

GAHC010038052024



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

Case No. : CRP/30/2024

MD. HUSSAN ALI @ HASAN ALI AND ANR
S/O- LATE GAMI SHEIKH @ GOMI SHEIKH, R/O- MARUA CHOWKI, P.S.
SIPAJHAR, DIST. DARRANG, ASSAM, PIN- 784145.

2: MD. HASMAT ALI
S/O- LATE GAMI SHEIKH @ GOMI SHEIKH
R/O- MARUA CHOWKI
P.S. SIPAJHAR
DIST. DARRANG
ASSAM
PIN- 784145

VERSUS

ON THE DEATH OF MD. HAMIR ALI HIS LEGAL HEIRS, TOMJIDA BEWA
AND 6 ORS.
W/O- LATE HAMIR ALI, R/O- MARUA CHOWKI, P.S. SIPAGHAR, DIST.
DARRANG, ASSAM, PIN- 784145.

2:HAFIJUDDIN AHMED
S/O- LATE HAMIR ALI
R/O- MARUA CHOWKI
P.S. SIPAGHAR
DIST. DARRANG
ASSAM
PIN- 784145.

3:HARUN ALI
S/O- LATE HAMIR ALI
R/O- MARUA CHOWKI
P.S. SIPAGHAR
DIST. DARRANG
ASSAM
PIN- 784145.

4:MD. IFAZUDDIN AHMED
S/O- LATE HAMIR ALI
R/O- MARUA CHOWKI
P.S. SIPAGHAR
DIST. DARRANG
ASSAM
PIN- 784145.

5:AZIDA BEGUM
D/O- LATE HAMIR ALI
R/O- MARUA CHOWKI
P.S. SIPAGHAR
DIST. DARRANG
ASSAM
PIN- 784145.

6:TAZIDA BEGUM
D/O- LATE HAMIR ALI
R/O- MARUA CHOWKI
P.S. SIPAGHAR
DIST. DARRANG
ASSAM
PIN- 784145.

7:MOUZIDA BEGUM
D/O- LATE HAMIR ALI
W/O- MOUFIZ ALI
R/O- MANDAKATA
P.S. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN- 781121

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

06.03.2024

Heard Mr. RP Sarmah, the learned senior counsel appearing on behalf of the petitioners.

2. This is an application under Article 227 of the Constitution for quashing of the order dated 19.01.2024 passed in Misc.(J) Case No.35/2019 in Title Execution Case No.7/2018 by the Court of the learned Civil Judge Junior Division No.1 Darrang at Mangaldoi. A perusal of the impugned order reveals that the said order has been passed in a proceeding under Section 47 read with Section 151 of the Code of Civil Procedure, 1908 (for short, the Code).

3. The basic ground on which the application under Section 47 was filed challenging the executability of the decree was that the plaintiff who was the respondent in the second appeal being RSA No.30/2005 had died during the pendency of the said appeal and under such circumstances, as the plaintiff was not substituted during the second appeal proceedings the decree is not executable.

4. This Court has duly taken note of that the decree in Title Suit No.16/2017 dated 30.06.2006 was passed in favour of the plaintiff. Thereupon the said appeal preferred by the petitioners herein who were the appellant was dismissed by the judgment and decree dated 22.09.2004. Subsequent thereto, the second appeal was filed being RSA No.30/2005 which was, however, dismissed by this Court on 17.07.2015. Even taking into account that the decree holder had expired during the pendency of the second appeal proceedings, then

also the non-substitution of the legal representatives of the decree holder would have abated the appeal. The same would not, however, effect the judgment and decree which was passed on 30.06.2006 in Title Suit No.16/1977.

5. This Court has also perused the order dated 19.01.2024 which has been passed by the learned Executing court and is of the opinion that there are no error of law as well as error in exercise of the jurisdiction. Consequently, this Court finds no merit in the instant proceeding for which the same stands dismissed. However, in the peculiar facts of the case, no costs.

JUDGE

Comparing Assistant