

pressing the earlier filed application as such the present application being in continuation of earlier application is within time.

He further submitted that mentioning of provision in the application is not mandatory, therefore even wrong provision has been mentioned and the relief sought can be given in other section, the court ought to give relief irrespective of section mentioned in the application and in furtherance of his argument he relying upon the judgement passed by Hon'ble MP High Court in Ramibai Vs Ramkumari Bai cited as 1989 0 Supreme (MP) 193 submitted that as per section 268 of Indian Succession act read with the order 22 rule 4 would also permit the substitution of legal heirs of the deceased opposite party of testamentary/probate petition subjected to fulfillment of other requirement.

On the other hand, Ld. Counsel of opposite party initially opposed the application on the ground that the application is barred by limitation and order 1 rule 10 would not applicable where order 22 Rule 4 is applicable and also that the proposed legal heirs have not filed the applications to implead them as objectors, however later on orally given his no objection.

I have gone through the record, it appears that the deceased Basudev Yadav died on 21.05.19 leaving behind his widow, Kuleshwari Devi,, sons Sidheswar Yadav and Rajesh Yadav and the date of knowledge of death is after filing of application 24.07.2019 and the first application under section 151 was filed to substitute him was 18.10.2019, therefore with in time of 90 days and the better application was filed in continuation of earlier application as such that application is also to be construed to be in time, though still the proper provision has not been mentioned, however the relief was sought to substitute the legal heirs of the opposite party which can be granted under the provision of order 22 rule 4 of CPC and further the Ld Counsel of the opposite party has given no objection.

Therefore the application dated 04.1.2020 filed under order 1 rule 10 (2) and 151 CPC is considered to have been filed under order 22 Rule 4 and section 151 CPC and the same is allowed and, the name of the opposite party Basudeo Yadav is substituted with his legal heirs 2 (a) Kuleshwari Devi, 2 (b) Sidheswar Yadav and 2 (c) Rajesh Yadav.

The Plaintiff /office is directed to incorporate the name of the legal heirs of the deceased Basudeo Yadav and take proper steps for their appearance and on taking the step by the plaintiff the office is directed to issue notice to the proposed defendant.

Now, to come up for further proceedings on **18.11.2022** for the appearance of the proposed defendants.

(Dictated)

Sd/-
A.D. & S.J. - II,
Gaya