

(2025) 04 GAU CK 0373
In the Gauhati High Court
Case No : CRP(IO) Of 307 Of 2023

Smita Roy @ Buri Roy And Anr

APPELLANT

Vs

Sima Roy And Anr

RESPONDENT

Date of Decision : 28-04-2025

Acts Referred:

Limitation Act, 1963 — Section 5

Code of Civil Procedure, 1908 mdash; Order 22 Rule 9, Order 22 Rule 3

Citation : (2025) 04 GAU CK 0373

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : B. Halder, O. Laskar

Final Decision : Dismissed

Judgement

Devashis Baruah, J

1. Heard Mr. B. Halder, the learned counsel appearing on behalf of the petitioners. Mr. O. Laskar, the learned counsel appears on behalf of the respondent No. 1.

2. This is an application filed by invoking the supervisory jurisdiction of this Court challenging the order dated 31.05.2023 passed by the learned Court of the Munsiff No. 1, Karimganj (hereinafter referred to as, "the learned Trial Court") in Title Suit No. 35/2013 whereby the application under Section 5 of the Limitation Act, 1963 (for short, "the Act of 1963") for condonation of delay of 2334 days in filing the application for setting aside the abatement was dismissed.

3. For appreciating the dispute involved in the instant proceedings, it is pertinent to take note of that one Panna Lal Roy who is the father of the petitioners had filed a suit being Title Suit No. 35/2013 before the learned Trial Court seeking declaration that he is the land holder of the suit land described in Third Schedule to the plaint and owner of the building/suit rooms described in Fourth Schedule to the plaint; for confirmation of plaintiff's possession over the suit land; for

declaration that the registered document No. 1487 dated 12.03.2004 of Karimganj Sub-Registry and the registered document No. 4807 dated 18.09.2004 of Karimganj Sub-Registry are illegal, malafide, collusive, without consideration, void and void-ab-initio as well as for declaration that the principal defendant No. 1 has not acquired any right, title, interest or possession in the suit land and in the suit building/suit rooms on the strength of the suit documents as well as for permanent injunction.

4. The said Panna Lal Roy expired in the year 2013 itself. The petitioners herein who were the daughters of Late Panna Lal Roy had admittedly severed their contacts with Late Panna Lal Roy during his lifetime and even at the time of his death they were not around. Late Panna Lal Roy during his lifetime had executed a Will in favour of the respondent No. 1 who was the defendant No. 9 in Title Suit No. 35/2013. A proceedings being Probate Title Suit No. 65/2014 was filed by the respondent No. 1 herein seeking probate of the Will. The learned Court of the District Judge, Karimganj vide the judgment and order dated 14.09.2017 granted the probate in favour of the respondent No. 1. On the basis of the said probate granted, the respondent No. 1 herein who was the defendant No. 9 in Title Suit No. 35/2013 was transpositioned as plaintiff of Title Suit No. 35/2013 vide an order dated 30.07.2018 passed in Misc Case No. 75/2015 by the learned Trial Court.

5. The petitioners herein, who, claim to have no knowledge either of the suit or even the probate proceedings filed an Appeal before this Court challenging the judgment and order dated 14.09.2017 in Probate Title Suit No. 65/2014 which was registered and numbered as Test Appeal No. 3/2024. The said Appeal is presently pending before this Court.

6. The petitioners further on 26.08.2022 filed 3 (three) applications before the learned Trial Court seeking condonation of delay of 2334 days; an application seeking setting aside of abatement and for seeking substitution. The application under Section 5 of the Act of 1963 was rejected on the ground that the cause shown was not sufficient and it is under such circumstances, the present proceedings have been filed.

7. This Court has duly heard the learned counsels appearing on behalf of the petitioners as well as the respondent No. 1 and given its anxious consideration to the materials on record.

8. In terms with the provisions of Order XXII of the Code of Civil Procedure, 1908 (for short, "the Code") if the right to sue survives, the suit upon the death of the person concerned can be continued through the legal representatives. Order XXII of the Code provides the manner in which the substitution of the legal representatives is to be carried out. This Court further finds it relevant to take note of Section 2(11) of the Code which defines the term "legal representative" to be a person who in law represents the Estate of the deceased and even includes a person who intermingles with the Estate of the deceased.

9. In the instant case, it is seen that the suit so filed by Late Pana Lal Roy pursuant to the order dated 30.07.2018 in Misc Case No. 75/2015 had been continued by substitution of the respondent No. 1. This order has not been put to challenge by the petitioners in any proceedings. What the petitioners seeks by filing these applications i.e. an application under Section 5 of the Act of 1963; the application under Order XXII Rule 9 of the Code as well as the application under Order XXII Rule 3 of the Code are in effect to set aside the abatement and to seek substitution. In the opinion of this Court, the question of seeking setting aside of abatement as well as seeking substitution does not arise at all, taking into account that the original plaintiff had already been substituted, by the respondent No. 1. The law does not provide for further substitution. It is trite that when the suit is already continued through a legal representative of the original plaintiff, the provisions of Order XXII Rules 3 and 9 of the Code would not apply.

10. Considering the above, the applications so filed by the petitioners before the learned Trial Court under Section 5 of the Act of 1963; the application under Order XXII Rule 9 of the Code as well as Order XXII Rule 3 of the Code are completely misconceived. Under such circumstances, this Court finds no reason to interfere with the impugned order dated 31.05.2023, however, for the reasons assigned herein above.

11. The interim order passed by this Court dated 22.09.2023 staying the further proceedings of Title Suit No. 35/2013 pending before the Court of the learned Munsiff No. 1, Karimganj is hereby vacated.

12. Mr. O. Laskar, the learned counsel appearing on behalf of the respondent No. 1 shall draw the attention of the learned Trial Court about the instant judgment by placing a certified copy on 19.05.2025 for further proceedings of Title Suit No. 35/2013.

13. With the above observations and directions, the instant petition stands dismissed.