

GAHC010075052025



2026:GAU-AS:4374

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

Case No. : I.A.(Civil)/1400/2025

SAYED IMDADUL ISLAM AND 3 OTHERS
S/O. LT. MD. BAHAL UDDIN

2: SAYED AZIZUL ISLAM
S/O. LT. MD. BAHAL UDDIN
BOTH ARE R/O. VILL. SONALUGURI
P/O. RANIGANJ
P/S. BILASIPARA
DIST. DHUBRI
ASSAM.

3: MAHFUZA BEGUM
W/O. SAHABUDDIN SK
R/O. VILL.- BASHJANI
P/O. SAGALCHARA
P/S. AND DIST. DHUBRI
ASSAM.

4: SAYED MOHSHINA BEGUM
W/O. TOSLIM UDDIN
WARD NO. 8
OPPOSITE OF JAME MASZID
P/O. AND P/S. DHUBRI
AND DIST. DHUBRI
ASSAM

VERSUS

SAYED AKHIRUL ISLAM AND ANR.
S/O. LT. MD. BAHAL UDDIN

2:MOMOTAZ BEGUM
W/O. ATOWAR RAHMAN
R/O. SURJYAKHATA

WARD NO. 2
P/O. AND P/S. BILASIPARA
DHUBRI

Advocate for the Petitioner : MR. RASHIDUL ISLAM, MR. T SK,MR. I ALAM

Advocate for the Respondent : MS. R CHOUDHURY (R-1,2), MD. MEMON AHMED(R-1,2)

Linked Case :

SAYED IMDADUL ISLAM AND ORS
S/O. LT. MD. BAHAL UDDIN

2: SAYED AZIZUL ISLAM
S/O. LT. MD. BAHAL UDDIN
BOTH ARE R/O. VILL. SONALUGURI
P/O. RANIGANJ
P/S. BILASIPARA
DIST. DHUBRI
ASSAM.

3: MAHFUZA BEGUM
W/O. SAHABUDDIN SK
R/O. VILL.- BASHJANI
P/O. SAGALCHARA
P/S. AND DIST. DHUBRI
ASSAM.

4: MOHSHINA BEGUM
W/O. TOSLIM UDDIN
WARD NO. 8
OPPOSITE OF JAME MASZID
P/O. AND P/S. DHUBRI
AND DIST. DHUBRI
ASSAM.

5: LEGEL HEIRS OF LT. SAYED WAHILUL ISLAM
HUSNARA BEGUM (WIFE)

6: WAHIDA NASIM
DAUGHTER

7: HABIBUL ISLAM
SON
ALL ARE R/O. DIMATOLA

WARD NO. 3
P/O. AND P/S. BILASIPARA
DIST. DHUBRI
ASSAM
VERSUS

SAYED AKHIRUL ISLAM AND ANR
S/O. LT. MD. BAHAL UDDIN

2:MOMOTAZ BEGUM
W/O. ATOWAR RAHMAN
R/O. SURJYAKHATA
WARD NO. 2
P/O. AND P/S. BILASIPARA
DHUBRI.

Advocate for : MR. RASHIDUL ISLAM
Advocate for : appearing for SAYED AKHIRUL ISLAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 26-03-2026

Heard Mr. I. Alam, learned counsel appearing for the applicants. Also heard Ms. R. Choudhury, learned counsel appearing for the respondents.

2. By way of the present interlocutory application, the applicants seek condonation of a delay of 1760 days in filing the accompanying second appeal against the Judgment and Order dated 30.11.2017 passed in T.A. No. 23/2016 by the learned Civil Judge at Dhubri. By the said judgment, the appeal was allowed on contest and the Judgment and Decree dated 20.02.2016 passed in T.S. No. 129/2014 were set aside, holding that the applicants/plaintiffs were not entitled to any relief.

3. It appears that the applicants/plaintiffs had instituted T.S. No. 129/2014 before the Trial Court seeking partition of the suit land amongst themselves and

the respondents/defendants in accordance with the provisions of Mohammedan Law of Inheritance. The Trial Court, by an ex parte Judgment and Decree dated 20.02.2016, decreed the suit in favour of the applicants/plaintiffs by declaring their right, title and interest over land measuring 3 Kathas 14.90 Lechas out of the total suit land measuring 1 Bigha 3 Lechas. The Trial Court further directed the Circle Officer, Bilasipara Revenue Circle, to effect partition of the suit land and issued precept accordingly.

4. Aggrieved by the said ex parte Judgment and Decree dated 20.02.2016, the respondents/defendants preferred Title Appeal No. 23/2016. The learned Appellate Court, upon hearing the parties, by Judgment and Decree dated 30.11.2017, allowed the appeal, reversed the findings of the Trial Court, and set aside the Judgment and Decree dated 20.02.2016.

5. Being aggrieved by the aforesaid Judgment and Decree dated 30.11.2017, the applicants/plaintiffs preferred the accompanying second appeal. However, in doing so, there has been a delay of 1760 days, for condonation of which the present interlocutory application has been filed.

6. Mr. I. Alam, learned counsel for the applicants, submits that pursuant to the ex parte Judgment and Decree dated 20.02.2016 granting partition, the applicants approached the jurisdictional Circle Officer for implementation of the decree. However, the Co-District Commissioner, Bilasipara, by a speaking order dated 12.11.2024, directed the parties to approach the Civil Court for enforcement of the decree, as the same had not been implemented. It is contended that only thereafter the applicants preferred the second appeal, resulting in the delay of 1760 days.

7. *Per contra*, Ms. R. Choudhury, learned counsel for the respondents,

vehemently opposes the prayer for condonation of delay. She submits that the applicants were fully aware, since the passing of the Appellate Court's judgment dated 30.11.2017, that the decree in their favour had been set aside. Despite such knowledge, they failed to challenge the same within the prescribed period and remained inactive. It is further submitted that the applicants had sufficient opportunity between 2017 and 2023 to initiate appropriate legal proceedings but deliberately failed to do so. The explanation that they approached a wrong forum and awaited a speaking order cannot constitute "sufficient cause," as ignorance of law or wrong advice is no ground for condoning an inordinate delay of such magnitude. The conduct of the applicants, according to the respondents, reflects gross negligence and lack of due diligence. It is also submitted that even after the speaking order dated 12.11.2024, the second appeal was filed only on 11.12.2024, indicating continued inaction. Lastly, it is contended that valuable rights have accrued in favour of the respondents due to the finality of the 2017 judgment, and condonation of delay would seriously prejudice them. Reliance is placed on ***Basawaraj and Another v. Special Land Acquisition Officer***, reported in ***(2013) 14 SCC 81***.

8. I have given my anxious consideration to the submissions advanced by the learned counsel for the parties and have perused the materials available on record.

9. The condonation sought is in respect of filing the second appeal against the Judgment and Decree dated 30.11.2017. It is evident that from 30.11.2017 till 11.12.2024 the date of filing of the second appeal, the applicants remained inactive. No satisfactory explanation has been furnished for not approaching the appellate forum within the prescribed period of limitation. On the contrary, the plea that the necessity to file the second appeal arose only after the speaking

order dated 12.11.2024 is wholly misconceived. The applicants were fully aware that the decree dated 20.02.2016 in their favour had already been set aside by the Appellate Court on 30.11.2017.

10. By no stretch of imagination could the partition decree of the Trial Court have been implemented thereafter, as the same had ceased to exist in the eye of law. It is also pertinent that the applicants did not initiate any execution proceedings for enforcement of the decree. Instead, upon alleged construction over the suit land by the respondents, they approached the Sub-Divisional Officer (Civil), Bilasipara on 07.08.2024. The speaking order dated 12.11.2024 passed thereafter has no bearing on the subsisting appellate decree of 30.11.2017.

11. In such circumstances, the explanation offered by the applicants lacks bona fides and does not constitute "sufficient cause" within the meaning of law.

12. Accordingly, the interlocutory application for condonation of delay stands dismissed.

13. No order as to costs.

JUDGE

Comparing Assistant