

GAHC010238442024



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

Case No. : CRP(IO)/479/2024

KAMALA KHATUN AND ANR
W/O- LATE JOYNUDDIN, D/O- LATE ACHANDI SHEIKH (THE PLAINTIFF
NO. 1), R/O- VILL.- NARABHITA PART-IV, P.O. NARABHITA, P.S.
MERERCHAR, DIST. BONGAIGAON, ASSAM

2: TARA MIAH
S/O- LATE ACHANDI SHEIKH (THE PLAINTIFF NO. 3)
R/O- VILL.- NARABHITA PART-IV
P.O. NARABHITA
P.S. MERERCHAR
DIST. BONGAIGAON
ASSA

VERSUS

KURBAN ALI AND 5 ORS.
S/O- LATE HAMED ALI, (DEFENDANT NO. 1), R/O- VILL.- NARABHITA
PART-II, P.O. NARABHITA, PS. MERERCHAR, DIST. BONGAIGAON, ASSAM

2:NABUR UDDIN
S/O- ANSER ALI @ SYED ALI
(DEFENDANT NO. 2)
R/O- VILL.- NARABHITA PART-II
P.O. NARABHITA
PS. MERERCHAR
DIST. BONGAIGAON
ASSAM

3:ABDUL JALIL
S/O- LATE SABED ALI
(DEFENDANT NO. 3)
R/O- VILL.- NARABHITA PART-II
P.O. NARABHITA
PS. MERERCHAR

DIST. BONGAIGAON
ASSAM

4:SOHRAB ALI
S/O- BOSIR UDDIN
(DEFENDANT NO. 4)
R/O- VILL.- NARABHITA PART-II
P.O. NARARBHITA
PS. MERERCHAR
DIST. BONGAIGAON
ASSAM

5:JAMELA KHATUN
D/O- HAKIM UDDIN
W/O- AJGOR AJGOR ALI
VILL.- BAMONTARY
P.O. BAMATARY
P.S. KOLGACHIA
DIST. BARPETA
ASSAM

6:HABIBOR RAHMAN
S/O- BASIRUDDIN
VILL.- NARARBHITA PART-II
P.O. NARARBHITA
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MS. R CHOUDHURY, MS. B. HAZARIKA

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

22.11.2024

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

2. This petition under Article 227 of the Constitution of India, the petitioners has 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.20/2021. It is to be noted here that vide impugned order dated 27.08.2024, the learned Trial Court has dismissed the Petition Nos.46/2023, 853/2024, 854/2024 and 1046/2024.

3. It is also to be noted here that vide Petition No.46/2023, the petitioners had prayed for substitution of legal representatives of the deceased plaintiff No.4 and plaintiff No.2, and vide Petition No.1046/2024, under Order 6 Rule 7 CPC, they prayed for amendment of the Petition No.46/2023 for proper adjudication and vide Petition No.854/2024 under Order 6 Rule 17 CPC, the petitioners prayed for amendment of the Petition No.46/2023 and vide Petition No.853/2024, under Section 5 of the Limitation Act, the petitioners had prayed for condonation of delay of a period w.e.f. 01.06.2022 to 03.01.2023.

4. Ms. Choudhury, learned counsel for the petitioners submits that due to inadvertent mistake on the part of the petitioners, the petition under Section 5 of the Limitation Act could not be filed in time as the petitioners were under the impression that in view of the decision of the Hon'ble Supreme Court in **Suo Moto Writ Petition (Civil) No.3/2020 [IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION]**, the period of limitation w.e.f. 15.03.2020 to 28.02.2022 has to be excluded, on account of Covid-19 pandemic and that it was not deliberate but due to inadvertence and the learned Trial Court had dismissed the said petition for filing substitution petition and that in the interest of justice the petitioners may be given another chance to file a petition before the learned Trial Court by setting aside the impugned order dated 27.08.2024.

5. Having considered the submission of Ms. Choudhury, learned counsel for the petitioners and also considering the given facts and circumstances on the record, this Court is inclined to dispose of this petition by setting aside the impugned order dated 27.08.2024. It is however a fact that no apparent illegality is shown to have committed by the learned Trial Court in passing the impugned order. But, fair opportunity has to be given to the petitioners to establish their case, which is a part of right to fair trial. The learned Trial Court is directed to afford another opportunity to the petitioners to file

appropriate petition and thereafter, to hear and dispose of the same in accordance with law.

6. In terms of above, this revision petition stands disposed of, at the motion stage itself.

Sd/- Robin Phukan
JUDGE

Comparing Assistant