

GAHC010112292024



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

Case No. : I.A.(Civil)/1063/2024

ON THE DEATH OF KAMAL BORA
HIS LEGAL HEIRS SUSILA BORAHAND AND ANR

1.1: SMT. SUSILA BORAH
WIFE OF LATE KAMAL BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 4

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

1.2: MRS. DRISTRITA BORAH
DAUGHTER OF LATE KAMAL BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 4

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
LAND AND REVENUE DEPARTMENT

DISPUR
GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
NAGAON DISTRICT
ASSAM.

3:SOURAV BORAH
SON OF LATE KIRAN CH. BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 3

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

4:SUMITRA BORAH
SON OF LATE KIRAN CH. BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 3

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

5:SAMARENDRA BORAH
SON OF LATE KIRAN CH. BORA

R/O- VILLAGE- KAMPUR REVENUE TOWN
WARD NO. 3

MOUZA- KAMPUR

P.S.- KAMPUR

DISTRICT- NAGAON
ASSAM.

Advocate for : MR. U J SAIKIA

Advocate for : SC

REVENUE appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 14.06.2024

Heard Mr. D. K. Nath, learned counsel for the applicant. Also heard Ms. N. Bordoloi, learned Standing Counsel for the respondent No. 1, Mr. K. Gogoi, learned Senior Government Advocate for respondent No. 2 and Mr. D. Mahanta, learned counsel for appearing for respondent No. 3, 4 and 5.

This is an application under order XXII Rule 9 for setting aside abetment.

Heard and perused the averments made in respect of the prayer.

Paragraph 2, 3 and 4 of the application is reproduced hereunder for ready reference:-

2. That the applicant states that during the pendency of the writ petition, the petitioner expired on 26/10/23 and as such the applicant filed. IA (C) for substitution. But the IA (C) for substitution could not be filed within 90 days from the date of death of the Petitioner No. 1, the suit is abated. As such the instant IA has been filed for setting aside abetment.

3. That the applicant states that on the death of the writ petitioner right to sue survives upon the applicant and unless and until abatement has been set aside, the applicant could not be substituted as party/petitioner in the writ petition.

4. That the applicant has an extremely good case and the delay has been

already condoned. Therefore, abatement of the suit may be set aside.

A perusal above averments indicate that the petitioner expired on 20.10.2023 and on the death of the petitioner though the right to choose survive upon the applicant.

However since the IA for substitution could not filed within 90 days from the death of the petitioner No. 1, the writ petition i.e. WP(C)/7128/2022 stood abetted.

Accordingly the instant application has been filed for setting aside the abetment.

It appears that petitioner has made out a sufficient cause for setting aside the abetment and accordingly abetment is set aside.

The application stands allowed.

Disposed of.

JUDGE

Comparing Assistant