

IN THE COURT OF SUB-JUDGE-II, PATNA CITY

DIST-PATNA

(T.S.125/08)

23-11-2023.

The case was called for.Ld. Counsel on behalf of plaintiff and defendents as well as intervener are present in the court.Heard them at length and perused the entire record sincerely.

After perusal it reveals that this case is pending for hearing on application filed on behalf of plaintiff on dated 06-1-21 U/O 22 R-3 of CPC. In which it was mentioned that plaintiff Ramnivas Agrawal has been died after leaving behing his wife and two daughters.So his name may kindly be expunged from the cause title and add the name of legal heirs under order 22 rule 3 of CPC.Ld counsel on behalf of plaintiff also quoted clause 17 of partnership agreement in which it was mentioned that the firm will not dissolved on the death of any partner and legal heirs who will major at the time of the death of any partner,will be considered to be taken is as partner.

On the other hand,ld.counsel on behalf of defendents vehemently oppose the petition of the plaintiff and stated that the basis of partnership is contract not status of the persons.as per sec 4 of Partnership Act 'relations between the parties who have agreed to share the profits of a business carried on by all or any of them acting all.'Further they quoted provision enumerated u/o XXX R-4 in which speaks about suits against or by the firms.in such rule its mentioned that where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit. Therefore the petition filed on behalf of the plaintiff shall be liable to rejected.they also submitted various authorities which is on the record

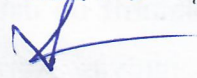
After hearing Submission by the both sides and their applications and rejoinders on that behalf it would be pertinent that though applicants can not be considered as partners because it will be contrary of partnership acts but at this stage question is wheather applicants who are legal heirs of the plaintiff should be permitted to continue the suit or not? After perusal of of provision contained in same rule (O-XXX rule-4) sub rule (2) of rule 4 speaks that "Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have-

In the Court of Sub Judge-II, Patna
T.S. 125/2008

Cont (a) to apply to be made a party to the suit, or
23.11.23 (b) to enforce any claim against the survivor or survivors."

Therefore in the interest of the justice and for complete and effective adjudication of the suit the petition dated 06-1-21 filed on behalf of the applicants is allowed to contest the suit only and not consider as partners of the firm. office is directed to bring the names of the legal heirs of the plaintiff mentioned in the petition on the record within ten days.

Put up this case record on next date for further proceeding in this case. ND-9-1-2024,


(Sub-Judge-II, Patna City)