

GAHC010055062023



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/950/2023

ANIL CH. DEV,
S/O LATE HARENDRA CH. DEV, R/O COLLEGE GATE, PANDU, P.S.
JALUKBARI, DIST. KAMRUP, ASSAM.

VERSUS

ON THE DEATH OF NARAYAN CH. GHOSH
HIS LEGAL HEIRS

1.1:MRINAL KANTA GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP(M)
ASSAM.

1.2:MRINMOY GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

1.3:DIPANKAR GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

1.4:PARITOSH GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

1.5:SMTI. SUPREYA GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

1.6:SMTI MINATI GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

1.7:SRI KANAK GHOSH

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

1.8:SMTI. ILA BASAK

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

2:ON THE DEATH OF NANI GOPAL BHATTACHARJEE
HIS LEGAL HEIRS

2.1:KAMAKHYA BHATTACHARJEE

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI

DIST. KAMRUP
ASSAM.

2.2:SHIBOK BHATTACHARJEE

R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

2.3:SMTI. KABITA BHATTACHARJEE

R/O COLLEGE GATE
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P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

2.4:TAARAK BOSAK

S/O LT. GOVINDA BOSAK
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR. SHEELADITYA,

Advocate for the Respondent : MR. B D DEKA,

Linked Case : I.A.(Civil)/951/2023

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S/O LT. GOVINDA BOSAK
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

Advocate for : MR. SHEELADITYA
Advocate for : appearing for ON THE DEATH OF NARAYAN CH. GHOSH

Linked Case : I.A.(Civil)/3703/2022

ANIL CH. DEV
S/O LATE HARENDRA CH. DEV
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

VERSUS

ON THE DEATH OF SUPRABHA GHOSH
HER LEGAL HEIRS MR. RAJIB GHOSH AND ORS

1.1:MR. RAJIB GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DISTRICT KAMRUP(M)
ASSAM

1.2:RAJAT GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DISTRICT KAMRUP(M)
ASSAM

1.3:RUPAK GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI

DISTRICT KAMRUP(M)
ASSAM

1.4:RAJESH GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DISTRICT KAMRUP(M)
ASSAM

Advocate for : MR.SHILADITYA
Advocate for : MR. H K DEKA appearing for ON THE DEATH OF SUPRABHA
GHOSH

Linked Case : I.A.(Civil)/3704/2022

ANIL CH. DEV
S/O LATE HARENDRA CH. DEV
R/O COLLEGE GATE
PANDU
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VERSUS

ON THE DEATH OF SUPRABHA GHOSH
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1.1:MR. RAJIB GHOSH
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R/O COLLEGE GATE

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DISTRICT KAMRUP(M)
ASSAM

1.4:RAJESH GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DISTRICT KAMRUP(M)
ASSAM

Advocate for : MR.SHILADITYA
Advocate for : MR. H K DEKA appearing for ON THE DEATH OF SUPRABHA
GHOSH

Linked Case : I.A.(Civil)/3702/2022

ANIL CH. DEV
S/O LATE HARENDRA CH. DEV
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

VERSUS

ON THE DEATH OF SUPRABHA GHOSH
HER LEGAL HEIRS MR. RAJIB GHOSH AND ORS

1.1:MR. RAJIB GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DISTRICT KAMRUP(M)
ASSAM

1.2:RAJAT GHOSH
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1.3:RUPAK GHOSH
R/O COLLEGE GATE
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DISTRICT KAMRUP(M)
ASSAM

1.4:RAJESH GHOSH
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DISTRICT KAMRUP(M)
ASSAM

Advocate for : MR.SHILADITYA
Advocate for : MR. H K DEKA appearing for ON THE DEATH OF SUPRABHA
GHOSH

Linked Case : RSA/226/2014

ANIL CH. DEV
S/O LATE HARENDRA CH. DEV
R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP
ASSAM.

VERSUS

ON THE DEATH OF NARAYAN CH. GHOSH HIS LEGAL HEIRS MRINAL
KANTA GHOSH and 11 ORS.

2:MRINMOY GHOSH

3:DIPANKAR GHOSH

4:PARITOSH GHOSH

5:SMTI SUPREYA GHOSH

6:SMTI MINATI GHOSH

7:KANAK GHOSH

8:SMTI ILA BASAK

9:KAMAKHYA BHATTACHARJEE

ON THE DEATH OF NANI GOPAL BHATTACHARJEE HIS LEGAL HEIRS

10:SHIBOK BHATTACARJEE

11:SMTI KABITA BHATTACHARJEE CHAUDHURY

12:TARAK BOSAK

S/O LT. GOBINDA BOSAK
ALL ARE R/O COLLEGE GATE
PANDU
P.S. JALUKBARI
DIST. KAMRUP.

Advocate for : MR.SHILADITYA
Advocate for : MR.H NATH appearing for ON THE DEATH OF NARAYAN CH.
GHOSH HIS LEGAL HEIRS MRINAL KANTA GHOSH and 11 ORS.

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : --21.02.2025

Heard Mr. Sheeladitya, the learned counsel for the applicant/appellant and also heard Mr. S.P. Roy, the learned counsel appearing for the respondent.

2. This is an application under Order 41 Rule 19 CPC for restoration of RSA No. 226 of 2014 which was dismissed for non-prosecution on 16.02.2023 by this

Court.

3. It is submitted by Mr. Sheeladitya, the learned counsel for the appellant that in RSA 226 of 2014 which was preferred against the judgment and decree dated 30.11.2012 passed by Civil Judge No. 1, Kamrup in Title Appeal No. 73 of 2008 and in Title Appeal No. 11 of 2009. After admitting the appeal on the substantial question of law a notice was also issued to the respondents and they also entered into appearance through their engaged counsel. But on 16.02.2023, the aforesaid second appeal listed for hearing in Part-1 list showing the name of the counsel as 'Shiladitya' whereas the correct name of the counsel for the appellant is 'Sheeladitya'. Thus the counsel for the appellant was searching his name in the Cause List and his name the Cause List was reflected as 'Shiladitya' and hence he could not find his name and thus missed the case and all other cases listed with correct key word as 'Sheeladitya' except this present appeal. Due to oversight of the counsel for the appellant they missed the case and this Court had dismissed the second appeal for non-prosecution as the counsel was absent at the time of calling the case.

4. However, one of the brothers had informed the counsel for the appellant regarding the dismissal of the second appeal and immediately he approached this Court and informed about the situation and circumstances. On which, this Court directed the appellant to file an appropriate application for readmission of the aforesaid second appeal as order of non-prosecution has already been passed. Immediately, the learned counsel for the appellant had applied for certified copy of the impugned order dated 20.02.2023 and then he came to know that the interlocutory application which were for substitution of legal heirs of the deceased respondent No. 1(a) and 1(e) are also dismissed for non-prosecution on 08.08.2022. As the name of the counsel has wrongly shown in

the Cause List, he missed the case due to oversight of the Cause List and for which the said second appeal was dismissed for non-prosecution.

5. There are some important substantial questions of law to be decided in the second appeal and if second appeal is not readmitted to file, the applicant/appellant will suffer from irreparable loss. There is no laches and negligence in preferring the present petition and same has been made bonafide and for the interest of justice.

6. Accordingly, Mr. Sheeladitya, the learned counsel for the appellant prayed for readmission of the appeal which has been dismissed on 16.02.2023 for non-prosecution.

7. Mr. Roy, the learned counsel for the respondent submitted in this regard that vide order dated 15.09.2014, the RSA 226/2014 was admitted and in the aforesaid order dated 15.09.2014 also the name of the counsel is shown as 'Mr. Shiladitya' who had appeared for the appellant on the said date. More so, this Court vide order dated 20.05.2022 had granted 2 weeks' time to the appellant for filing substitution petition for legal heirs of the deceased respondent and in the said order also the name of the counsel was shown as 'Mr. Shiladitya' which shows that there is a gross negligence on the part of the learned counsel for the appellant and after expiry of 9 years of admission of RSA vide order dated 15.09.2014, the learned counsel has had not taken any steps to correct the spelling of his name in the said list.

8. Mr. Roy accordingly submitted that there are multiple incidence of negligence and laches on the part of the learned engaged counsel for the

appellant and he never felt it justified to correct the name of the counsel and only after long 9 years the petition has been filed wherein the signature of the counsel is also not matching with his actual spelling in the Vakalatnama filing the RSA. Accordingly, Mr. Roy raised strong objection and submitted that this is not at all a fit case wherein the RSA No.226/2014 was dismissed for non-prosecution and be readmitted.

9. Hearing the submissions made by learned counsel for both sides, I have also perused the orders annexed along with the petition and objection vis-à-vis the Vakalatnama which has been filed by learned counsel for the respondents as well as the learned counsel for the appellant. It is a fact that the name of the learned Advocate for the appellant is reflected in the Cause List as 'Shiladitya' and not as 'Sheeladitya' and from the order passed by this Court it also reveals that the name of the counsel is mentioned as 'Shiladitya' and not as 'Sheeladitya'. But, the learned counsel for the appellant submitted that while he was searching his name in the Cause List by putting 'Sheeladitya', he did not find his name in the Cause List against any case number and for which he failed to appear before the Court and accordingly the case was dismissed for his non-prosecution. But, at the same time it also cannot be denied that the advocate was appearing before the Court with his wrong name 'Shiladitya' and he never raised any objection to the Court for correction of his name in the Cause List. At the same time it also cannot be denied that of the same mistake and negligence slightly on the part of the engaged counsel for the appellant, the parties may not aware about such fact of wrong spelling of the name of their engaged counsel.

10. Accordingly, I find that if the present petition is not allowed for readmission

of the RSA 226/2014, the parties may suffer from irreparable loss and injury and from the entire facts and circumstances of this case it also cannot be denied that there was no negligence or fault on the part of the appellant wherein they have engaged a counsel to conduct their case and appellant may not be aware about the mistake of spelling in the Cause List for the learned engaged counsel.

11. Considering all aspects of this case and for the ends of justice the present petition stands allowed and the RSA 226 of 2014 is hereby restored to readmission.

12. Registry will do the needful in listing the IA.

13. List the matter after 4 (four) weeks.

JUDGE

Comparing Assistant