

GAHC010214042022



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

Case No. : CRP/109/2022

KAMRUL ALOM CHOUDHURY
S/O LATE RAIS ALI CHOUDHURY, R/O VILL-NARAYANPUR, P.O. AND P.S.-
HAILAKANDI

VERSUS

ON THE DEATH OF LATE KODOR ALI HIS LEGAL HEIRS AND ORS
(HIS LEGAL HEIRS)

1.1:ASARUN NESSA LASKAR
W/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.2:RAJIA BEGUM LASKAR
D/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.3:ABDUL KHALIK LASKAR
S/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.4:ABDUL NUR LASKAR
S/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.5:MONWARA BEGUM LASKAR
D/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.6:RABIA BEGUM LASKAR
D/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.7:ABDUL MANIK LASKAR
D/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

1.8:SOFIA BEGUM LASKAR
D/O LATE KODOR ALI LASKAR
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKANDI

2:MD. TAYABUR RAHMAN BORBHUIYAN
S/O LT. MATLIB ALI BORBHUIYAN
R/O NARAYANPUR PART-II
P.O.-WEST CHANDPUR
P.S. AND DIST-HAILAKAND

Advocate for the Petitioner : MR. A CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.11.2022

Heard Mr. A. Choudhury, learned counsel for the petitioner.

By filing this revision petition under Article 227 of the Constitution of

India, the petitioner has assailed the judgment dated 26.08.2022, passed by the learned Civil Judge, Hailakandi in Misc. Appeal No. 04/2021. By the said judgment, the learned Civil Judge, Hailakandi had entertained a Misc. Appeal under the provisions of Order XLIII Rule 1 CPC against the judgment and decree passed by the learned Munsiff No.1, Hailakandi on an application filed under Order XXI Rule 97, 99 and 101 CPC, wherein the petitioner had raised objection in course of execution of the judgment and decree dated 15.06.2016, passed by the learned Munsiff No.1, Hailakandi in Title Suit No. 07/2009.

Amongst others, it appears to the Court that as per the provision of Rule 103 of Order XXI, the orders passed on an application, which has been adjudicated under Rule 98 or 100 of Order XXI are to be treated as decrees. Therefore, it *prima facie* appears that only a regular appeal under section 96 could have been entertained in respect of judgment dated 03.03.2020, passed in Misc.(J) Case No. 56/2018 arising out of Title Execution No. 11/2017.

Therefore, the Court is of the considered opinion that although the said issue is not raised in this revision, this matter is also required to be heard on the said point.

Accordingly, let a notice including notice on the prayer for interim relief be issued returnable on 04.01.2023.

The petitioner shall take steps within 2 (two) days for service of notice on the respondents by registered post with A/D. In addition, the petitioner is also permitted to serve notice through dasti through his learned counsel or advocate clerk by routing the process through the Registry of the Court and upon service, an affidavit of service shall be filed prior to the next date of listing.

Prayer for interim relief shall be considered on service of notice on the

respondents.

List on 04.01.2023.

JUDGE

Comparing Assistant