

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

10-08-2022

Plaintiff and defendant no.-1 to 6 are represented through their counsels. On perusal of the case record, it appears to the Court that today this case has been fixed for order on petition dated- 11.05.2022 on behalf of the plaintiff U/O-XXII, Rule-4 & 9 and u/s-151 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.-9 namely Harikant Jha, s/o-Late Bachchi Jha died on 31.12.2020 leaving behind him his widow Masmt. Veena Devi, one son namely Niraj Kumar as well as two daughters namely Smt. Nilam Devi & Smt. Renu Devi who are the legal representatives of the deceased defendant no.-9 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.-9 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 and u/s-5 of the Limitation act for the ends of justice. Therefore, it is prayed that name of Defendant No.-9, namely Harikant Jha be deleted and substitute his legal heirs/representatives in place of him in the plaint in the interest of justice by condoning the delay in filling the petition as detailed on the foot of the petition.

No rejoinder of the petition dated- 11.05.2022 has been filed on behalf of the defendants.

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. It also appears that defendant no.-2 namely Hirakant Jha died on 31.12.2020 by leaving behind him his widow Masmt. Veena Devi, one son namely Niraj Kumar as well as two daughters namely Smt. Nilam Devi & Smt. Renu Devi who are the legal heirs of the deceased defendant no.-9

continue.....

Title Suit No.-33 of 2016,Registration No.-40/16
Kamalakant Jha & Others vs. Jay Krishna Pd. Yadav & Others

16-08-2022

continued.....

On bare perusal of the provisions contained under Order-XXII,Rule-4(3) of the C.P.C; 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, petition is not filed within time as stipulated in the Article -120 of the Limitation Act,yet by seeing the prevailing circumstances in last two years due to Global pandemic Covid-19, delay in filling the same is condoned and order of abatement as against the deceased defendant is set aside 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.-9 namely Harikant Jha and right to sue survives as his legal heirs are alive. Therefore,the petitions dated-11.05.2022 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.-9 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-11.05.2022 on next date. Thus,petitions dated- 11.05.2022 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on for deletion of the name of deceased defendant no.-9 and substitution of his legal heirs.

Dictated

Sub Judge-II
16.8.22