

GAHC010237912024



2024:GAU-AS:11840

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

Case No. : CRP(IO)/472/2024

KAMALA KHATUN AND ANR
W/O LATE JOYNUDDIN AND D/O LATE ACHANDI SHEIKH, R/O VILL-
NARARBHITA PART-IV, P.O.-NARARBHITA, P.S.-MERERCHAR, DIST-
BONGAIGAON, ASSAM

2: TARA MIAH
S/O LATE ACHANDI SHEIKH
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSA

VERSUS

ON THE DEATH OF PARESH ALI HIS LEGAL HEIRS AND ORS
NAMELY

1.1:SUKURJAN NESSA
W/O LATE PARESH ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

1.2:AYEN UDDIN
S/O LATE PARESH ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

1.3:MAIN UDDIN
S/O LATE PARESH ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

1.4:NUTUB ALI
S/O LATE PARESH ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

1.5:NAYAN ALI
S/O LATE PARESH ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

1.6:SAIDUL ISLAM
S/O LATE PARESH ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

2:KURBAN ALI
S/O LATE HAMED ALI
R/O VILL- NARARBHITA PART-IV
P.O.-NARARBHITA
P.S.-MERERCHAR
DIST- BONGAIGAON
ASSAM

3:BIMALA KHATUN
W/O MOKSED ALI
R/O VILL- KHAIRABARI
P.O.-JOYPUR BAZAR
P.S.-AMGURI
DIST- CHIRANG
BTAD
ASSA

Advocate for the Petitioner : MS. R CHOUDHURY, MS F N ZAMAN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 27.11.2024

Heard Ms. R. Choudhury, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the order dated 27.08.2024, passed by the learned Civil Judge (Junior Division), North Salmara, Abhayapuri, in Title Suit No. 186/2021.

3. It is to be noted here that vide impugned order dated 27.08.2024, the learned trial Court has dismissed the petition No. 2234/2023, filed by the petitioners for substituting the legal heirs of the deceased plaintiff Nos. 2 and 4.

4. Ms. Choudhury, learned counsel for the petitioners submits that substitution of the legal heirs of the plaintiff No. 4 is not required as she is represented by the other plaintiffs, who are her sons and daughters and that the legal heirs of plaintiff No. 2 are not cooperating and as such, the legal heirs of plaintiff No. 2 may be substituted as proforma defendants in the suit. Ms. Choudhury also submits that the substitution application could not be filed in time as they were under the impression that in view of order of Supreme Court in **Suo Moto Writ Petition (Civil) No. 03/2020**, the period of limitation w.e.f. 15.03.2020 to 28.02.2022 has to be excluded and that the delay is not intentional, having aware of the requirement, an application under Section 5 of the Limitation Act was preferred, but the same was also dismissed by the

learned trial Court, and that on account of some fault on the part of the engaged counsel, the applicant should not suffer and that the petitioners may be granted liberty to file appropriate application by setting aside the impugned order and the learned trial Court may be directed to consider the same in accordance with law.

5. Having heard the submission of Ms. Choudhury, learned counsel for the petitioners, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 27.08.2024.

6. Taking note of all the facts and circumstances on the record, this Court is inclined to allow this petition by setting aside the impugned order and by granting liberty to the petitioners to approach the learned trial Court again by filing appropriate application. In the event of filing such an application, the learned trial Court shall consider the same in accordance with law.

7. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant