

Ejectment Suit 434 of 2019.

[ CNR WBPS01 001056 2019 ]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-28.

22-09-2023.

Today is fixed for hearing on the point of maintainability of the petition u/o-22 Rule 3 of C.P Code, w/o , if any in the mean time.

Plaintiff takes no steps. Defendant files hazira. Added defendant also files hazira.

However, at the time of call, parties are found present.

Ld. Advocates for the defendants submitted that the suit has already been abated for which plaintiffs have filed an application u/o-22 Rule 9 of C.P.C which has been registered as a Misc Case being no 76 of 2023 but no notice has served upon them . Ld. Advocate for the defendants further prayed that a formal order is required to be passed recording the abatement of the instant suit.

Ld. Advocate for the plaintiffs on the other hand submitted that the Misc Case 76 of 2023 has been filed because 90 days have already been passed after the death of plaintiff no-1. He prayed for admission of the Misc Case.

Heard submissions from the parties. Perused the materials on record.

Considered.

Firstly, so far the instant Ejectment suit is concerned, today is fixed for hearing on the point of maintainability of the petition filed u/o-22 Rule 3 of C.P.C Code filed by the petitioners on 10-05-2023.

It appears from Order no 24 dated 10-05-2023 , that on that day, the petitioners/ plaintiffs have filed a petition u/o-22 Rule 3 of C.P.C praying for substitution of legal heirs of deceased plaintiff no-1 .

*p.t.o.....*

It further reveals from the said order that in the last portion of the order, this Court has categorically made observation questioning the maintainability of the said petition to the extent that the petitioners have admitted in the petition that plaintiff no-1 died on 28-01-2023 but the petition for substitution has been filed on 10-05-2023 and more than 90 days have already passed.

The petitioners/ plaintiffs also not disputed the said fact.

Therefore, in the attending circumstances, it is palpably clear that the instant petition for substitution dated 10-05-2023 filed u/o-22 Rule 3 of C.P.C Code by the petitioners is not maintainable in the eye of law since the suit has already been abated.

Accordingly,

it is

Ordered

that the petition filed u/o-22 Rule 3 of C.P.C Code by the petitioners dated 10-05-2023 is considered and rejected on contest being time barred and being not maintainable.

The Ejectment Suit being no 434 of 2019 stands abated so far plaintiff no-1 is concerned. The rest of the plaintiffs are at liberty to proceed with the suit in accordance with law.

To **( 03-01-2024 )** for taking steps by the rest of the plaintiffs.

Dictated & corrected

by me :-

Chief Judge

Chief Judge.

J.O .Code:- WB 01244.

Misc Case 76 of 2023.

[ u/o- 22 Rule 9 of C.P Code ]

[ Arising out of Ejectment suit 434 of 2019 ]

[ CNR WBPS01 000269 2023 ]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-28.

22-09-2023.

Today is fixed for hearing on the point of admission and filing General power of attorney by the petitioners.

Petitioner files hazira. Ld. Advocate for the petitioner is found present.

Ld. Advocate for the petitioners prayed for admission of the Misc Case.

Heard submission from the Ld. Advocate for the petitioners. Perused the materials on record. Considered.

Now, it is well settled principle of law that where a suit or appeal has already abated, an application under Order 22 Rule 9 of C.P Code has to be filed within sixty days from the date of abatement for an order to set aside the abatement- vide Article 121 of Limitation Act. The abatement is automatic after 90 days prescribed by Article 120 have expired and unless the abatement is set aside on an application within 60 days or a period further extends under Section 5 of the Limitation Act.

Here the application u/o-22 Rule 9 of C.P Code has been filed by the petitioners on 16-05-2023 whereas the death of plaintiff no-1 occurred on 28-01-2023 as it appears from Order dated 10-05-2023 which means that although no formal order of abatement has been passed, the suit abated automatically on the 90<sup>th</sup> day after the death of plaintiff no-1, ie on 28-04-2023. The instant Misc Case has been filed on 16-05-2023.

Therefore, the Misc Case prima facie appears to be admissible so far limitation is concerned.

p.t.o....

However, record reveals that till date no General power of attorney has been filed by the petitioners in compliance of the Order dated 16-05-2023 passed by this Court.

Therefore, petitioners are directed to file the General Power of Attorney as per their undertaking made in the petition dated 16-05-2023 as well as in compliance of Order dated 16-05-2023. Thereafter, the matter shall be heard on the point of admission.

Accordingly, fix. ( 03-01-2024) for hearing on the point of admission and filing of General power of attorney by the petitioners in terms of Order date 16-05-2023.

It may be mentioned here that prior to passing of any order of abatement in the original Ejectment suit, the application u/o-22 Rule 9 of C.P.C has been registered as a Misc Case by the department concerned. Therefore, Dealing clerk of the concerned department is hereby cautioned and directed to remain vigilant in future and not to repeat such mistakes.

Dictated & corrected

by me :-

Chief Judge

Chief Judge.

J.O .Code:- WB 01244.