

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Miscellaneous Appellate Jurisdiction)
M. A. No. 81 of 2013

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Smt. Kanti Devi Appellant

Versus

Mrs. Gopa Biswas & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

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For the Appellant : Mr. Sandeep Verma, Advocate

For the Respondents :

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08/25.06.2020

The present Miscellaneous Appeal has been preferred by Smt. Kanti Devi, wife of Lal Jai Kishore Nath Shahdeo against the order dated 27.02.2013 passed by learned Sub-ordinate Judge-I, Palamau at Daltonganj, whereby on death of one of the legal heirs of Late Bishwanath Biswas, the learned Sub-ordinate Judge has dismissed the entire suit as abated.

Learned counsel for the appellant, Mr. Sandeep Verma has submitted that Bishwanath Biswas had executed an agreement for sale of the suit property fully described in the schedule to the plaint in favour of the plaintiff no.1 Smt. Kanti Devi for a valuable consideration of Rs. 10,00,000/- and the entire consideration amount was paid by the plaintiff no. 1 through her husband, Lal Jai Kishore Nath Shahdeo, plaintiff/proforma respondent no. 5 to Bishwanath Biswas on the date of execution of the agreement and in pursuance to the said agreement the plaintiffs are coming in peaceful continuous and uninterrupted possession thereof.

It is further stated that Bishwanath Biswas also executed a registered power of attorney in favour of plaintiff no.2, Lal Jai Kishore Nath Shahdeo on 02.09.1997 appointing the plaintiff no.2 as his lawful attorney conferring various power including power to execute and get registered deed of sale with respect to the suit premises on behalf of Bishwanath Biswas, but said Bishwanath Biswas died issueless leaving behind defendant no.1 Mrs. Gopa Biswas as his sole legal heir being the widow, but Bithika Ghosh and Mrs. Juthika Kar have been impleaded as defendant nos. 2 & 3 respectively, as they are claiming themselves to be the daughters of Bishwanath Biswas.

Subsequently, Bithika Ghosh (defendant no. 2) died on 28.04.2010 at Kolkatta leaving behind Indrajit Ghosh through her husband Deo Brat Ghosh and Deo Brat Ghosh, son of Late Sushil Chandra Ghosh as her legal heirs.

An application has been filed for substitution of legal heirs of defendant no.2 Bithika Ghosh, vide substitution petition dated 28.10.2010, which was heard on 11.03.2011 and finally decided by learned trial court vide order dated 27.02.2013 dismissing the entire suit as abated against the whole respondents / defendants.

Learned counsel for the appellant has assailed the impugned order on the ground that if substitution of legal heirs of one of the defendant is not made within 90 days as per Order XXII Rule 4 (3) C.P.C., the suit may abate as against the legal heirs of the deceased defendant, but it shall never be dismissed as abated against entire defendants. In the present case, the contesting defendant, Mrs. Gopa Biswas, wife of Late Bishwanath Biswas is alive and one daughter namely Mrs. Juthika Kar claiming herself to be the daughter of Bishwanath Biswas is also alive and petition for substitution has been filed before the trial court without any application for condonation of delay and for setting aside abatement, as such, the impugned order passed by learned court below is bad in law and may be set aside.

After hearing the parties, let notice be issued upon the contesting defendants / respondents namely, (1) Mrs. Gopa Biswas, wife of Late Bishwanath Biswas, resident of Mohalla Nawa Toli, Daltonganj, P.O. P.S. and District - Palamau, (2) Sri Deo Brat Ghosh, son of Late Sushil Chandra Ghosh, (3) Indrejit Ghosh, son of Dev Brat Ghosh, (2) & (3) both residents of 39/C. Prince Rahimuddin Lane, P.O. and P.S. - Tallyganj, Kolkata-700033 (West Bengal) and (4) Mrs. Juthika Kar, wife of Sri Mukul Lal Biswas, resident of Flat No. 313/1-1-H, Prince Golam Mhammad Shah Road, Kolkata at present sident of Mohalla Nawa Toli, Daltonganj, P.O., P.S. and District – Palamau, under both process i.e. registered cover as well as A/D, for which requisites etc. must be filed within a period of two weeks.

Put up this case after service of notice.

(Kailash Prasad Deo, J.)