



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI
Intestate Case No. 02 of 2015

Smti. Geetanjali Das,
W/o Late Golap Das,
R/o Tezpur Town,
Mouza – Mahabhairab,
Dist. – Sonitpur, Assam.

..... Appellant.

-Versus-

Smti. Rina Das,
W/o Late Golap Das,
Vill. – Bamgaon,
Mouza – Biswanath,
PIN – 78417,
Dist. – Sonitpur, Assam.

..... Respondent.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates for the appellants :- Mr. B. Chakravarty.
Advocate for the respondent :- Mr. M. Choudhury.

Date of Hearing :- 12.09.2024.

Date of Judgment & Order :- 23.09.2024

JUDGEMENT & ORDER (CAV)

Heard Mr. B. Chakravarty, learned counsel for the appellant and Mr. M. Choudhury, learned counsel for the respondent.

2. This appeal under Section 384 of the Indian Succession Act, 1925, is directed against the order dated 30.07.2014, passed by the learned Additional District Judge, Sonitpur, Tezpur, in **Title Suit No. 34/2009**. It is to be noted here that vide impugned judgment and order the learned Addl. District Judge, Sonitpur Tezpur, had granted Succession Certificate in favour of the respondent in this appeal in respect of the following dues of her deceased husband from the Oriental Insurance Co. Ltd.:-

Sl. No.	Subject	Amount
01.	Gratuity amount	Rs. 98,000.00
02.	GS Insurance amount	Rs.1,60,000.00
03.	S.B. Account No.114428 with Allahabad Bank	Rs. 1251/24
04.	Provident Fund	Rs.212,602.00
05.	LIC Policy No. 482180336	Rs. 75,000.00
06.	LIC Policy No. 482656397/133-02	Rs. 1,00,000.00
07.	Janata P.A. Policy No. 130700/47/03/00063	Rs.1,00,000.00
08	Family Pension	Not ascertained
	Total	Rs. 7,46,853/24

3. The background facts, leading to filing of the present appeal, is adumbrated herein below:-

"Golap Das, since deceased was a permanent resident of Bamgaon, Biswanath Chariali of the then Sonitpur district. He was serving as Development Officer at the Oriental Insurance Company Limited at Tezpur. He died on 22.08.2006, at EMM Hospital, Tezpur. At the time of his death he left behind his wife Smti. Rina Das, his son Sri Uttam Das, his daughter Smti Rimpi Das and his another son Sri Aditya Das. His conjugal life was not happy for which he seldom visited his native place at Biswanath Chariali and he used to stay at Tezpur where he was posted. In course of time he married the present appellant on 04.02.2004. Prior to the death of Golap Das, on 03.03.2004, he executed his last will and testament whereby he bequeathed his estate and effects thereupon, to the appellant. After the death of Golap Das, the respondent herein had applied for grant of Succession Certificate in respect of the debt and securities left by Golap Das. In the said case being T.S. No. 34/2009, the present appellant entered appearance after receiving notice and contested the said suit on the ground that Golap Das had executed his last will bequeathing his estates in favour of the appellant and that she has instituted a suit seeking grant of Letter of Administration in respect of said will.

Thereafter, hearing both the parties, the learned trial court had framed the following issues :-

1. Whether there is cause of action for the suit ?
2. Whether the suit is maintainable ?
3. Whether the opposite party is the legally married wife of the deceased Golap Das as per customary right ?
4. Whether the petitioner and her sons and daughters are only heirs of Late Golap Das and whether the plaintiff is entitled to get succession Certificate in respect of the debt and securities ?
5. To what other reliefs the parties are entitled to ?

Thereafter, hearing both the parties, the learned trial court had decreed the suit and allowed the petition vide impugned judgment and order dated 30.07.2014.

5. Being highly aggrieved and dissatisfied with the judgment and order dated 30.07.2014, passed by the learned Additional District Judge, Sonitpur, Tezpur in Title Suit No. 34/2009, the appellant has preferred this present appeal, on the following grounds :-

- (i) That, the learned trial court had misread the provision of law and the materials on record;
- (ii) That, the respondent in her pleadings and evidence had never disputed the signature of the testator of the will and she had also admitted that the deceased was residing with the appellant since last several years at Tezpur. And that legality of her marriage with Golap Das has nothing to do with the will and on such count succession

certificate ought not to have been granted to the respondent;

- (iii) That, it is an admitted fact that the respondent had never visited the deceased when he was sick and the appellant had provided him marital bliss and nursing to the deceased/testator and this aspect has been overlooked by the learned trial court;
- (iv) That, the finding of the learned trial court had held that the will was executed under suspicious circumstances without any reason being cited for the same.
- (v) That, the learned trial court had failed to appreciate the fact that the appellant having being able to prove execution of will, the burden thereof shift on the respondent to prove that there was undue influence and that the respondent had failed to prove the same;
- (vi) That, the appellant had discharged her initial burden in proving execution of the will by examining one attesting witness as required under Section 68 of the Evidence Act as such the learned trial court ought to have granted the prayer of the appellant as there remains no impediment;
- (viii) That, the learned trial court had relied upon hearsay evidence in respect of undue influence and on such count the finding is erroneous and liable to be set aside;

Submissions:-

6. Mr. Chakravarty, learned counsel for the appellant, while reiterating the grounds mentioned in the memo of appeal, submits that the learned trial court has illegally rejected the prayer of the appellant in Title Suit No. 47/2007. Mr. Chakravarty, further submits that will has duly been executed and execution of the same is duly proved by one attesting witness and as such, the requirement of Section 68 of the Evidence Act has been complied with. Mr. Chakravarty also submits that as the appellant had discharged the initial burden and as such, it is the respondent to show that the will is not executed following due course of law. Mr. Chakravarty also submits that the outcome of this appeal depends upon the outcome of the Testamentary Case No. 08 of 2016, wherein rejection of Letter of Administration in Title Suit No. 47/2007 is being challenged.

7. On the other hand, Mr. Choudhury, learned counsel for the respondent has supported the impugned judgment and order dated 30.07.2014, passed by the learned Additional District Judge, Sonitpur, Tezpur and submits that admittedly the appellant was the second wife and the said marriage was performed during the lifetime of the respondent who was the first wife of Late Golap Das and there is no provision in Succession Act for inheriting the properties of Late Golap Das, by the appellant, as her marriage with Late Golap Das was void. Mr. Choudhury, further submits that the appellant had preferred an application for grant of Letter of Administration as she had failed to remove the suspicious

circumstances surrounding execution of the will. Therefore, it is contended to dismiss the appeal.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned judgment and order, dated 30.07.2014, so passed by the learned trial court.

9. It appears that succession certificate was applied for under Section 372 of the Indian Succession Act by the respondent. A bare perusal of the section reveals that Sub-section 1(c) requires that the applicant has to furnish the particulars of the family or near relatives of the deceased and their respective residence. Sub-Section 1(d) of the said Act requires that particulars of the right in which the petitioner claims, has also to be furnished. On perusal of the petition filed by the respondent herein seeking succession certificate, reveals that the aforementioned requirements had been complied with.

10. It is to be noted here that Section 383 of the Indian Succession Act provides for revocation of certificates, which states that a certificate granted under this part may be revoked for any of the following causes, namely:-

- (a) that, the proceedings to obtain the certificate were defective in substance;

- (b) that, the certificate was obtained fraudulently by making a false suggestion, or by concealment from the Court of something material to the case;
- (c) that, the certificate was obtained by means of untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that, the certificate has become useless and inoperative through circumstances;
- (e) that, a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

11. In the case in hand, having considered the submission of learned Advocates of both sides and also considering the materials placed on record and the impugned judgment and order dated 30.07.2014, I find that the appellant herein was the second wife of Late Golap Das. She got married with Late Golap Das during the subsistence of first marriage of Late Golap Das with that of the respondent herein. And as such her marriage itself with Late Golap Das was void.

12. It is to be noted here that Hon'ble Supreme Court in the case of **Rameshwari Devi vs. State of Bihar**, reported in **AIR 2000 SC 735**, while dealing with the property of a male Hindu, dying intestate, has held thus :

"It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of Clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in Clause (i) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void." (Emphasis is added)

13. Notably, the aforementioned case reference was made to the provisions of Hindu Succession Act, 1956. Since the parties herein governed by Hindu law, as a logical corollary said proposition of law can be applied to the present case also.

14. Moreover, the appellant herein had failed to demonstrate existence of at least a single ground, as mentioned in Section 383, for revocation of the aforementioned succession certificates. Her claim in this appeal is mainly rest upon the 'will' dated 03.03.2004, for which she had filed an application for grant of Letter of Administration of said 'will'. In respect of the said will she had applied for grant of Letter of Administration by instituting a Title Suit being Title Suit No. 34/2009, before the court of learned Addl. District Judge, Sonitpur, Tezpur. But, said suit was dismissed by the

learned trial court on account of failing to remove suspicious circumstances surrounding execution of the will dated 03.03.2004, vide judgment and decree dated 30.07.2014.

15. Against the said judgment and decree she had preferred an appeal, being Testamentary Appeal No. 08/2016. But, the grounds pleaded for allowing the appeal were found to be not at all sustainable for which the appeal was dismissed today.

16. Thus, I find this appeal devoid of merit and substance and accordingly, the same stands dismissed. The parties have to bear their own costs. Send down the record of the learned trial court with a copy of this judgment and order.

JUDGE

Comparing Assistant