

Schedule XLII-

No. (J) 9a [Old (M) 164]

Serial No.	Date of order of proceeding	Order with the signature of the Court	Office action taken with date
1	2	3	5
	25.01.2023	<p><u>Original Title Suit No. 165 of 2009</u></p> <p>Lawyer's attendance has been filed on behalf of the plaintiff and defendant no. 1.</p> <p>From the perusal of the case record it is evident that a petition dt. 20.03.2017 filed on behalf of the intervenor Romi Bhatia and another petition dt. 25.07.2017 filed on behalf of the plaintiff is pending for order. It is desirable here to mention that the hearing on the afore-mentioned petitions was concluded and the case record was fixed for order on the afore-mentioned petitions.</p> <p>First of all, the undersigned intends to consider the petition dt. 20.03.2017 filed on behalf of the intervenor Romi Bhatia under Order 1 Rule 10(2) C.P.C. r/w Section 151 of C.P.C. As per the afore-mentioned petition, it is the case of the intervenor that he had purchased superstructure of ground floor and first floor consisting of rooms and other structures (except portion sold to M/s. Atwal Furniture, measuring 330 sq. feet in the ground floor) having total</p>	

	<p>Contd. 25.01.2023</p> <p>super built-up area 615 sq. ft. standing on the western half portion of Holding no. 500 covering land measuring 22' x 60', i.e. 1320 sq. ft. within the building known as Mohan Complex with all its advantages, privileges, amenities, leasehold rights, roof right, common passage, stair and other services situated at Kasidih lease area by the registered Deed of Sale being Deed no. 1948 dt. 09.05.2016 from Sri. Vijay Kumar Singh for a valuable consideration and the shop premises which form of the subject matter of the present Title Suit is also included in the area purchased by the Intervenor petitioner in the ground floor by the aforesaid Deed of Sale. It is further the case of the intervenor petitioner that the suit property of the present suit in fact belongs to the intervenor petitioner and no decree can be passed in favour of the plaintiff in the absence of the Intervenor petitioner.</p> <p>The Intervenor petitioner has also filed certain documents in support of his claim. He has filed the certified copy of the registered sale deed dt. 09.05.2016 vide which the intervenor petitioner has purchased from one Vijay Kumar Singh the entire structure consisting ground floor</p>	
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	<p>Contd. 25.01.2023</p>	<p>and first floor (except the portion of the sold area 330 sq.ft of M/s. Atwal Furniture, in the ground floor) standing on western part of Holding no. 500 covering land area 22' x 60', i.e. 1320 sq. ft. situated in New Kashidih Lease area along with all its advantages, privileges, amenities, leasehold rights, roof right, common passage, stair and other services situated at Kalimati road, Kasidih thereon with the building now known as Mohan Complex. The intervenor petitioner has also filed a sale deed dt. 31.07.2009 vide which one Vijay Kumar Singh and Hare Ram Singh had purchased a piece and parcel of land measuring 120x120 ft. bearing holding no. 500 situated at Kashidih lease area, Jamshedpur from Ajay Kumar Banerjee.</p> <p>From the perusal of the plaint, it is evident that the suit property which has been mentioned in schedule attached with the plaint is also situated in holding no. 500 of area measuring 21'.7" ft x 13'.2" ft. situated at Mohan complex. So, the description of the property which has been purchased by the intervenor petitioner vide Sale Deed dated 09.05.2016 from Vijay Kumar Singh and the description of the property which is the subject matter of the suit overlap. It is also</p>	
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	Contd. 25.01.2023	<p>pertinent here to mention that the intervenor petitioner has purchased the portion of the Mohan Complex building situated at Holding no. 500, from Vijay Kumar Singh and Vijay Kumar Singh along with Hare Ram Singh has purchased the property from Ajay Kumar Banerjee. Therefore, the Court is of the opinion that the registered title deed which has been produced by the intervenor petitioner contains the suit property meaning thereby that the suit property is a part of the property which has been purchased by the intervenor petitioner.</p> <p>In the fact and circumstances of the case, documents on record and in the light of the aforementioned discussion on the facts, the Court is of the opinion that the intervenor petitioner namely, Romi Bhatia is a necessary party and his presence before the Court is desirable to properly adjudicate upon the issues involved in the suit. So, the petition dt. 20.03.2017 filed under Order 1 Rule 10(2) C.P.C. r/w Section 151 C.P.C is liable to be allowed and is hereby allowed. Let, the Intervenor petitioner namely, Romi Bhatia be added as defendant no. 2 in the present case for the proper adjudication of the present case.</p>	
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	<p>Contd. 25.01.2023</p> <p>Plaintiff is hereby directed to bring out necessary changes in the title portion of the plaint and add intervenor namely, Romi Bhatia as defendant no. 2.</p> <p>Now, the undersigned would adjudicate upon the other petition under Order 22 Rule IV and dated 25.07.2017, filed on behalf of the plaintiff. It has been submitted on behalf of the plaintiff in the afore-mentioned petition that it has come to the knowledge of the plaintiff from the petition of one Romi Bhatia proposed to be intervenor filed under Order 1 Rule X, r/w Section 151 of C.P.C, that the defendant Juthika Banerjee had died. It has been further submitted in the petition on behalf of the plaintiff that the Romi Bhatia stated in para-6 of the petition dt. 20.03.2017 that Juthika Banerjee died some time during the last and her only son Sorindra Mohan Banerjee deceased the said Juthika Banerjee and consequently, there was no one to represent the said Juthika Banerjee in the present case. It has also been submitted on behalf of the plaintiff that under Order 22 Rule 4 (A) of C.P.C. where there is no legal heirs and the plaintiff then in that scenario the Court shall by Order appoint the</p>	
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	<p>Contd. 25.01.2023</p>	<p>administrator or an officer of the Court or such other person as it things fit to represent the estate of the deceased person for the purpose of the suit and any judgment or order subsequently given for made in the suit shall bind the state of the deceased person to the same extend as he would have been bound if personnel representative of the deceased person had been a party to the suit. Consequently, it has been prayed on behalf of the plaintiff to allow the substitution petition and to delete the name of deceased defendant Smt. Juthika Banerjee from defendant's column of the plaint and further to appoint an administrator or an officer of the Court or such other person being fit to represent the state of deceased defendant for the purpose of the suit in place of deceased defendant Juthika Banerjee. Along with this petition, a petition under Section 5 of the Limitation Act has also been filed for condonation of the delay.</p> <p>From the perusal of the case record, it is evident that vide order dt. 25.05.2011, the Court fixed the case for ex-parte hearing against the defendant namely, Juthika Banerjee. It is crystal clear from the bare perusal of the afore-</p>	
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	<p>Contd. 25.01.2023</p>	<p>mentioned order dated 25.05.2011 that despite exhausting all the processes for the appearance of the defendant namely, Juthika Banerjee, she never appeared before the Court and consequently, the case was ordered to be proceeded ex-parte against her.</p> <p>Under such circumstances it is desirable here to reproduce the provision contained in Rule 4 of Order 22 as hereunder ;</p> <p>“Order 22 Rule 4. Procedure in case of death of one of several defendants or of sole defendant. -- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.</p> <p>(2). Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.</p> <p>(3). Where within the time limited by law no application is made under sub-rule (1), the suit</p>	
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	<p>Contd. 25.01.2023</p>	<p>shall abate as against the deceased defendant.</p> <p>(4). The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.</p> <p>(5) Where, ---</p> <p>(a). the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963, and the suit has, in consequence, abated, and</p> <p>(b). the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963, for setting aside the abatement and also for the admission of that application under Section 5 of the Act on the ground that he had, by reason of such ignorance, sufficient cause for not making</p>	
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	Contd. 25.01.2023	<p>the application within the period specified in the said Act,</p> <p>the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved.”</p> <p>So, from bare perusal of sub-rule 4 of Rule 4 of Order 22 it is crystal clear that the Court whenever things fit may exempt the plaintiff from the necessity of substituting of legal representative of any such defendant who was failed to file a written statement or who having filed it as failed to appear and contest the suit at the hearing and judgment may in such case be pronounced against the said defendant notwithstanding the death of such defendant and shall have the said force and effect as if it has been pronounced before death took place.</p> <p>In the present case defendant namely, Juthika Banerjee never appeared before the Court and the case was fixed for ex-parte hearing against her. Therefore, in the light of Order 22, rule 4, sub-rule 4, it is not necessary to take up substitution proceeding with respect to defendant namely, Juthika Banerjee. It is further desirable here to mention that the basis of the petition of</p>	
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	Contd. 25.01.2023	<p>the plaintiff is the information mentioned in the petition dated 20.03.2017 filed by the intervenor regarding the death of the defendant namely, Juthika Banerjee. But from even very minute perusal of the afore-mentioned petition filed by the intervenor namely, Romi Bhatia and the present petition filed by the plaintiff, it is evident that in both the afore-mentioned petitions, there is no mention of date or month of death of defendant namely, Juthika Banerjee. It has been vaguely mentioned in the petition filed by the intervenor namely, Romi Bhatia that, “Juthika Banerjee died some time during the last year”. So, the exact date and time of death has not been mentioned either in the present petition filed by plaintiff or in the petition filed by the intervenor namely, Romi Bhatia. Further, no document or death certificate has been filed by the plaintiff or the intervenor in the present case.</p> <p>Under such circumstances, the Court is of the opinion that it is not proper to presume the death of defendant namely, Juthika Banerjee without proper proof, prima facie or otherwise.</p> <p>Therefore, in the light of afore-mentioned discussions on the fact and law and further, in the</p>	
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	<p>Contd. 25.01.2023</p> <p>light of provision of law enunciated under sub-rule 4, Rule 4 of Order 22 of C.P.C. the Court is of the opinion that the petition dated 25.07.2017 filed on behalf of the plaintiff under Order 22 Rule 4(A) is liable to be rejected and hereby rejected.</p> <p>Dictated</p> <p>(Ranjay Kumar) Civil Judge (Sr.Div.)-VI, Jamshedpur Officer ID: JH0664</p>	
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