

GAHC010106012024



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

Case No. : I.A.(Civil)/1656/2024

ON THE DEATH OF FIROJA KHATUN,
HIS LEGAL HEIRS

1.1: WAHID KHAN

S/O LATE SAHID KHAN AND LATE FIROJA KHATUN
R/O VILL. JAGIROAD SILBHANGA
DIST. MORIGAON
ASSAM
PIN CODE 782410

1.2: YUSUF KHAN

S/O LATE SAHID KHAN AND LATE FIROJA KHATUN
R/O VILL. JAGIROAD SILBHANGA
DIST. MORIGAON
ASSAM
PIN CODE 782410

1.3: IMRAN KHAN

S/O LATE SAHID KHAN AND LATE FIROJA KHATUN
R/O VILL. JAGIROAD SILBHANGA
DIST. MORIGAON
ASSAM
PIN CODE 782410

1.4: WAHIDA BEGUM

D/O LATE SAHID KHAN AND LATE FIROJA KHATUN
R/O VILL. JAGIROAD SILBHANGA
DIST. MORIGAON
ASSAM
PIN CODE 78241

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 78241

Advocate for the Petitioner : MR. S K DEKA, MR. S K DEKA,MR. T K BHUYAN,MR. J DEKA,MR. S SARMA

Advocate for the Respondent : GA, ASSAM, SC, NHAI,MD. M H CHOUDHURY,SC, PWD (R - 1)

In

RSA/199/2014

FIROJA KHATUN
W/O MD. SAHED ALI
VILL. JAGIROAD SILBHANGA
P.S. JAGIROAD
MOUZA -GOVA
DIST. MORIGAON
ASSAM.

VERSUS

RAJIA BEGUM and 10 ORS.
W/O MD. ALI HUSSAIN
VILL. JAGIROAD SILBHANGA
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2:THE STATE OF ASSAM

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W/O SRI RATAN PAUL

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S/O LATE BIRENDRA DEY
VILL. NAKHULA GRANT
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P.O. and P.S. JAGIROAD
DIST. MORIGAON
ASSAM
PIN CODE 782410

Advocate for : MR.B ISLAM

Advocate for : MS. L N CHOUDHURY appearing for RAJIA BEGUM and 10 ORS.

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 4(4) read with Section 151 of the Code of Civil Procedure has been filed by the applicant for exemption to substitute the legal representatives of the proforma opposite party No. 8, namely, Paskuri Ranjan Dey and proforma opposite party No. 9, namely, Adaribala Das respectively.

3. The learned counsel for the applicant has submitted that the predecessor-in-interest of the present applicant preferred the connected second appeal, namely, i.e. RSA No. 199/2014, wherein substantial question(s) of law was formulated as well as notices was issued to the parties. However, during the pendency of the said second appeal, the predecessor-in-interest of the present applicant preferred, namely, Firoja Khatun expired and the appeal got abated. Now the present applicant, who are the legal representatives of the original second appellant have filed substitution petition which has been registered as Interlocutory Application No. 238/2023 in connection with RSA No. 199/2014. However, in preferring the Interlocutory Application also, there has been a delay and for condoning the delay the instant Interlocutory Application has been filed, wherein, all the other opposite parties except opposite party Nos. 8 and 9 have appeared.

4. The notices were also duly served on opposite party Nos. 10 and 11, who failed to appear in spite of due service of notice on them.

5. The learned counsel for the applicant has submitted that the opposite party Nos. 8 and 9, who were the defendant Nos. 8 and 9 respectively, in the Title Suit No. 07/09 failed to file any written statement against the plaint of the plaintiff in the said suit. However, they did file written statement against the counter-claim filed by the predecessor-in-interest of the present applicant, though the respondent Nos. 8 and 9 filed the written statement against the counter-claim, however, they failed to contest the said case and the case proceeded *ex parte* against them. Hence, the learned counsel for the applicant submits that under above circumstances, the provision of Order 22 Rule 4(4) of the Code of Civil Procedure, 1908 is applicable and therefore, he prays that the applicant may be exempted from substituting the legal representatives of

opposite party Nos. 8 and 9 in this case.

6. The learned counsel for the respondent No. 1 and other respondents does not oppose the prayer of the applicant.

7. On the basis of what has been narrated hereinbefore, it appears that the case of the applicant with regard to the applicability of Order 22 Rule 4(4) of the Code of Civil Procedure, 1908, squarely, falls under the said provisions. Hence, this Court is of considered opinion that this is a fit case where the above-named applicant may be exempted from the necessity of substituting the legal representatives of respondent Nos. 8 and 9 in I.A. No. 235/2023.

8. This Interlocutory Application is accordingly allowed and disposed of.

JUDGE

Comparing Assistant