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15.02.2022

**C.O. No. 3999 of 2019
(Via Video Conference)**

**Sri Asish Samanta
Vs.
Sri Madan Chandra Samanta & Ors.**

Mr. Asish Chandra Bagchi, Sr. Adv.,
Ms. Malyasree Maity ... For the petitioner.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for declaration of title and injunction which is directed against the Order No. 196 dated September 21, 2019 passed by the Additional Court of learned Civil Judge (Junior Division) at Tamruk, District – Purba Medinipur in J. Misc. Case No. 56 of 2018 arising out of Title Suit No. 04 of 2010.

The learned Trial Judge by the order impugned has allowed the connected Misc. Case under Order XXII Rule 9 of the Code of Civil Procedure along with an application under Section 5 of the Limitation Act, 1963 thereby setting aside the order of abatement of the suit out of which the Misc. Case arose being Title Suit No. 04 of 2010.

Mr. Asish Chandra Bagchi, learned senior counsel appearing on behalf of the petitioner submits that except an application under Section 5 of the Limitation Act, 1963, there was no application under Order XXII Rule 9 of the Code in the record of the said Misc. Case as on the date of passing the order impugned.

He further submits that bringing the heirs and legal representatives of the deceased plaintiff no. 7 on record is

of no consequence when for the failure of the plaintiffs to bring the heirs and legal representatives of some other

deceased defendants within time, the suit has already abated. He adds that the observation of the learned Trial Judge that in view of the larger public interest, this Court is inclined to allow the application under Order XXII Rule 9 of the Code along with the petition under Section 5 of the Limitation Act is completely un-called for and contrary to law, required to be considered in an application under Order XXII Rule 9 of the Code.

The petitioner is disputing the very existence of the application under Order XXII Rule 9 of the Code on record, such allegation can only be well addressed by the learned Trial Judge as the records of the case is under his control. The petitioner, therefore, is at liberty to draw the attention of the learned Trial Judge regarding the said issue.

It is always open for the petitioner to apply for recording of the abatement of the suit for the failure of the plaintiffs to bring the heirs and legal representatives of the deceased defendants of the suit on record within the period of limitation.

C.O. 3999 of 2019 is disposed of with the above observations without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)