IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P No. 131 of 2022

Mohammad Iliyas, aged about 48 year, s/o late S.K. Makbool, r/v Bishundas Chak, PO Laxmipur, PS Basantrai, Dist. Godda

… Petitioner(s).

Versus

1. Sheikh Basir
2. Sheikh Sammer
3. Sheikh Jainul
   All sons late Sheikh Budhu, , petitioner no.1 to 3 resident of village Sarkhi PO & PS Pathargama, Dist. Godda
4. Sheikh Nazeer, s/o Sheikh Kayamuddin, r/v Sonaguji PO & PS Belbadda, Dist. Godda
5. Mosomat Fogni, w/o late Sheikh Mazid
6. Sheikh Ahmad Ali, s/o late S.K. Mazid
7. Bibi Mamun, d/o late S.K Mazid & w/o Sheikh Bakuruddin
   Petitioner nos. 5 to 7 r/o Chakhathu, PO & PS Sanhola Dist. Bhagalpur (Bihar)

… Opp. parties(s).

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner(s) : Mr. J.P Jha, Sr. Advocate
For the Respondents: Mr. Pankaj Choudhary, Advocate

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11 /28.11.2024:

Heard the learned counsel for the parties.

2. The instant application has been preferred against the order dated 07.01.2022 passed in Civil Appeal No. 4 of 2019 under order-VI Rule 18 whereby learned District Judge-II, Godda has dismissed the petition filed on behalf of the appellant/petitioner for substitution of respondent no.4/Defendant no.4.

3. Learned counsel for the petitioner submits that Title Partition Suit No.39 of 2006 was dismissed by the trial court on 12.09.2018 and decree of the same was prepared on 03.10.2018. Against the very judgment and decree Civil Appeal No. 4 of 2019 was preferred and in that appeal substitution application was moved after the death of respondent no.4 Sk. Kudrat. The same has also been rejected by the learned Appellate Court vide order dated 07.01.2022, on the ground that provision of Order-XXII Rule 4 of the CPC were not applicable in the appeal. The impugned order passed by the learned Appellate Court is against the provision of law and based on perverse finding.

4. Learned counsel for the respondents opposes the contention made by learned counsel for the petitioner and contented that indeed Sk. Kudrat died during the pendency of suit itself. The substitution application was not filed on

behalf of plaintiff before the trial court, but the judgment and decree was also passed by the trial court, as such, the impugned order passed by the learned Appellate Court bears no infirmity.

5. Admittedly, the Title Partition Suit No. 39 of 2006 which was pending before the learned Civil Judge Senior Division, 1st Class, Godda, the same was dismissed on 12.09.2018 and decree was passed on 03.10.2018. Against the judgement and decree passed by the learned trial court in the Title Partition Suit No. 39 of 2006, Civil Appeal No. 4 of 2019 was preferred which is now pending in the court of District Judge-II, Godda. The copy of the memo of appeal is produced on behalf of the petitioner. During the pendency of this appeal, an application for substitution was moved on behalf of the appellant which is Annexure-1 of the civil miscellaneous petition. From the very perusal of this substitution application, it is found that the respondent no.4 Sk. Kudrat died and after his death he left his four sons and two daughters. Name of the sons and the daughters are shown in para 5 of this application and prayer was also sought to substitute the sons and the daughters of deceased-respondent no.4 in that appeal.

6. From the very perusal of the decree itself, it is found that learned trial court has nowhere mentioned in the decree itself that the Title Partition Suit No. 39 of 2006 had abated against defendant no.4 on account of his death and not substituting his legal heirs as submitted by the learned counsel for the respondents. From the decree itself, it is evident that this very fact of death of respondent no.4 Sk. Kudrat was never brought into the knowledge of the trial court, that's why nothing has been mentioned in the decree itself.

7. This application for substitution which was moved before the Appellate Court on behalf of the appellant in regard to the death of respondent no.4 Sk. Kudarat and after his death to substitute his four sons and two daughters as legal heirs was very much maintainable before the appellate court in view of the Order-XXII Rule-4 of CPC. Prior to disposal of that very substitution application, it was incumbent upon the Appellate Court firstly to issue the notice to the legal heirs of deceased respondent no.4 whose name and address is shown in para 4 and 5 of the substitution application and thereafter to dispose of the same, but the learned trial court has rejected the very application holding that the same was not maintainable at the stage of appeal. Very impugned order bears infirmity and same needs interference.

8. The impugned order passed by the learned Appellate Court is set aside. The matter is remitted back to the learned trial court to dispose of the substitution application a fresh after issuance of notice to the legal heirs of respondent no.4.

9. Accordingly, this civil miscellaneous petition stands disposed of.

(SUBHASH CHAND, J.)

Anjali/- cp3