

Title Suit No.01/2023

26/05/2023

Both parties are represented.

Plaintiff has submitted written statement against counter claim of defendant no.4 to 11 along with copy which is furnished to the engaged advocate of defendant side.

Seen petition no. 547/2023 filed by the engaged advocate for the plaintiff under Order VI Rule 17 of C.P.C. with a prayer to correct some typographical error in petition no. 386/2023. Furnish copy of the petition to the defendants.

Perused petition no.164/ 23 filed by learned advocate for the plaintiff under Order XXII Rule 4 of C.P.C. with a prayer to substitute the legal heirs of deceased defendant no.8 Saha Ali.

Defendant side has filed written objection against the said petition and submitted that the substitution of legal heirs of deceased defendant no.8 is not tenable in view of provision laid down in Article 120 of the Indian Limitation Act and in absence of petition under section 5 of the Limitation Act as defendant no.8 Saha Ali died on 20/09/2020. The defendants have submitted a copy of death certificate of deceased Saha Ali.

Perused the same. Perusal of death certificate of defendant no.8 transpires that defendant no.8 had expired on 20/09/2020.

Heard learned advocate for the plaintiff. It is submitted that the plaintiff came to know about the death of the defendant no.8 on 25/1/2023 from the report of process server and the plaintiff filed the petition for substitution on 28/02/2023. The plaintiff has further stated that they were unknown about the death of defendant Saha Ali and impleaded him as party to the suit on the basis of his mutation over the suit land on 12/09/2022. Therefore, he prayed to allow him to substitute the legal heirs of the deceased defendant no.8.

Contd,

Considering the fact that the right to sue survives and the plaintiff came to know about the death of defendant no.8 from report of process server on 25/01/2023, the petition is allowed for proper adjudication of the matter in dispute.

Accordingly, the legal heirs of deceased defendant no.8 are substituted in his place.

B.A. shall insert the names of legal heirs of deceased defendant no.8 in the plaint with red ink.

Plaintiff shall take fresh step against newly substituted defendants.

In view of order of Misc(J) case 12/2023 the exparte order dated 25.01.2023 passed against defendant no 1,2 and 3 is vacated with cost of Rs. 1,000/- and written statement submitted by them are accepted.

Fix **16.06.2023** for S.R./W.S