

GAHC010234992022



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

Case No. : I.A.(Civil)/3498/2022

ON THE DEATH OF RAMEN SARMAH
HIS LEGAL HEIRS AND MEERA SARMA AND ORS.

1.1: SRIMATI MEERA SARMA
W/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.2: SRI ABHIJIT SARMA
S/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.3: SMTI. SWEETY SARMA
D/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.4: SRIMATI JEEMONI SARMAH
W/O SRI PRANJAL BARTHAKE MARRIED DAUGHTER OF LATE RAMEN
SARMAH
R/O MEKONA CHUBURI

P.S. BIHAGURI
P.S. JOHAMARI
DIST. SONITPUR
ASSA

VERSUS

SRI SHYAMAL SARMAH
S/O LATE DULAL SARMAH, R/O BORJHAR SAIKIA CHUBURI, P.S. TEZPUR,
MOUZA-HOLESWAR, DIST. SONITPUR, ASSAM, PIN 784501

Advocate for the Petitioner : MS.B CHOUDHURY

Advocate for the Respondent : MR. T K BHUYAN

Linked Case : I.A.(Civil)/3499/2022

ON THE DEATH OF RAMEN SARMAH
HIS LEGAL HEIRS AND MEERA SARMA AND ORS.

1.1: SRIMATI MEERA SARMA
W/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.2: SRI ABHIJIT SARMA
S/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.3: SMTI. SWEETY SARMA
D/O LATE RAMEN SARMAH
R/O BORJHAR GAON

P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.4: SRIMATI JEEMONI SARMAH
W/O SRI PRANJAL BARTHAHAKUR MARRIED DAUGHTER OF LATE RAMEN
SARMAH
R/O MEKONA CHUBURI
P.S. BIHAGURI
P.S. JOHAMARI
DIST. SONITPUR
ASSAM
VERSUS

SRI SHYAMAL SARMAH
S/O LATE DULAL SARMAH
R/O BORJHAR SAIKIA CHUBURI
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

Advocate for : MS.B CHOUDHURY
Advocate for : MR. T K BHUYAN appearing for SRI SHYAMAL SARMAH

Linked Case : RSA/146/2017

SRI RAMEN SARMAH
S/O LATE GUNADHAR SARMAH
RO BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

VERSUS

SRI SHYAMAL SARMAH
S/O LATE DULAL SARMAH

R/O BORJHAR SAIKIA CHUBURI
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

Advocate for : MS.B CHOUDHURY
Advocate for : MR. S SARMA appearing for SRI SHYAMAL SARMAH

Linked Case : I.A.(Civil)/3501/2022

ON THE DEATH OF RAMEN SARMAH
HIS LEGAL HEIRS AND MEERA SARMA AND ORS.

1.1: SRIMATI MEERA SARMA
W/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.2: SRI ABHIJIT SARMA
S/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.3: SMTI. SWEETY SARMA
D/O LATE RAMEN SARMAH
R/O BORJHAR GAON
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

1.4: SRIMATI JEEMONI SARMAH
W/O SRI PRANJAL BARTHAHAKUR MARRIED DAUGHTER OF LATE RAMEN

SARMAH
R/O MEKONA CHUBURI
P.S. BIHAGURI
P.S. JOHAMARI
DIST. SONITPUR
ASSAM
VERSUS

SRI SHYAMAL SARMAH
S/O LATE DULAL SARMAH
R/O BORJHAR SAIKIA CHUBURI
P.S. TEZPUR
MOUZA-HOLESWAR
DIST. SONITPUR
ASSAM
PIN 784501

Advocate for : MS.B CHOUDHURY
Advocate for : MR. T K BHUYAN appearing for SRI SHYAMAL SARMAH

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

28. 02. 2023

Heard Ms. B Choudhury, learned counsel for the applicants. Also heard Mr. S Sarma, learned Senior counsel for the respondent.

2. These three applications are taken up for final disposal. The sole appellant in RSA 146/2017 had expired. On his death, his legal heirs have filed IA (C) 3501/2022 to substitute themselves in place of the appellant No. 1, their predecessor in interest. However, such substitution petition was not filed within the prescribed period of limitation. Accordingly, the appeal abated. In view of the aforesaid, IA (Civil) 3499/2022 is filed under Section 5 of the Limitation Act for condonation of delay to set aside the

abatement and IA (Civil) 3498/2022 is being filed for setting aside the abatement.

3. Mr. Sarma, learned Senior counsel in his usual fairness submits that he will not object to any of the applications. However, he expresses an urgency that this matter is pending since 2017 and relates to specific performance of contract. Accordingly, he prays that the second appeal be heard on merit.
4. Considered the submission of Mr. Sarma, learned Senior counsel and also considered the pleadings made in the connected applications.
5. From the aforesaid, this court is of the view that the applicants were prevented by sufficient cause in filing the substitution petition. Accordingly, delay is condoned, abatement is set aside and substitution is allowed.
6. Registry to incorporate the names of the applicants in IA (Civil) No. 3501/2022, which are reflected at paragraph 2 in place of sole appellant namely Ramen Sarmah.
7. All IA stand disposed of.

JUDGE

Comparing Assistant