

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

*Present:- Pranav Kumar Bharti*

**Title Suit No.-27 of 2018, Registration No.-30/18**

*Smt. Siyabati Devi & others vs. Mosmt. Bhagwan Dai Devi & others*

**09-05-2022**

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- 07.03.2022 on behalf of the plaintiff U/O-XXII, Rule-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.-6(3<sup>rd</sup> party) namely Parmanand Jha died about eight months ago due to infection of Covid-19 leaving behind him his detailed below legal heirs who are the legal representatives of him after his death. Further submission of the plaintiff is 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-6 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.-6, namely Parmanand 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-07.03.2022 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-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. It also appears that Defendant No.-6(3<sup>rd</sup> party) namely Parmanand Jha died due to Covid-19 about eight months ago by leaving behind his legal heirs his wife and three sons as mentioned in the foot of the petition. These are the legal heirs and representatives of the deceased defendant no.-6 namely Parmanand Jha.

**Continue.....**

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Continued.....

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, 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, yet a separate petition U/O-XXII, Rule-9(2) of the C.P.C. is on record. On perusal of the record, it appears that defendant no.-6 died due to Covid-19 pandemic and that's why no substitution petition has been filed on behalf of the plaintiff within time. So abatement of suit against the deceased defendant no.-6 is setting aside for the ends of justice. Therefore, the petitions dated-07.03.2022 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.-6 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-07.03.2022 within twenty days from today. Thus, petitions dated- 07.03.2022 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on ...24-05-22... for deletion of the name of deceased defendant no.-6 and substitution of his legal heirs/representatives.

Dictated

Sub Judge-II

09.05.22