

GAHC010251802019



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

Case No. : CRP(IO)/354/2019

ABDUL KARIM AND 9 ORS.

S/O- LATE SAYED ALI, ASSTT PROFESSOR OF KHARUPETIA COLLEGE, P.O-
KHARUPETIA, P.S- DHULA, DIST- DARRANG, ASSAM, PIN- 784115

2: MD. JALAL UDDIN AHMED

S/O- LATE IZZAT ALI

ASSTT PROFESSOR OF KHARUPETIA COLLEGE

P.O- KHARUPETIA

P.S- DHULA

DIST- DARRANG

ASSAM

PIN- 784115

3: MD. ABDUR RAHMAN

S/O- LATE MAJU SHEIKH

ASSTT PROFESSOR OF KHARUPETIA COLLEGE

P.O KHARUPETIA

P.S- DHULA

DIST- DARRANG

ASSAM

PIN- 784115

4: ASMAN ARA BEGUM

D/O- LATE ACHIRUDDIN AHMED

ASSTT PROFESSOR OF KHARUPETIA COLLEGE

P.O KHARUPETIA

P.S- DHULA

DIST- DARRANG

ASSAM

PIN- 784115

5: DEEPAK KALITA

S/O- LATE KHARGESWAR KALITA

ASSTT PROFESSOR OF KHARUPETIA COLLEGE

P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

6: MOUSHUMI SAHA KALITA
S/O- LATE PRAMATH NATH SAHA
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

7: ABDUL AWAL
S/O- LATE KALIMUDDIN AHMED
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

8: JEEBENDRA MOHAN DEV SARMA
S/O- LATE JATINDRA MOHAN DEV SARMA
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

9: MD. SHAHID ALI
S/O- LATE ABUL HUSSAIN
LDA OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

10: MD. IMADADUL ISLAM
S/O- MD. AKHERUDDIN AHMED
REPORTER 'AJI' DAILY NEWSPAPER
MASJIDPATTY
KHARUPETIA
P.S- DALGAON

DIST- DARRANG
ASSAM
PIN- 78411

VERSUS

REBEKA RAHMAN AND 2 ORS.
W/O- LATE B M HAMIDUR RAHMAN, R/O- WARD NO.2, MANGALDAI
TOWN, P.O AND P.S- MANGALDAI, DIST- DARRANG, ASSAM, PIN- 784125

2:RAJIBUR RAHMAN
S/O- LATE B M HAMIDUR RAHMAN
R/O- WARD NO.2
MANGALDAI TOWN
P.O AND P.S- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125

3:MD. REKIBUR RAHMAN
S/O- LATE B M HAMIDUR RAHMAN
R/O- WARD NO.2
MANGALDAI TOWN
MOUZA- CHAPAI
P.O AND P.S- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 78412

Advocate for the Petitioner : MR. R P KAKOTI SR. ADV.

Advocate for the Respondent :

Linked Case : I.A.(Civil)/681/2022

ABDUL KARIM AND 9 ORS.
S/O- LATE SAYED ALI
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O- KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

2: MD. JALAL UDDIN AHMED
S/O- LATE IZZAT ALI

ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O- KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

3: MD. ABDUR RAHMAN
S/O- LATE MAJU SHEIKH
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

4: ASMAN ARA BEGUM
D/O- LATE ACHIRUDDIN AHMED
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

5: DEEPAK KALITA
S/O- LATE KHARGESWAR KALITA
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

6: MOUSHUMI SAHA KALITA
S/O- LATE PRAMATH NATH SAHA
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

7: ABDUL AWAL
S/O- LATE KALIMUDDIN AHMED
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA

DIST- DARRANG
ASSAM
PIN- 784115

8: JEEBENDRA MOHAN DEV SARMA
S/O- LATE JATINDRA MOHAN DEV SARMA
ASSTT PROFESSOR OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

9: MD. SHAHID ALI
S/O- LATE ABUL HUSSAIN
LDA OF KHARUPETIA COLLEGE
P.O KHARUPETIA
P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784115

10: MD. IMADADUL ISLAM
VERSUS

MD. REBEKA RAHMAN AND 2 ORS.
W/O- LATE B M HAMIDUR RAHMAN
R/O- WARD NO.2
MANGALDAI TOWN
P.O AND P.S- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125

2:MD. RAJIBUR RAHMAN
S/O- LATE B M HAMIDUR RAHMAN
R/O- WARD NO.2
MANGALDAI TOWN
P.O AND P.S- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125

3:MD. REKIBUR RAHMAN
S/O- LATE B M HAMIDUR RAHMAN
R/O- WARD NO.2
MANGALDAI TOWN
MOUZA- CHAPAI
P.O AND P.S- MANGALDAI

DIST- DARRANG
ASSAM
PIN- 784125

Advocate for : MR. A K DUTTA
Advocate for : appearing for MD. REBEKA RAHMAN AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 01-03-2023

Heard Mr. R. P. Kakati, learned Senior counsel assisted by Mr. S. Sutradhar, learned counsel for the petitioners. Though notices were duly served however, the respondents have not appeared in the present case.

2. The present petition under Article 227 of the Constitution of India is filed assailing an order dated 9.9.2019 whereby the Petition No. 1755/19 arising out of Money Suit No. 15/2012 was rejected. The background facts of the present case can be summarised as under:

(i) The predecessor-in-interest of the respondent initially filed a complaint in the court of learned Chief Judicial Magistrate, Darrang, Mangaldoi u/s 500/34 IPC for initiation of Criminal defamation against the present petitioner which was registered as Complaint Case No. 2440/2011. Subsequently such defamation proceeding was challenged before this court through an application u/s 482 Cr. P. C which was registered as Crl. Petition No.392/2012. This court by order dated 3.10.2013 quashed the Complaint case No. 2440/ 2011 registered u/s 500 /34 IPC.

(ii) Simultaneously, the predecessor-in-interest of the present

respondent instituted Money Suit being Money Suit No. 15/2012 in the court of learned Civil Judge, Darrang, Mangaldoi claiming damages of Rs 1 crore to him for alleged defamation by the present petitioner.

(iii) The present petitioners appeared before the learned court below and filed written statement therein. In the meantime, the plaintiff i.e. predecessor in interest of the present respondents had expired on 5.12.2016. On the death of the plaintiff, the present respondents got themselves impleaded in the aforesaid Money Suit as plaintiffs being legal heirs.

(iv) Thereafter the petitioner filed a petition u/s 306 of Indian Succession Act, 1925 praying of dismissal of Money Suit No. 15/2012 on the death of plaintiff. Such petition was registered as Petition No. 1755/2019.

(v) The contention raised was that in view of the mandate of Section 306 of Indian Succession Act, 1925, a defamation suit cannot be prosecuted by the legal heirs of the deceased plaintiff.

(vi) The learned court below dismissed such petition on the ground that such contention is a mixed question of law and fact, which cannot be decided in the *interregnum* as preliminary issue inasmuch as the issue of maintainability is already framed in the suit. Accordingly the matter was fixed for cross-examination of PW 1 and PW 2.

3. Section 306 of the Indian Succession Act, 1925 mandates, amongst other that right to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his death survive to or against his executors or administrator except for cause of action against defamation and assault as defined in the Indian Penal Court, 1860 etc.

4. On a bare reading of the plaint, it is clear that the suit was initiated for compensation against the alleged defamation by the respondents against the predecessor-in-interest of plaintiff. It is also not disputed that the plaintiff had in the meantime expired and on his death, the present respondent as legal heirs got themselves impleaded.

5. Therefore in the above admitted set of facts, learned trial court committed an error by exercising it, jurisdiction in ignorance of law and by holding that the questions raised on the death of sole plaintiff is a mixed question of fact and law inasmuch the facts are admitted that the sole plaintiff filed the suit for defamation and he died during the pendency of the suit. Therefore the present case will squarely be covered by Section 306 of Indian Succession Act, 1925 and the suit for defamation therefore cannot be prosecuted by the legal heirs of deceased plaintiff.

7. Accordingly the present revision petition is allowed by holding that the Money Suit No. 15/2012 cannot proceed on the death of plaintiff namely B. M. Hamidur Rahman .

JUDGE

Comparing Assistant