiff and substitution of his legal heirs/representatives.

Dictated

  
Sub Judge-II  
240 8.22