

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

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

**Title Suit No.-33 of 2016, Registration No.-40/16**

***Kamalakant Jha & Others vs. Jay Krishna Pd. Yadav & Others***

**13-12-2021**

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- 29.01.2021 on behalf of the plaintiff U/O-XXII, Rule-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 this petition, it has been submitted that Defendant No.-2 namely Shashinath Pd. Yadav, s/o-Late Ganga Yadav died 12.04.2020 leaving behind him his two sons namely Manish Kumar & Ashish Kumar as well as one daughter namely Arati Kumar and his widow Laxami Devi who are the legal representatives of the deceased Defendant No.-2 and whose details are given at the foot of the petition. Further submission of the plaintiff is that it is expedient to substitute the name of the legal heirs of the deceased defendant no.-2 in the suit for the end of justice. Further submission of the plaintiff is that due to global pandemic of Covid-19, the plaintiff couldn't able to file instant petition earlier within time prescribed by law. There was no deliberate and willful laches in the part of plaintiff for not substituting the legal representatives of deceased defendant. Further submission of the plaintiff is that plaintiff has filed a separate petition U/O-XXII, Rule-9 of the C.P.C. for setting aside the abatement for the ends of justice. Therefore, it is prayed that name of Defendant No.-2, namely Shashinath Pd. Yadav be deleted and substitute his legal heirs/representatives namely Manish Kumar, Ashish Kumar, Arati Kumari & widow Most. Laxami Devi in place of him in the plaint in the interest of justice by condoning the delay in filling the petition.

No rejoinder of the petition dated- 29.01.2021 has been filed on behalf of the defendant and they were debarred from filling rejoinder on 26.11.2021.

Heard the learned counsel of the plaintiff and defendants. On hearing and perusal of case record, it appears to the court that a petition U/O-XXII, Rule-4 & 9 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.-2 namely Shashinath Pd. Yadav died on 12.04.2020 by leaving behind his two namely Manish Kumar & Ashish Kumar,one daughter namely Arati Kumari as well as his widow namely Most. Laxmi Devi. It further appears that wife of deceased defendant no.-2 namely Laxami Devi has already on record in the array of defendant as defendant no.-4. So there is no need to substitute her name. 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 the suit is not abated due to death of deceased defendant no.-2 namely Shashinath Pd. Yadav and right to sue survives as his legal heirs are alive and already on record. Therefore,the petitions dated-29.01.2021 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.-2 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-29.01.2021 except Most. Laxami Devi within fifteen days from today. Thus, petitions dated- 29.01.2021 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on 23-12-21..... for deletion of the name of deceased defendant no.-2 and substitution of his legal heirs/ representatives.

Dictated

Sub Judge-II

13.12.21