

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.528 of 2019**

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Rajendra Prasad Sah S/o Late Mahadeo Sah, resident of Village Asarganj,
P.S.- Asarganj, Distt.- Munger.

... .. Petitioner

Versus

Lakshmi Devi, W/o Late Balram Sao, resident of Village- Makwa, Pergana
Lakhanpur, P.S.- Tarapur, Distt.- Munger.

... .. Respondent

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Appearance :

For the Petitioner : Mr.Kumar Kamal Nayan, Advocate
For the Respondent : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 29-08-2019

This application has been filed by the petitioner for setting aside the order dated 17.12.2018 passed by the learned Sub-Judge-1st, Munger in Title Suit No. 109 of 1978 whereby he has allowed the application dated 26.07.2018 filed under Order 22 Rule 3 of the Code of Civil Procedure (for short 'CPC') for impleading Salil Kumar and Sourav Kumar as party in place of Shiv Shankar Sao who had died on 14.02.2017.

2. The facts of case, in brief, are that prior to filing of Title Suit No. 109 of 1978, the plaintiff had filed Partition Suit bearing No. 54 of 1967 in the court of Sub-Judge-1st Munger, which was dismissed for default on 30.05.1973. Thereafter, the restoration application was also dismissed. After dismissal of the aforesaid partition suit, the plaintiffs filed Title Suit No. 109 of



1978. On 26.07.2018, a petition was filed informing that the plaintiff no. 1, namely, Shiv Shankar Sah had died on 14.02.2017. It was also prayed that names of Salil Kumar and Sourav Kumar may be added in place of plaintiff no.1. The defendant filed his rejoinder. After hearing the parties vide impugned order dated 17.12.2018, the application filed on behalf of the plaintiffs for impleadment of Salil Kumar and Sourav Kumar after the death of Shiv Shankar Sao was allowed.

3. The aforesaid order dated 17.12.2018 is under challenge in the present case.

4. Learned counsel appearing for the petitioner submitted that the order under challenge has been passed overlooking the materials available on record as well as ignoring the objections raised by the petitioner. He contended that since there was an inordinate and unexplained delay, the trial court ought not to have allowed the application filed on behalf of the plaintiffs under Order 22 Rule 3 of the CPC. According to him since the suit had already abated, in absence of any application for setting aside the order of abatement, the delay in filing an application under Order 22 Rule 3 of the CPC could have been condoned.



5. On perusal of the record, I find that it is not case in which there is sole plaintiff. It is also not the case of the petitioner that upon death of the plaintiff, Shiv Shankar Sao, right to sue did not survive. In case of death of one of several plaintiffs, the right to sue survives. In such a case, the court has been vested with the power to bring on record the legal representative of the deceased-plaintiff and make him party in view of the provisions prescribed under Order 22, Rule 3(1) of the CPC.

6. Having regard to the facts and circumstances of the case, I do not see any perversity or illegality in the order impugned.

7. In that view of the matter, I am not inclined to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India.

8. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.09.2019
Transmission Date	

