

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-199 of 2012, Registration No.-199/12

Anand Mukhiya & others vs. Raju Mukhiya & others

20-06-2022

Wakaltan hazari is filed on behalf of defendant no.-1 & 8 while time petition is filed on behalf of the plaintiff. On perusal of the case record, it appears to the Court that today this case has been fixed for order on petition dated- 17.02.2020 filed on behalf of the plaintiff U/O-XXII, Rule-3 of the Civil Procedure Code, 1908 herein after referred as the C.P.C. In the petition dated-17.02.2020, it has been submitted that Plaintiff No.-1 namely Anand Mukhiya, s/o-phushi Mukhiya died on 17.10.2019 leaving behind himself his four sons namely Ramchandra Mukhiya, Shyam Mukhiya, Lakhan Mukhiya, Ramdeo Mukhiya and three daughters namely Smt. Sumitra Devi, Jitan Devi & Geeta Devi. Now it is essential for the plaintiff to substitute the legal representatives of aforesaid plaintiff no.-1 in the plaint. It has been further submitted that petition is within time and in the interest of justice, it is essential that legal representatives of the aforesaid deceased plaintiff no.-1 be permitted to be substituted in the plaint. Therefore, your honour would graciously be pleased to order to substitute the legal representatives of the deceased plaintiff no.-1 Anand Mukhiya in the plaint in the interest of justice as mentioned in the foot of the petition.s

No rejoinder of the petition dated-17.02.2020 has been filed on behalf of the defendant. Ld. Counsel of the defendant orally opposed the substitution petition filed on behalf of the plaintiff. He contended that petition dated-17.02.2020 filed on behalf of the plaintiff is time barred and suit against the deceased plaintiff is abated due to non substitution of his legal representatives within time prescribed by law.

Heard the learned counsel of the plaintiff. On hearing and perusal of case record, it appears to the Court that a petition U/O-XXII, Rule-3 of the C.P.C. supported with an affidavit has been filed on behalf of the plaintiff. It also appears that plaintiff no.-1 namely Anand Mukhiya died on 17.10.2019 leaving behind himself his four sons namely Ramchandra Mukhiya, Shyam Mukhiya, Lakhan Mukhiya, Ramdeo Mukhiya and three daughters namely Smt. Sumitra Devi, Jitan Devi & Geeta Devi.

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continued..... It is expedient to introduce Order-XXII, Rule-3 of the C.P.C.

before coming to any conclusion.

Order-XXII, Rule-3(2) of the C.P.C.- "Where within time limited by law, no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned and on the application of the defendant, the Court may award him the cost which may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff."

A bare perusal of the provisions under Order-XXII, Rule-3(1) of the C.P.C. would clearly show that where within the time limited by law, no application is made under sub-rule 1, the suit shall abate as against the deceased plaintiff. As per the averment of the petitioner in the petition, the plaintiff no.-1 namely Anand Mukhiya died 17.10.2019. But the petition for substitution of his legal heirs has been filed on 17.02.2020. Neither a petition for condonation of delay, nor a separate petition for setting aside the abatement has been filed on behalf of the plaintiff. Further, substitution petition dated-17.02.2020 has not been filed within time as stipulated under Art.- 120 of the Limitation Act. Therefore, the Court is of opinion that suit as against the plaintiff no.-1 is automatically abated after the time prescribed to bring the heirs or legal representatives of the deceased plaintiff no-1 on record expires. Hence petition dated-17.02.2020 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on11-7-22.. for plaintiff evidence.

Dictated

Sub Judge-II

20.6.2022