

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-87 of 2013, Registration No.-1568/14

Smt. Rajkumari Devi & others vs. Smt. Hira Devi & others

21-07-2022

Wakaltan hazari is filed on behalf of the plaintiff, 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- 16.12.2021 filed on behalf of the plaintiff U/O-XXII, Rule-2,4(1) & 9(2) 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.-3 (2nd party) namely Raj Kumar Jha died on 16.12.2020 by leaving behind him his widow Hira Devi, two sons namely Shiv Kumar Jha & Ghanshyam Jha as well as one daughter namely Pushpa Devi @ Girija Devi who are legal representatives of the deceased defendant no.-3 after his death. Further submission of the plaintiff is that out of the above named legal representative of the deceased defendant no.-3, his wife Hira Devi has already arrayed as defendant no.-2 and name of the rest legal representative of the deceased defendant no.-3 are essential to arrayed in the plaint as defendant. It is further stated that due to pandemic of Covid-19, the plaintiffs couldn't become able to file instant petition for substitution earlier in time specified in the law. Thus, there is no deliberate and willful latches in the part of plaintiff for not substituting the legal representatives of deceased defendant no-3 within time. Therefore, the plaintiff has filed a separate petition u/s-5 of the Limitation Act to condone the delay and also a petition U/O-XXII, Rule-9(2) of the C.P.C. Therefore, it is prayed that name of defendant no.-3, namely Raj Kumar Jha be deleted and substitute his legal heirs/ 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-16.12.2021 has been filed on behalf of the defendant.

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-2,4(1) & 9(2) 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.

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continued.....

It also appears that Defendant No.- 3 (2nd party) namely Raj Kumar Jha died on 16.12.2020 by leaving behind him his widow Hira Devi,two sons namely Shiv Kumar Jha & Ghanshyam Jha as well as one daughter namely Pushpa Devi @ Girija Devi as mentioned in the foot of the petition. These are the legal heirs and representatives of the deceased defendant no.-3 namely Raj Kumar Jha and their substitution in the column of defendant is necessary for complete adjudication of the suit. Though, petition 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 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 not abated due after the death of defendant no.-3, as his wife Hira Devi has already on record as defendant no.-2 Moreover, a separate petition U/O-XXII,Rule-9(2) of the C.P.C. is on record. Therefore,the petitions dated-16.12.2021 filed on behalf of the plaintiff is allowed by condoning the delay in filling the same in the interest of justice. Learned Counsel of the plaintiffs is directed to struck off the names of deceased defendant no.-3(2nd party) from array of the defendants and substitute the name of his legal heirs on the title page of plaint as given on the foot of the petition,dated-16.12.2021 within 30 days from today. Thus, petitions dated-16.12.2021 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on19-09-22 for deletion of the name of deceased defendant no.-3 and substitution of his legal heirs/ representatives.

Dictated

Sub Judge-II