

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-45 of 2012, Registration No.-1591/14

Thakko Gareri vs. Vindeshwar Sah & others

21-06-2022

Wakaltan hazari are filed on behalf of the plaintiff and defendants. On perusal of the case record, it appears to the court that today this case has been fixed for order on petition dated- 30.03.2022 on behalf of the plaintiff U/O-XXII, Rule-4 of the Civil Procedure Code, 1908 herein after referred as the C.P.C. and u/s-5 of the Limitation Act. In this petition, it has been submitted that defendant No.-7 namely Jhameli Gareri died on 20.07.2020 leaving behind him his four legal representatives named below. It has been further submitted that keeping in the mind the above facts and circumstances, it is essential to expunge the name of defendant no.-7 namely Jhameli Gareri from the array of the defendants and be pleased to substitute the legal representatives of the deceased defendant in the plaint. Further submission of the plaintiff is that due to pandemic of Covid-19, no petition U/O- XXII, Rule-4 has been presented by the plaintiff in the suit earlier. Therefore, the plaintiff has filed a separate petition u/s-5 of the Limitation Act to condone the delay. Therefore, it is prayed that name of deceased defendant No.-7, namely Jhameli Gareri be expunged and order of substitution of his legal representatives in place of him in the plaint in the interest of justice as mentioned in the foot of the petition.

No rejoinder of the petition dated-30.03.2022 has been filed on behalf of the defendants, then they were debarred from filling the rejoinder on 25.05.2022.

Heard the learned counsel of the plaintiff, but on repeated calls, nobody turned up on behalf of the defendants. On hearing and perusal of case record, it appears to the Court that a petition U/O-XXII, Rule-4 of the C.P.C. and u/s-5 of the Limitation Act supported with an affidavit has been filed on behalf of the plaintiff on 30.03.2022. It also appears that defendant no.-7 namely Jhameli Gareri died on 20.07.2020 by leaving behind him his four legal representatives as detailed in the foot of the petition. On perusal of the case record, it transpires that this suit has been brought against the eight defendants on 15.03.2012 and

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Continued..... after admission, defendants were summoned. Defendants no.-1 to 7 appeared in the suit on 16.05.2015 and W.S. was filed on their behalf. It further appears that name of the defendant no.-8 namely Harideo Thakur was expunged by the order dated-29.10.2015. It further appears that issues have been settled on 25.01.2017 and since 09.02.2017, this instant suit has been pending for plaintiff evidence. It further appears that a petition has been filed on behalf of the defendants on 20.02.2020 that defendant no.-6 namely Shyam Sundar Gareri died on 26.06.2018, but no steps has been taken by the plaintiff for substitution of his legal representatives on record, so this suit is abated against him. Then an order of abatement of suit as against the defendant no.-6 was passed on 08.03.2022. Then on next date, the instant petition for substitution of the legal representatives of the deceased defendant no.-7 has been filed on 30.03.2022 by the plaintiff and after hearing the same is fixed for order today.

Though, petition for substitution of legal representatives of deceased defendant no.-7 is not filed within time as stipulated in the Article -120 of the Limitation Act, yet by seeing the prevailing circumstances due to Global pandemic Covid-19 in last two years, delay in filling the same is condoned for the ends of justice.

Considering the facts and circumstances as discussed above, the Court is of opinion that though, the suit is automatically abated due after the death of the party, if his legal heirs/representatives are not substituted within time as stipulated in law, but reason behind non filling of substitution petition is prevailing Global pandemic Covid-19 in last two years. So abatement of suit against the deceased defendant no.-7 is setting aside for the ends of justice. Therefore, the petitions dated-30.03.2022 filed on behalf of the plaintiff is allowed by condoning the delay in filling the same in the interest of justice. Abatement as against the defendant no.-7 is set aside. Learned Counsel of the plaintiffs is directed to struck off the names of deceased defendant No.-7 from array of the defendants and substitute the name of his legal representatives on the title page of plaint as given on the

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Continued.....

foot of the petition, dated-30.03.2022 within twenty days from today. Thus, petitions dated- 30.03.2022 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on 29-7-22 for deletion of the name of deceased defendant no.-7 and substitution of his legal heirs/ representatives in the plaint.

Dictated


Sub Judge-II
21/6/22