

GAHC010026802020



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

Case No. : I.A.(Civil)/758/2020

ON THE DEATH OF ALI AKBAR HIS LEGAL HEIRS NAMELY JAYDA
KHATUN AND 4 ORS
GOALPARA

1.1: JAYDA KHATUN
W/O- LATE ALI AKBAR
R/O- VILL.- KASIMA
P.O.- CHUNARI
P.S. LAKHIPUR
DIST.- GOALPARA
ASSAM.

1.2: AYSHA SIDDIKA
D/O- LATE ALI AKBAR
W/O- JOYNAL ABEDIN
R/O- NANKARGAON
P.O. DHONTOLA
P.S. BONGAIGAON
DIST.- BONGAIGAON
ASSAM.

1.3: JAHIDUL ISLAM
S/O- LATE ALI AKBAR
R/O- JAMADARBHITA
P.O. CHUNARI
P.S. LAKHIPUR
DIST.- GOALPARA
ASSAM.

2: RABIUL ISLAM
S/O- LATE MD. ALI AKBAR
R/O- JAMADARBHITA
P.O. CHUNARI
P.S. LAKHIPUR

DIST.- GOALPARA
ASSAM.

3: AMINUL ISLAM
S/O- LATE MD. ALI AKBAR
R/O- JAMADARBHITA
P.O. CHUNARI
P.S. LAKHIPUR
DIST.- GOALPARA
ASSAM.

4: AZADUL ISLAM
S/O- LATE MD. ALI AKBAR
R/O- JAMADARBHITA
P.O. CHUNARI
P.S. LAKHIPUR
DIST.- GOALPARA
ASSAM.

5: AMJAD ALI
S/O- LATE BASHU MONDAL
R/O- GOMAIJHAR NAYAPARA
P.O. JAYRAMKUCHI
P.S. LAKHIPUR
DIST.- GOALPARA
ASSAM

VERSUS

ASMOT ALI AND 7 ORS
S/O- LATE JAYNUDDIN SK. R/O- GOMAIJHAR NAYAPARA, P.O.-
JAYRAMKUCHI, P.S.- LAKHIPUR, DIST.- GOALPARA, ASSAM, PIN- 783129.

2: ABUL HUSSAIN
S/O- LATE ALIMUDDIN
R/O- RAKHAL KILLA
P.O.- JAYRAMKUCHI
P.S.- LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129.

3: NURU SHEIKH
S/O. UNKNOWN
R/O- GOMAIJHAR NAYAPARA
P.O.- JAYRAMKUCHI
P.S.- LAKHIPUR
DIST.- GOALPARA

ASSAM
PIN- 783129.

4:RABIUL
S/O- KADER
R/O- GOMAIJHAR NAYAPARA
P.O.- JAYRAMKUCHI
P.S.- LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129.

5:HASEN ALI
S/O-ASGOR
R/O- GOMAIJHAR NAYAPARA
P.O.- JAYRAMKUCHI
P.S.- LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129.

6:FAKIR
S/O. UNKNOWN
R/O- GOMAIJHAR NAYAPARA
P.O.- JAYRAMKUCHI
P.S.- LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129.

7:ON THE DEATH OF AMJAD HIS LEGAL HEIRS
GOALPARA

7.1:SURUT JAMAL
S/O LATE AMJAD
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM
PIN 783129

7.2:NURUDDIN SK
S/O LATE AMJAD
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA

ASSAM
PIN 783129

7.3:ALI HUSSAIN
S/O LATE AMJAD
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM
PIN 783129

7.4:SHAHALOM SK
S/O LATE AMJAD
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM
PIN 783129

7.5:SHAHADOT ALI
S/O LATE AMJAD
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM
PIN 783129

7.6:MOFIDUL SK
S/O LATE AMJAD
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM
PIN 783129

7.7:MORIOM KHATUN
W/O. SHOHIDUL ISLAM
D/O AMJAD
R/O DINGDINGA PART-II
P.O. DHUMERGHAT
P.S. SOUTH SALMARA
DIST. DHUBRI
ASSAM
PIN 783330

8:ON THE DEATH OF LALCHAND HIS LEGAL HEIRS
GOALPARA

8.1:ROFIQUL ISLAM
S/O LALCHAND
R/O GOMAIJHAR NAYAPARA
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
ASSAM
PIN 783129

8.2:LAILY KHATUN
W/O ABDUL MALEK
D/O LALCHAN
R/O KALLOI
P.O. MADERTATI
P.S. FAKIRGANJ
DIST. DHUBRI
PIN 783330

8.3:LOTIFA KHATUN
W/O JAHIDUL ISLAM
D/O LALCHAN
R/O NIDANPUR
P.O. AND P.S. LAKHIPUR
DIST. GOALPARA
PIN 783129

8.4:LOJIDA KHATUN
W/O GULBAHAR
D/O LALCHAN
R/O SOMLABARI
P.O. SIMLABARI
P.S. LAKHIPUR
DIST. GOALPARA
PIN 783129

8.5:SHORIFA KHATUN
W/O ABDUL MOZID
D/O LALCHAN
R/O DASPARA
P.O. DHUMERGHAT
P.S. LAKHIPUR
DIST. GOALPARA
PIN 783129

8.6:NARJINA KHATUN
W/O BANIZ ALI
D/O LALCHAN
R/O MILAN NAGAR
SHATIPUR
P.O.
P.S. AND DIST. GOALPARA
PIN 78310

For the applicant (s) : Mr. S. Hoque, Advocate

For the respondent (s) : Mr. S. K. Ghosh, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

15.05.2024

Heard Mr. S. Hoque, the learned counsel for the applicants and Mr. S. K. Ghosh, the learned counsel appearing on behalf of some of the opposite parties.

2. This is an application under Section 5 of the Limitation Act, 1963 for condoning the delay of 1434 days in filing the accompanying Appeal against the judgment and decree dated 05.12.2014 passed by the learned Civil Judge, Goalpara in Title Appeal No.3/2006 whereby the judgment and decree dated 30.09.2013 passed by the learned Civil Judge (Junior Division) No.1, Goalpara in Title Suit No.12/2000 was affirmed.

3. It is relevant to take note of that the judgment and decree dated 05.12.2014 passed in Title Appeal No.3/2006 was challenged by filing an Appeal by the predecessor-in-interest of the applicants, one Ali Akbar (since deceased) along with the applicant Nos.2 to 5 herein. The said Appeal upon being filed was issued a Filing Number being No.253896. On

account of there being a delay of 44 days and various other defects including the facts that the Applicant Nos.2 to 5 in the said Appeal filed in the year 2015 did not sign the Vakalatnama, the said Appeal was kept as defective in the Filing Section.

4. A perusal of the instant application shows that the counsel who had filed the Appeal in the year 2015 duly intimated Ali Akbar during his lifetime about the said defects. However, those defects were not rectified. On the other hand, on account of illness, Late Ali Akbar expired on 01.09.2015. It is categorically stated in paragraph No.4 of the present application that Late Ali Akbar duly informed the applicants herein about the filing of the said Second Appeal in the year 2015 and the same was lying defective on the grounds which were duly intimated to him by his counsel. Thereupon, there is nothing mentioned in the instant application why immediately after the death of Ali Akbar, steps were not taken for rectification of the defects in the Regular Second Appeal filed in the year 2015 or for the purpose of filing the present Appeal immediately thereafter. The accompanying Appeal was filed on 08.02.2019 along with an application for condonation of delay which was registered as I.A.(C) No.1383/2019. This I.A.(C) No.1383/2019 was withdrawn by the applicants on account of the death of the respondent Nos.7 & 8 to the said application with a liberty to file a fresh application, and accordingly, the present application was filed on 03.02.2020.

5. In the backdrop of the above, this Court has heard Mr. S. Hoque, the learned counsel for the applicants who is not only the counsel in the instant proceedings but was also the filing counsel in the earlier Appeal filed in the year 2015. I have also heard Mr. S. K. Ghosh, the learned

counsel appearing on behalf of some of the opposite parties and have given due consideration to the respective submissions. The question therefore arises as to whether the delay of 1434 days in filing the accompanying Appeal can be condoned.

6. This Court has duly taken note of that in the Appeal filed in the year 2015, although the names of the applicant Nos.2, 3, 4 & 5 were duly mentioned as Applicant Nos.2, 3, 4 & 5 but the said Applicants did not sign the Vakalatnama. Therefore, the said Appeal filed in the year 2015 cannot be said to be an Appeal filed by the Applicant Nos.2, 3, 4 & 5. The said Appeal had to be therefore constricted to be an Appeal filed by Late Ali Akbar and upon his death, it was the responsibility of his legal representatives to take appropriate steps in that matter which included the applicant Nos.2, 3, 4 & 5 who were the sons of Late Ali Akbar. Be that as it may, no steps were taken and the said Appeal remained in a defective state all the years till date.

7. In the meantime, the Applicant Nos.1(a), 1 (b) & 1 (c) along with the applicant Nos.2, 3, 4 & 5 filed the present accompanying Appeal along with the condonation application for condoning the delay of 1434 days. In the said condonation application, it has been specifically mentioned that Ali Akbar expired on 01.09.2015. It is also stated that Late Ali Akbar before his death also informed the applicants about the filing of the Appeal in the year 2015 and it was lying defective. There is no explanation whatsoever in the instant application as to why then also no steps were taken for removing the defects in the Appeal filed in the year 2015 or a fresh Appeal was not filed immediately thereafter.

8. Taking into account that the instant application is bereft of any detail

sufficient cause being shown, this Court therefore rejects the instant application for condonation of delay of 1434 days in preferring the accompanying Appeal.

9. Accordingly, the instant application stands rejected.

10. The consequential effect of rejection of the instant application for condonation of delay is that the accompanying Appeal which was filed on 08.02.2019 cannot be entertained as it is barred by limitation.

11. In view of the above, the instant I.A. stands disposed of.

12. The records of the Appeal filed in the year 2015 bearing Filing Number RSA 253896/2015 is segregated.

JUDGE

Comparing Assistant