

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**TITLE SUIT NO-98/2008**

**CIS NO. TS 398/2018**

**PARMA SAH & OTHERS.....PLAINTIFFS**

**V/S**

**MANEGER SAH & OTHERS.....DEFENDANTS**

<b>DATE</b>	<b>ORDER</b>	<b>REMARKS</b>
<b>14.05.2024</b>	<p>Attendance filed on behalf of both parties.</p> <p>Case called out for hearing on point of petition under order-22 rule-4 and section 151 of CPC filed by plaintiff on dated 21/03/2023.</p> <p>Petition filed by the Plaintiff dated 21/03/2023 for substituting the legal heir of the Defendant no-2 Yugal Paswan under order-22 rule-4 of CPC and under section 151 CPC and also for Condonation of delay section 5 of limitation act.</p> <p>Rejoinder of aforesaid petition filed by Defendant no-1 on dated 01/09/2023.</p> <p>Heard the Ld. Counsel of plaintiff and Ld. Counsel of defendant.</p> <p>The plaintiff has stated in the petition that Defendant no-2 Yugal Lal Paswan has been died on dated 20.03.2019 leaving behind Sole Dattak Putra Rambalak Paswan and widow wife Rambha Devi and Daughter Shobha Devi W/O Chabila Paswan And prayed for substitution in place of Defendant no-2.</p> <p>The Ld. Defendant counsel filed rejoinder on dated 01/09/2023 and in his rejoinder objected for the aforesaid petition and stated that Defendant no-2 Died four years ago and this petition is not maintainable and plaintiff have not filed any Limitation petition and further stated that only one plaintiff signature over the petition and petition is not supported by affidavit.</p>	

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It is further stated that plaintiff have given false information regarding Dattak putra Rambalak paswan rather Rambalak paswan is the son of Late. Mahanth Paswan and not of Yuglal Paswan. The admitted fact is that Yuglal paswan Died Leaving Behind his Widow wife Rambha Devi and Daughter Shobha Devi. Defendant no-1 also filed some document of Partition suit no-25/2020 which is pending in the court of sub-judge Narkatiaganj in which it is given that Father of Rambalak Paswan was the Late. Mahanth paswan and Defendant also filed a copy of proceeding under section 144 Crpc in the court of SDO, Narkatiganj of case no-1117/2022 between Rambalak Paswan and Manager Sah in that also father of Rambalak sah has given late. Mahanth Paswan. Further prayed that plaintiff petition dated 21/03/2023 is not maintainable and likey to be dismissed.

It is well settled that an application to bring on record the legal representatives of a deceased party is governed by the provision of article 120 of the limitation act. An application for substitution should be filed with in 90 days from the date of death of the deceased party. If no such petition is filed within 90 days of death of the deceased party abatement sets in. An application to set-aside such abatement is governed by Article 121 of Limitation act which prescribed a period of 60 days starting to run from the date of abatement. If no application for substitution is made within 150 days of death of deceased party, then party seeking for substitution has to make a prayer for condonation of the delay, besides making a prayer for setting aside abatement. Therefore, if a petition for substitution is not filed within 150 days of death of the deceased party, then

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In the instant petition Plaintiff have also given name of Rambalak paswan in his substitution petition as a Dattak Putra of the Yuglal Paswan. But plaintiff have not submitted any document regarding any Adoption done by the Yuglal paswan to adopt Rambalak paswan as a Adopted son under provision section 6 & section 7 of Hindu adoption and Maintance Act 1956. On the other side Defendant no-1 also filed some document of Partition suit no-25/2020 which is pending in the court of sub-judge Narkatiaganj in which it is given that Father of Rambalak Paswan was the Late. Mahanth paswan and Defendant also filed a copy of proceeding under section 144 Crpc in the court of SDO, Narkatiganj of case no-1117/2022 between Rambalak Paswan and Manager Sah in that also father of Rambalak sah has given late. Mahanth Paswan. After Considering the above fact it is clear that Rambalak paswan is not the legal Representative of the Defendant no-2.

On bare perusal of order 22 Rule-4 of CPC it state that court, on application made in that behalf, shall cause the legal Representative of the Deceased Defendant to be made party and shall proceed with the suit. In the instant case Rambalak Paswan is not the legal representative of the Defendant no-2 and only Late Yuglal Paswan, wife namely Rambha Devi and Daughter Shobha Devi is the legal representative in eye of law.

Thus, After Considering all the facts and circumstances in the aforesaid petition and the observation and ratio laid down in the case law discussed above of the Apex Court and also taking into consideration the inconvenience and delay caused to the opposite side, court is view that

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<p><b>Continue..</b> <b>14.05.2024</b></p>	<p>Petition dated 21/03/2023 filed by plaintiff under Order 22 Rule-4 here by Partly Allowed with cost of 500/-</p> <p>The B/C is directed to add the following persons namely 1. Rambha Devi W/O- Late Yuglal Paswan, 2. Shobha Devi W/O Chhabila Paswan as Defendant no-2 Set in the present suit.</p> <p>After, their addition the plaintiff is required to file the requisite of the summons for their appearance before the court.</p> <p>Put the record on 19.06.2024 for further proceeding.</p> <p style="text-align: right;">Munsif Narkatiaganj</p>	
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