

GAHC010134652022



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

Case No. : CRP(IO)/153/2022

ON THE DEATH OF MUSSTT AFRUJA BEGUM BARBHUIYA, HER LEGAL
HEIRS
DIST. CACHAR, ASSAM.

1.1: JIYAUR RAHAMAN BARBHUIYA
S/O LATE MOBIJIL ALI BARBHUIYA AND LATE AFRUJA BEGUM
BARBHUIYA
VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1.2: ABIDUR RAHAMAN BARBHUIYA
S/O LATE MOBIJIL ALI BARBHUIYA AND LATE AFRUJA BEGUM
BARBHUIYA
VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1.3: AMIJUR RAHAMAN BARBHUIYA
S/O LATE MOBIJIL ALI BARBHUIYA AND LATE AFRUJA BEGUM
BARBHUIYA
VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1.4: TAMIZUR RAHAMAN BARBHUIYA
S/O LATE MOBIJIL ALI BARBHUIYA AND LATE AFRUJA BEGUM
BARBHUIYA

VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM

VERSUS

ON THE DEATH OF MD. MAHAMOD ALI BARBHUIYA AND ANR
HIS LEGAL HEIRS-

1:v) MD. ANOWAR UDDIN BARBHUIYA

S/O. LT. MAHAMOD ALI BARBHUIYA
R/O. VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1:iv) MD. MOHIB UDDIN BARBHUIYA

S/O. LT. MAHAMOD ALI BARBHUIYA
R/O. VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1:iii) MD. SAHAB UDDIN BARBHUIYA

S/O. LT. MAHAMOD ALI BARBHUIYA
R/O. VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1:ii) MD. JAHUR UDDIN BARBHUIYA

S/O. LT. MAHAMOD ALI BARBHUIYA
R/O. VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1:i) MD. MOIN UDDIN BARBHUIYA

S/O. LT. MAHAMOD ALI BARBHUIYA
R/O. VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM.

1:vi) MD. KAMRUL ISLAM BARBHUIYA

S/O. LT. MAHAMOD ALI BARBHUIYA
R/O. VILL. PANGRAM
PT-III
P.O. AND P.S. UDHARBOND
DIST. CACHAR
ASSAM

Advocate for the Petitioner : MS. P BHATTACHARYA

Advocate for the Respondent : MR. S D PURKAYASTHA

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

11.08.2023

Heard Ms. P Bhattacharya, learned counsel for the petitioners whereas Shri SD Purkayastha, learned counsel is present for the contesting respondents.

A short issue has arisen for consideration in this petition filed under Section 227 of the Constitution of India.

The petitioner is aggrieved by an order dated 02.03.2022 passed by the learned Munsiff No. 5-cum-JMFC Cachar, Silchar in Title Suit No. 111/2012. The suit was instituted against the petitioners as defendants for declaration of right, title, interest, confirmation of possession and cancellation of sale deed.

When the suit had reached the stage of examination of two numbers of defence witnesses, the matter did not proceed and as such, there was a delay from the year

2017 to 2022.

Considering the above, the learned Munsiff vide the impugned order dated 02.03.2022 had expunged the evidence of DW1 and DW2.

Ms. Bhattacharya, learned counsel for the petitioners-defendants has submitted that there were compelling reasons for seeking adjournments. She submits that there were deaths of parties which required substitution and in the mean time, in the year 2020, the Covid pandemic had also affected the proceedings and therefore, there was no deliberate attempt to prolong the suit.

On the other hand, opposing the present prayer, Shri Purkayastha, learned counsel for the respondents has submitted that the order impugned was passed by taking into consideration all the relevant facts and circumstances and the principal consideration that there was unnecessary delay is a relevant one and therefore, the order may not require any interference.

After hearing the learned counsel for both the parties, this Court is of the considered opinion that the reasons cited for passing the order dated 02.03.2022 may not be construed as wholly irrelevant, as expeditious disposal of a suit/proceeding is an essential component. However, this Court is of the opinion that interest of justice would be served if a last opportunity is granted to the defendants to produce the DW1 and DW2 for their cross-examinations. However, such order is required to be a conditional order.

Therefore, while the impugned order dated 02.03.2022 whereby the evidence of DW1 and DW2 was expunged is set aside, the learned Munsiff No. 5, Cachar is directed to allow the DW1 and DW2 to be cross-examined on a date to be fixed by the said Court. The present order, however, is subject to payment of cost of Rs.5,000/- which is imposed upon the petitioners-defendants to be paid to the respondents.

The petition is, accordingly allowed and the parties are directed to appear before the learned Munsiff No. 5-cum-JMFC Cachar, Silchar on 28.08.2023 on which date, the

learned Court will fix a date for the cross-examination as a last chance.

The revision petition stands disposed of.

JUDGE

Comparing Assistant