

GAHC010082602022



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

Case No. : CRP/44/2022

ON THE DEATH OF MOIJUDDIN SK @ MAOREA HIS LEGAL HEIRS AND
ORS
(LEGAL HEIRS)

1.1: MD. ASKAR ALI
S/O LATE MOIJUDDIN SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

1.2: SMT. SOKILA BIBI
D/O LATE MOIJUDDIN SK
W/O MOZID SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

1.3: SMT. OHILA BEWA
D/O LATE MOIJUDDIN SK
W/O LATE JALAL SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

2: ON THE DEATH OF KHATIMULLA SK

HIS LEGAL HEIRS

2.1: NASKER ALI
S/O KHATIMULLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

2.2: OHAR ALI
S/O LATE KHATIMULLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

2.3: BOSKER ALI
S/O LATE KHATIMULLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

2.4: OSKAR ALI
S/O LATE KHATIMULLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

2.5: SAIBANI BIBI
D/O LATE KHATIMULLA SK
W/O SIRABDI SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

3: DARGI SK
S/O MOHADDI SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

4: ON THE DEATH OF SHASHI SK
HIS LEGAL HEIRS

4.1: MOINUL HAQUE
S/O LATE SHASHI SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

4.2: SOPIA BIBI
D/O LATE SHASHI SK
W/O HAMED ALI
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

5: ON THE DEATH OF JAHAR UDDIN SK
HIS LEGAL HEIRS

5.1: MONSER ALI
S/O LATE JAHAR UDDIN SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

5.2: BANU BIBI
D/O LATE JAHARUDDIN SK
W/O KALIMUDDIN SK
R/O VILL-KISMAT
HASDAHA PART-II

P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

6: ON THE DEATH OF FAKARUDDIN SK
HIS LEGAL HEIRS

6.1: FAZOR ALI SK
S/O LATE FAKARUDDIN SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

6.2: SAMSER ALI
S/O LATE FAKARUDDIN SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

6.3: TAMSER ALI
S/O LATE FAKARUDDIN SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

6.4: MOJIRAN BIBI
D/O LATE FAKARUDDIN SK
W/O JABBAR ALI
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

7: ON THE DEATH OF PAGLA SK
HIS LEGAL HEIRS

7.1: KHATUDDIN SK
S/O LATE PAGLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

7.2: AFZAL ALI
S/O LATE PAGLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

7.3: BUCHI BIBI
D/O LATE PAGLA SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

7.4: OHIRAN BIBI
D/O LATE PAGLA SK
W/O NUR NABI
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

7.5: OHIMAN BIBI
D/O LATE PAGLA SK
W/O ABU SK
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSAM

7.6: JOHIRAN BIBI

D/O LATE PAGLA SK
W/O SAIYED ALI
R/O VILL-KISMAT
HASDAHA PART-II
P.O.-KALAHAT
PIN-783334
P.S. AND DIST-DHUBRI
ASSA

VERSUS

ON THE DEATH OF SONADDI SK HIS LEGAL HEIRS AND ORS
(LEGAL HEIRS)

1.1:SABJAN BEWA
W/O LATE SONADDI SK
R/O VILL-KISMAT
HASDAHA PART-III
P.O.-KALAHAT
P.S. AND DIST-DHUBRI
ASSAM

1.2:SARPAT ALI
S/O LATE SONADDI SK
R/O VILL-KISMAT
HASDAHA PART-III
P.O.-KALAHAT
P.S. AND DIST-DHUBRI
ASSAM

1.3:SAPOR ALI
S/O LATE SONADDI SK
R/O VILL-KISMAT
HASDAHA PART-III
P.O.-KALAHAT
P.S. AND DIST-DHUBRI
ASSAM

1.4:SOLEMA BIBI
D/O LATE SONADDI SK
W/O HOSSEN ALI
R/O VILL-KISMAT
HASDAHA PART-I
P.O.-KALAHAT
P.S. AND DIST-DHUBRI
ASSAM

1.5:SOLEMA BIBI

D/O LATE SONNADI SK
W/O KASHEM ALI
VILL-DHARMASALA PART-IV
P.O.-DHARMASALA
PIN-783325
P.S. AND DIST-DHUBRI
ASSAM

2:MAZIBAR RAHMAN
S/O LATE HIKMAT ALI
VILL-KISMAT HASDAHA PART-III
P.O.-KALAHAT
P.S. AND DIST-DHUBRI
ASSAM

3:ON THE DEATH OF KANDURA SK
HIS LEGAL HEIRS

3.2:JOLA SK
S/O LATE KANDURA SK
VILL-DHARMASALA
P.O.-DHARMASALA
P.S. AND DIST-DHUBRI
PIN-783325

4:ON THE DEATH OF TOMIZ UDDIN
HIS LEGAL HEIRS

4.2:TOSKA SK
S/O LATE TOMIZ UDDIN
VILL-DHARMASALA
P.O.-DHARMASALA
P.S. AND DIST-DHUBRI
PIN-783325

5:ON THE DEATH OF EKABULLAH SK
HIS LEGAL HEIRS

5.2:TAHER ALI
S/O LATE EKABULLAH SK
VILL-DHARMASALA
P.O.-DHARMASALA
P.S. AND DIST-DHUBRI
PIN-783325

6:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR OF DHUBRI

7:THE SETTLEMENT OFFICER
DHUBRI
P.O. AND DIST-DHUBRI

8:THE ASSISTANT SETTLEMENT OFFICER
DHUBRI
P.O. AND DIST-DHUBRI

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 06-03-2024

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the order dated 05.01.2022 passed by the learned Munsiff No. 2, Dhubri in Title Suit No. 402/2014 whereby an application being petition No. 884/20 under Order XXII Rule 9(2) of the Code as well as the petition No. 885/20 under Section 5 of the Limitation Act, 1963 (for short the Act) was allowed.

2. Though the instant proceeding has been filed under Section 115 of the Code but taking into account that the instant proceeding ought to have been filed under Article 227 of the Constitution of India, and not under the provisions of Section 115 of the Code, this Court for the interest of justice, converts the instant proceeding to a proceeding under Article 227 of the Constitution.

3. From the records, it is apparent that the plaintiff No. 1 in Title Suit No. 402/2014 had expired on 27.09.2018. Thereupon, on 06.02.2019 an application was filed for substituting the legal representatives of the plaintiff No. 1. However, this application being petition No. 676/2019 was rejected vide the

order dated 09.12.2019 by the learned trial Court and it was further opined in the said order that the suit would abate against the deceased plaintiff No. 1 and shall proceed at the instance of the surviving plaintiffs. Immediately, thereupon, on 04.02.2020 the plaintiffs filed another application being petition No. 884/20 for setting aside the abatement under Order XXII Rule 9(2) of the Code and also an application being petition No. 885/20 under Section 5 of the Act for condoning the delay in filing the application for substitution.

4. The learned trial Court vide the order dated 05.01.2022 although opined that there was no specific ground in the petition under Section 5 of the Act for which the delay must be condoned but for the ends of justice, allowed both the applications for condoning the delay as well as for setting aside the abatement vide the impugned order dated 05.01.2022 for which the instant proceeding has been filed.

5. This Court have heard the learned counsel appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the respondent Nos. 6, 7 and 8. None has appeared on behalf of the respondent Nos. 1(a) to 1(e), 2, 3(b), 4(b) and 5(b). This Court having perused both the orders dated 09.12.2019 and 05.01.2022 is shocked and perplexed to take note of that when vide the order dated 09.12.2019 the application for substitution was rejected and there being no further proceeding against the said order dated 09.12.2019, how the learned trial Court could have allowed the setting aside of the abatement and condonation of delay vide the impugned order dated 05.01.2022 that too even after arriving at a finding that there was no specific ground in the petition under Section 5 of the Act for which the delay must be condoned.

6. Taking into account the above, this Court is of the opinion that the exercise of the jurisdiction by the learned trial Court vide the order dated

05.01.2022 is on the face of it suffers from exercising jurisdiction not conferred upon it by law as well also exercising jurisdiction with illegality and material irregularity, for which this Court sets aside the order dated 05.01.2022 passed by the learned Munsiff No. 2, Dhubri in Title Suit No. 402/2014. Consequently, the stay order dated 05.05.2022 passed by this Court stands vacated and parties are directed to appear before the learned trial Court on 03.04.2024.

7. This Court, however, before parting would like to observe that setting aside of the order dated 05.01.2022 by this Court by the present order shall not however preclude the legal representatives of the plaintiff No. 1 to avail such remedies as permissible under the law against the order dated 09.12.2019, if so advised.

8. With the above observations, this Civil Revision Petition stands disposed of.

JUDGE

Comparing Assistant