

GAHC010106012024



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

Case No. :

I.A.(Civil)/236/2023

ON THE DEATH OF FIROJA KHATUN
HER LEGAL HEIRS WAHID KHAN AND ORS.

1.1: WAHID KHAN
S/O LATE SAHID KHAN AND LATE FIROJA KHATUN R/O VILLAGE
JAGIROAD(SILBHANGA)
DISTRICT MORIGAON
ASSAM
PIN 782410.

1.2: YUSUF KHAN
S/O LATE SAHID KHAN AND LATE FIROJA KHATUN R/O VILLAGE
JAGIROAD(SILBHANGA)
DISTRICT MORIGAON
ASSAM
PIN 782410.

1.3: IMRAN KHAN
S/O LATE SAHID KHAN AND LATE FIROJA KHATUN R/O VILLAGE
JAGIROAD(SILBHANGA)
DISTRICT MORIGAON
ASSAM
PIN 782410.

1.4: WAHIDA BEGUM

D/O LATE SAHID KHAN AND LATE FIROJA KHATUN
W/O JALAL AHMED
R/O VILLAGE AND P.O. TOPATALI
DISTRICT KAMRUP

ASSAM
PIN 782403.
VERSUS

RAJIA BEGUM and 10 ORS.
W/O MD. ALI HUSSAIN
VILL. JAGIROAD SILBHANGA
DIST. MORIGAON
ASSAM
PIN CODE 782410

2:THE STATE OF ASSAM

REPTD. BY CHIEF SECY.
GOVT. OF ASSAM
DISPUR
GUWAHATI 781006

3:THE DEPUTY COMMISSIONER

MORIGAON
DIST. MORIGAON ASSAM
PIN CODE 782105

4:THE ADDL. DEPUTY COMMISSIONER

MORIGAON
P.O. MORIGAON
DIST. MORIGAON ASSAM
PIN CODE 782105

5:THE NATIONAL HIGHWAY AUTHORITY OF INDIA

UNDER MINISTRY OF SHIPPING
ROAD TRANSPORT AND HIGHWAYS GOVT. OF INDIA
PROJECT IMPLEMENTATION UNIT
NAGAON
HAVING ITS OFFICE AT SANKAR MISSION ROAD
DIST. NAGAON
ASSAM
PIN CODE 782001

6:THE CIRCLE OFFICER OF MAYONG REVENUE CIRCLE

JUGI BHAKATGAON
MOUZA MANAHA
DIST. MORIGAON
ASSAM

PIN CODE 782411

7:THE ASSTT. EXECUTIVE ENGINEER

P.W.D. BUILDING DIVISION
MORIGAON
P.S.MORIGAON
DIST. MORIGAON
ASSAM
PIN CODE 782105

8:PASKURI RANJAN DEY

S/O MAHENDRA DEY
VILL. NAKHULA GRANT
JAGIROAD REVENUE TOWN
DIST. MORIGAON
ASSAM
PIN CODE 782410

9:SMTI ADARIBALA DAS

W/O PRIYALAL DAS
VILL. NAKHULA GRANT
JAGIROAD REVENUE TOWN
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN CODE 782410

10:SMTI JHARNA RANI PAUL

W/O SRI RATAN PAUL
VILL. NAKHULA GRANT
JAGIROAD REVENUE TOWN
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN CODE 782410

11:MANIK CH. DEY

S/O LATE BIRENDRA DEY
VILL. NAKHULA GRANT
JAGIROAD REVENUE TOWN
P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM

PIN CODE 782410

Advocate for : MR. S K DEKA

Advocate for : appearing for RAJIA BEGUM and 10 ORS.

In

RSA Case No. 199/2014

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

31.07.2024

- 1.** Heard Mr. J. Deka, learned counsel for the applicant. Also heard Mr. S.N. Ahmed, learned counsel for the respondent No. 1. Mr. K.K. Bhattacharyya, learned counsel for the respondent Nos. 2, 3, 4 and 6 as well as Mr. C. Baruah, learned counsel appearing for the respondent No. 5 and Ms. S. Sharma, learned counsel appearing for the respondent No. 7.
- 2.** This application under Order 22 Rule 9 of the Code of Civil Procedure, 1908 has been filed by the applicant for setting aside abatement of RSA No. 199/2014 on the death of sole appellant Firoja Khatun.
- 3.** The learned counsel for the applicant has submitted that they are the legal representative of the appellant Firoja Khatun, who passed away on 30.12.2021.
- 4.** The learned counsel for the applicant had also preferred an Interlocutory Application, which was registered as I.A. No. 235/2023 for condoning the delay in preferring the substitution application for substitution of the legal representative of the deceased applicant and same has been allowed by order dated 31.07.2024 passed by this Court, on the same ground the abatement of appeal being RSA No. RSA No. 199/2014 may also be set aside.

The applicant has also sufficiently explained the reasons for which they were prevented from continuing the appeal after the death of the sole applicant.

5. The counsel for the respondents have raised no objection to the prayer for setting aside of the abatement of the connected regular second appeal.

6. Considering the submissions made by the learned counsel for the applicant, as well as considering the grounds shown in the application, which is supported by affidavit, this Court is of the considered opinion that the applicant has showed sufficient cause for which they were prevented from consuming the appeal on the death of the sole appellant before it got abated by operation of law.

7. For reasons mentioned herein above, the abatement of connected regular second appeal No. 199/2014 on the death of the appellant Firoja Khatun is hereby set aside.

8. This Interlocutory Application is accordingly disposed of.

JUDGE

Comparing Assistant