

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-156 of 2010, Registration No.-2128/14

Smt. Moti Devi & others vs. Jatashankar Jha & others

13-05-2022

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 petitions dated-06.01.2022 & 25.03.2022 filed on behalf of the plaintiff U/O-XXII, Rule-4, 4(4) & 9 of the Civil Procedure Code, 1908 herein after referred as the C.P.C. and u/s-5 of the Limitation Act. In these petition, it has been submitted that Defendant No.-2 namely Parmanad Jha died on 21.06.2021 leaving behind himself his two sons namely Ghanshyam Jha & Radheshyam Jha and his widow Sudhira Devi. It has been prayed by the plaintiff that this Court be pleased to substitute the legal heirs of the defendant no.-2 in the array of the defendants in the plaint.

Further submission of the plaintiff is that defendant no.-5 namely Ganga Pd. Jha died on 22.12.2021. This defendant filed the W.S. but has failed to appear and contest the suit at the time of hearing. Therefore, your honour graciously be pleased to order to exempt the plaintiff from substituting the legal heirs of the defendant no.-5 in the interest of justice.

A separate petition for setting aside the abatement and condonation of delay has been filed on behalf of the plaintiff on 25.03.2022. In this petition, it has been submitted that plaintiff has filed a petition on 06.01.2022 for substitution of legal representatives of the deceased defendant no.-2 namely Parmanand Jha. The plaintiff couldn't be able to file the substitution petition earlier due to Covid-19 epidemic. The plaintiff has no legal knowledge, so they couldn't file the said petition earlier. Further submission of the plaintiff is that learned lawyer of defendant also gave information to the Court on 03.11.2021 regarding the death of deceased Parmanand Jha. In the interest of justice, it is expedient that abatement if any be set aside and delay be condoned.

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Therefore, it is prayed that name of Defendant No.-2 & defendant.-5 be deleted and substitute his legal heirs/ representatives of defendant no.-2 in place of him in the plaint in the interest of justice by condoning the delay in filling the petition.

A rejoinder of the petition dated-25.03.2022 has been filed on behalf of the defendants on 12.04.2022. In this rejoinder, it has been submitted that Ganga Pd. Jha died on 22.12.2021 by leaving behind him his widow and five sons and as such petition U/O-XXII,Rule-4(4) of the C.P.C. is not attracted at all at the initial stage of the case. Further submission of the defendant is that Ganga Pd. Jha has filed his W.S. and was ailing since long who was contesting the case. The justice demand if legal heirs of Ganga Pd. Jha are not substituted within time suit be abated. It is therefore, prayed that your honour be pleased to reject the petition of plaintiff holding the suit is abated against the defendant no.-5 namely Ganga Pd. Jha.

Heard the learned counsel of the plaintiff and defendants. On hearing and perusal of case record, it appears to the Court that this instant suit has been brought by the plaintiffs on 07.10.2010 against eight defendants. After admission, defendants were summoned. Defendant no.-1 to 5 appeared in the suit on 18.07.2013 and W.S. was filed on behalf of defendant no.-4 & 5 respectively on 26.09.2013 & 16.08.2014. It further appears that defendant no.-6 to 8 appeared in the suit on 04.12.2013. But they didn't file the W.S. It further appears that W.S. was filed on behalf of the defendant no.-1 to 3 on 06.01.13. It further appears that ex parte proceeding was initiated against the defendant no.-6 on 22.03.2016 while defendant no.-7 & 8 were transposed as plaintiff no.-2 & 3 by the order dated-20.07.2015. It further appears that issues were settled on 21.02.2017 and since 21.03.2017 to 03.03.2020, this instant suit has been pending for plaintiff evidence. P.W.-5 namely Moti Devi produced for examination and she was partly cross examined by the

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continued..... defendants, but since 18.03.2020 this instant suit has been pending for her further cross examination. But she didn't turn up for further cross examination. Then a petition the petitions U/O-XXII, Rule-4, 4(4) & 9 of the C.P.C. and u/s-5 of the Limitation Act for substituting the legal heirs of the deceased defendant no.-2 & 5 have been filed on behalf of the plaintiff on 06.01.2022 & 25.03.2022. After hearing the same is fixed for order today.

Order-XXII, Rule-4(3) of the C.P.C.- "Where within time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant. "

A bare perusal of the provisions under Order-XXII, Rule-4(3) of the C.P.C. would clearly shows that where within the time limited by law, no application is made under sub-rule 4(1), the suit shall abate as against the deceased defendant. In this case, plaintiff didn't file a petition for substitution of legal heirs or representatives of deceased defendant no.-2 & 5 namely Parmanand Jha & Ganga Pd. Jha within time as stipulated under Art.- 120 of the Limitation Act. Therefore, the Court is of opinion that suit is automatically abated after the time prescribed to bring the heirs or legal representatives of the defendant on record expires. Though, these petitions are 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 at that time, delay in filling the same is condoned for the ends of justice.

So far as the defendant no.-5 is concerned, plaintiff wants exemption from substituting the legal heirs of deceased defendant no.-5, U/O-XXII, Rule-4(4) of the C.P.C. On perusal of the case record, it appears to the Court that defendant no.-5 filed the W.S. on 16.08.2014, but he left pairvi and didn't contest the case.' So, plaintiff is exempting from substituting the legal heirs of the deceased defendant no.-5.

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Considering the facts and circumstances as discussed above, the petitions dated-06.01.2022 & 25.03.2022 filed on behalf of the plaintiff are allowed by condoning the delay in filling the same in the interest of justice. The abatement of suit against the deceased defendant no.-2 & 5 is set aside. Learned Counsel of the plaintiffs is directed to struck off the names of deceased Defendant No.-2 & 5 from array of the defendants and substitute the name of the legal heirs of defendant no.-2 on the title page of plaint as given on the foot of the petition, dated-06.01.2022 within twenty days from today. Thus, petitions dated- 06.01.2022 & 25.03.2022 filed on behalf of the plaintiff are disposed of as accordingly.

Fixing on ~~31-05-22~~..... for deletion of the name of deceased defendant no.-2 & 5 and substitution of the legal heirs of defendant no.2.

Dictated

Sub Judge-II

13.5.22