

GAHC010037002022



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

Case No. : I.A.(Civil)/1128/2022

SRI TAPAN SAHA AND 3 ORS.

S/O- LATE UPENDRA NATH SAHA, R/O- WARD NO. III, GAURIPUR TOWN,
P.O. GAURIPUR, P.S. GAURIPUR, DIST.- DHUBRI, ASSAM, PIN- 783331.

2: SOVAN SAHA

S/O- LATE UPENDRA NATH SAHA

R/O- WARD NO. III

GAURIPUR TOWN

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331.

3: RATAN SAHA

S/O- LATE UPENDRA NATH SAHA

R/O- WARD NO. III

GAURIPUR TOWN

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331.

4: JIBAN KRISHNA SAHA

S/O- LATE UPENDRA NATH SAHA

R/O- WARD NO. III

GAURIPUR TOWN

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331

VERSUS

SRI JOYKANTA KALITA AND 9 ORS.

S/O LATE BIDITRAM KALITA, R/O GAURIPUR TOWN, WARD NO. 3, PO
GAURIPUR, PS GAURIPUR, DIST. DHUBRI, ASSAM, PIN-783331

2:LAKSHMIKANTA KALITA
D/O LATE BIDITRAM KALITA
R/O GARUIPUR TOWN
WARD NO. 3
PO GAURIPUR
PS GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

3:ON THE DEATH OF SUBODH SAHA
HIS LEGAL HEIRS

3.1:MRS. AROTI SAHA
W/O LATE SUBODH SAHA
R/O VILL-GAURIPUR
WARD NO. 4
P.O.-GAURIPUR
DIST-DHUBRI
ASSAM
PIN-783331

3.2:MRS. ARPITA SAHA
D/O LATE SUBODH SAHA
C/O PRITAM SAHA (GOBIND SAHA)
VILLAGE SHANTINAGAR
WARD NO. 13
PO DHUBRI
DIST. DHUBRI
ASSAM
PIN-783301

3.3:SUJIT SAHA
S/O LATE SUBODH SAHA
R/O VILLAGE-GAURIPUR
WARD NO. 4
PO GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

4:ON THE DEATH OF SUBAL SAHA

HIS LEGAL HEIRS

4.1:SMTI. SHIPRA SAHA
W/O LATE SUBAL SAHA
R/O GAURIPUR TOWN
P.O.-GAURIPUR
NEAR NARI SAMITI
DIST-DHUBRI
ASSAM
PIN-783331

4.2:SUMIT SAHA
S/O LATE SUBAL SAHA
R/O GAURIPUR TOWN
PO GAURIPUR
NEAR NARI SAMITI
DIST. DHUBRI
ASSAM
PIN-783331

4.3:SUDIP SAHA
S/O LATE SUBAL SAHA
R/O GAURIPUR TOWN
PO GAURIPUR
NEAR NARI SAMITI
DIST. DHUBRI
ASSAM
PIN-783331

4.4:SAURAV SAHA
S/O LATE SUBAL SAHA
R/O GAURIPUR TOWN
PO GAURIPUR
NEAR NARI SAMITI
DIST. DHUBRI
ASSAM
PIN-783331

5:JITENDRA NATH SAHA
S/O LATE JOGENDRA NATH SAHA
R/O GARUIPUR TOWN
WARD NO. 3
PO GAURIPUR
PS GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

6:NIRMAL SAHA
S/O LATE JOGENDRA NATH SAHA
R/O GARUIPUR TOWN
WARD NO. 3
PO GAURIPUR
PS GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

7:RAJIB SAHA
S/O LATE MOHALAL SAHA
R/O GARUIPUR TOWN
WARD NO. 3
PO GAURIPUR
PS GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

8:SHEFALI BALA SAHA
W/O LATE MOHANLAL SAHA
R/O GARUIPUR TOWN
WARD NO. 3
PO GAURIPUR
PS GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

9:UTPAL SAHA
S/O LATE PARESH SAHA
R/O GARUIPUR TOWN
WARD NO. 4
PO GAURIPUR
PS GAURIPUR
DIST. DHUBRI
ASSAM
PIN-783331

10:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR OF DHUBRI DISTRICT
P.O.-DHUBRI
DIST- DHUBRI
ASSAM
PIN-78330

Advocate for the Petitioner : MR. P P BARUAH,

Advocate for the Respondent : MR D CHAKRABORTY,

Linked Case : RSA/278/2019

SRI TAPAN SAHA AND 3 ORS.
S/O- LATE UPENDRA NATH SAHA
R/O- WARD NO. III
GAURIPUR TOWN
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

2: SRI SOVAN SAHA
S/O- LATE UPENDRA NATH SAHA
R/O- WARD NO. III
GAURIPUR TOWN
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

3: SRI RATAN SAHA
S/O- LATE UPENDRA NATH SAHA
R/O- WARD NO. III
GAURIPUR TOWN
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

4: SRI JIBAN KRISHNA SAHA
S/O- LATE UPENDRA NATH SAHA
R/O- WARD NO. III
GAURIPUR TOWN
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

VERSUS

SRI JOYKANTA KALITA AND 9 ORS.

S/O- LATE BIDITRAM KALITA

R/O- GAURIPUR TOWN

WARD NO. 3

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331.

2:SRI LAKSMIKANTA KALITA

D/O- LATE BIDITRAM KALITA

R/O- GAURIPUR TOWN

WARD NO. 3

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331.

3:SRI SUBODH SAHA

S/O- LATE MAHENDRA NATH SAHA

R/O- GAURIPUR TOWN

WARD NO. 3

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331.

4:SRI SUBAL SAHA

S/O- LATE MAHENDRA NATH SAHA

R/O- GAURIPUR TOWN

WARD NO. 3

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI

ASSAM

PIN- 783331.

5:SRI JITENDRA NATH SAHA

S/O- LATE JOGENDRA NATH SAHA

R/O- GAURIPUR TOWN

WARD NO. 3

P.O. GAURIPUR

P.S. GAURIPUR

DIST.- DHUBRI
ASSAM
PIN- 783331.

6:SRI NIRMAL SAHA
S/O- LATE JOGENDRA NATH SAHA
R/O- GAURIPUR TOWN
WARD NO. 3
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

7:SRI RAJIB SAHA
S/O- LATE MOHANLAL SAHA
R/O- GAURIPUR TOWN
WARD NO. 3
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

8:SRI SHEFALI BALA SAHA
W/O- LATE MOHANLAL SAHA
R/O- GAURIPUR TOWN
WARD NO. 3
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

9:SRI UTPAL SAHA
S/O- LATE PARESH SAHA
R/O- GAURIPUR TOWN
WARD NO. 4
P.O. GAURIPUR
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331.

10:THE STATE OF ASSAM
REP. BY THE COLLECTOR OF DHUBRI DISTRICT
P.O. AND DIST.- DHUBRI
ASSAM

PIN- 783301.

Advocate for : MR. P P BARUAH

Advocate for : MR D. CHAKRABORTY (r-1

2) appearing for SRI JOYKANTA KALITA AND 9 ORS.

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 16.03.2026

Heard Mr. P. P. Baruah, learned counsel appearing for the applicant. Also heard Ms. S. Azmi, learned counsel appearing for the respondent No. 1 and 2.

2. By way of the present interlocutory application, the applicant seeks amendment of the cause title in RSA No. 278/2019 for the purpose of bringing on record the legal heirs and representatives of the deceased respondent No. 3, namely, Subodh Saha.

3. It is the case of the applicant that although the regular second appeal was instituted on 13.11.2019 and admitted on 19.07.2021 after steps for service were taken, it subsequently came to light upon an office note dated 18.11.2021 that respondent No. 3 had, in fact, expired prior to the institution of the appeal.

4. Mr. P.P. Baruah, learned counsel for the applicant, submits that since respondent No. 3 was already deceased at the time of filing of the appeal, the cause title requires correction, as no appeal can be maintained against a dead person. In support of this submission, reliance is placed on **Anil Ch. Paul & Ors. v. Sudhir Ch. Deb & Ors.**, reported in **2002 (1) GLT 342**.

5. Ms. S. Azmi, learned counsel appearing for respondent Nos. 1 and 2, submits that she has no instructions to oppose the present application.

6. Upon hearing the learned counsel for the parties and perusing the materials available on record, it is evident that respondent No. 3 had expired on 01.03.2019, i.e., prior to the filing of the present regular second appeal. The said fact has been corroborated by the office note dated 18.03.2022, as well as the averments made in paragraph 3 of the interlocutory application, which explain the circumstances under which the applicant came to know of the death and subsequently ascertained the particulars of the legal heirs.

7. The legal position in this regard is well settled. Various High Courts, including this Court, have held that where an appeal is filed against a person who was already dead at the time of its institution, such defect is not necessarily fatal. The proceeding can be treated as having been instituted against the legal representatives, provided that a satisfactory explanation is furnished both for the initial lapse and for any delay in taking steps to cure the defect. Reference in this regard may be made to ***State of West Bengal v. Manisha Maity***, reported in ***AIR 1965 Cal 459***, ***Gopalakrishnaayya v. Adivi Lakshmana Rao***, reported in ***AIR 1925 Mad 1210***, ***Shankar Ganesh Joshi v. State of Mysore***, reported in ***AIR 1962 Mys 112***, and ***Anil Ch. Paul (supra)***.

8. In the present case, the explanation furnished by the applicant demonstrates that the fact of death was not within his knowledge at the relevant time and that reasonable diligence was exercised in

subsequently ascertaining the date of death and details of the legal heirs. The delay in seeking amendment thus stands sufficiently explained.

9. In view of the above, this Court is of the considered opinion that the prayer for amendment of the cause title is justified and deserves to be allowed.

10. Accordingly, the interlocutory application stands allowed.

11. The applicant shall file an amended cause title incorporating the legal heirs and representatives of deceased respondent No. 3 before the Registry within a period of 2 (two) weeks. Upon such filing, the Registry shall carry out the necessary corrections.

JUDGE

Comparing Assistant