

GAHC010023762024



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

Case No. : I.A.(Civil)/626/2024

ON THE DEATH OF PABITRA BARUAH HIS LEGAL HEIRS ARATI BARUAH
AND ORS

2: SMT. ARATI BARUAH

W/O- LATE PABITRA BARUAH
R/O- NEC ROAD
NEAR MAIRAPUR M E SCHOOL
RANI
MAIRAPUR
P.O. RANI
DIST. KAMRUP
ASSAM
PIN 781131.

3: SRI CHETANDEEP BARUAH

S/O- LATE PABITRA BARUAH
R/O- NEC ROAD
NEAR MAIRAPUR M E SCHOOL
RANI
MAIRAPUR
P.O. RANI
DIST. KAMRUP
ASSAM
PIN 781131.

4: SRI PARIKHEET BARUAH

S/O- LATE PABITRA BARUAH
R/O- NEC ROAD
NEAR MAIRAPUR M E SCHOOL
RANI
MAIRAPUR

P.O. RANI
DIST. KAMRUP
ASSAM
PIN 781131.

5: SMT. GEETASHREE BARUAH GOHAIN
W/O SRI DEEP GOHAIN
R/O KHETOGUTIBARIGAON
DULIAJAN GAON
TINSUKIA
ASSAM
PIN 786170

VERSUS

SMTI. SABITRI RANI GHOSH
W/O- SRI BHAJAN CHANDRA GHOSH, R/O- BISHNUPUR, GUWAHATI,
MOUZA- BELTOLA, DIST.- KAMRUP(M), ASSAM, PIN- 781028.

Advocate for the Petitioner : MR. A C SARMA

Advocate for the Respondent :

Linked Case : RSA/145/2019

SRI PABITRA BARUAH
S/O- LATE PHANINDRA NATH BARUA
R/O- GANESH PARA
GUWAHATI
MOUZA- BELTOLA
DIST.- KAMRUP(M)
ASSAM
PIN- 781025.

VERSUS

SMTI. SABITRI RANI GHOSH AND 7 ORS.
W/O- SRI BHAJAN CHANDRA GHOSH
R/O- BISHNUPUR
GUWAHATI

MOUZA- BELTOLA
DIST.- KAMRUP(M)
ASSAM
PIN- 781028.

2:SASHINDRA PATHAK
S/O- LATE THANURAM PATHAK
R/O- VILL.- MAKHIBAHA
MOUZA AND P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781374.

3:STRUCK OFF
VIDE HONBLE COURTS ORDER DTD 04.12.2019 PASSED IN RSA NO. 145/2019
4:STRUCK OFF

VIDE HONBLE COURTS ORDER DTD 04.12.2019 PASSED IN RSA NO. 145/2019
5:STRUCK OFF

VIDE HONBLE COURTS ORDER DTD 04.12.2019 PASSED IN RSA NO. 145/2019

6:SRI SATYENDRA NATH PHUKAN
S/O- LATE PULIN RAM PHUKAN
R/O- BHARALUMUKH
MOUZA- GUWAHATI
DIST.- KAMRUP(M)
ASSAM
PIN- 781009.

7:STRUCK OFF
VIDE HONBLE COURTS ORDER DTD 04.12.2019 PASSED IN RSA NO. 145/2019
8:SMT. BIMALA DAS THAKURIA

W/O- HEM THAKURIA
R/O- VILL.- KALUBARI
MOUZA- NAGARBERA
DIST.- KAMRUP(M)
ASSAM
PIN- 781127.

Advocate for : MR. A C SARMA
Advocate for : MS. B BHUYAN appearing for SMTI. SABITRI RANI GHOSH AND
7 ORS.

Linked Case : I.A.(Civil)/627/2024

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VERSUS

SMTI. SABITRI RANI GHOSH

W/O- SRI BHAJAN CHANDRA GHOSH
R/O- BISHNUPUR
GUWAHATI
MOUZA- BELTOLA
DIST.- KAMRUP(M)
ASSAM
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Advocate for : MR. A C SARMA
Advocate for : appearing for SMTI. SABITRI RANI GHOSH

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VERSUS

SMTI. SABITRI RANI GHOSH
W/O- SRI BHAJAN CHANDRA GHOSH
R/O- BISHNUPUR
GUWAHATI
MOUZA- BELTOLA
DIST.- KAMRUP(M)
ASSAM
PIN- 781028.

Advocate for : MR. A C SARMA
Advocate for : appearing for SMTI. SABITRI RANI GHOSH

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

05.04.2024

All these applications are taken up together by this common order taking into account that the matters pertain to condonation of delay, setting aside abatement, as well as for substitution of legal representatives of the sole appellant.

2. I have heard Mr. G Bharadwaj, the learned counsel appearing on behalf of the appellant/applicants and Mr. T Gogoi, the learned counsel appearing on behalf of the respondent.

3. This Court has also seen the grounds which have been assigned in the application for condonation of delay in filing the application for setting aside abatement as well as for filing the application for substitution of the legal representatives of the sole appellant.

4. This Court has also taken note of the judgment of the constitution Bench judgment of the Supreme Court in the case of *Sardar Amarjit Singh Karla (dead) by LRs & Ors. Vs. Smti Pramod Gupta (dead) by LRs. & Ors.* reported in (2003) 3 SCC 272 wherein the Supreme Court had observed at paragraph 26 that the laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order XXII of CPC as well as the subsequent amendments thereto as per the Supreme Court would lend credit and support to

the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order XXII are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.

5. In the backdrop of the above proposition of law as laid down by the Constitution Bench judgment of the Supreme Court in the case of Sardar Amarjit Singh Karla (*supra*) and applying the same to the facts as narrated hereinabove, this Court is of the view that this is a fit case wherein the delay is required to be condoned on the materials which are placed before this Court and consequently, on condoning the delay, the abetment which had occurred on account of not filing the substitution be set aside and thereupon to substitute the legal representatives of the sole appellant. Accordingly, all the applications which are before this Court stand allowed and thereby the delay is condoned, the abetment is set aside in so far as the sole appellant is concerned and the legal representatives of the sole appellant, whose name appears at paragraph 1 of IA(C)No.625/2024 be substituted against the name of the sole appellant as appellant Nos.1(i), 1(ii), 1(iii) and 1(iv) respectively.

6. All the interlocutory applications, accordingly, stand disposed of.

7. The appellants are directed to file a fresh memo of parties before the Registry of this Court by 10.04.2024 and on the basis of the instant order as well as the fresh memo of parties, the Registry shall make the necessary corrections in the cause-title of the Memo of appeal and also update the same in the CIS.

JUDGE

Comparing Assistant