
(2009) 11 GAU CK 0075
In the Gauhati High Court
Case No : C.R. (P) No. 06 (SH) of 2009

Eurica Marbaniang

APPELLANT

Vs

Dorbarlin Kharbithai

RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Succession Act, 1925 — Section 372, 377, 383, 384

Citation : (2006) 1 GLT 62

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : M.F. Qureshi, for the Appellant; N. Mozika, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. M.F. Qureshi, learned Counsel for the Petitioner as well as Mr. N. Mozika, learned Counsel for the sole Respondent.

2. An application u/s 372 of Indian Succession Act, 1925 (hereinafter referred to the Act) having been filed by the Petitioner herein, Additional Deputy Commissioner, East Khasi Mills District, Shillong by an order dated 10.9.2007 granted a succession certificate under the provision of Section 377 of the Act in respect of debts and securities amounting to Rs. 54,510 only left out by her deceased husband. This certificate was granted on the same day of the order i.e. 10.9.07. The sole Respondent herein claiming herself to be the second wife of the deceased husband of the Petitioner filed, an application before the court of Additional Deputy Commissioner, East Khasi Hills District was filed praying for stay of the operation of the order dated 10.9.2007 by which the succession certificate was granted. In the application it was claimed that the Petitioner herein by suppressing material facts obtained certificate from the court. On filing of this application, the court by this impugned order (order dated 10.12.2008) stayed the operation of the order dated 10.9.2007 holding inter alia that the Petitioner herein while filing the application for grant of succession certificate did not disclose the heirs of the deceased husband and further the succession was

granted ex-parte.

3. Being aggrieved thereby the Petitioner has preferred his application under Article 227 of the constitution of India challenging the legality and correctness of the order dated 10.12.2008.

4. Mr. M.F. Qureshi, learned Counsel appearing for the Petitioner submits that the learned Additional Deputy Commissioner, East Khasi Hills District, Shillong committed error and illegality in staying the operation of the succession certificate dated 10.9.2007 inasmuch as for adopting such jurisdiction no provision has been incorporated in Indian Succession Act, 1925. It is submitted by Mr. Qureshi that 2 (two) options are available for an aggrieved party to challenge the succession certificate, firstly, by resorting to provision of Section 383 and the secondly, Section 384 of the Act. Section 383 of the Act provides the provisions for revocation of the certificate while Section 384 provides provisions for appeal; therefore, the order which has been passed by the learned Additional Deputy commissioner, East Khasi Hills District, Shillong staying operation of the Succession certificate dated 10.9.2007 is beyond jurisdiction. A certificate can be revoked u/s 383 of the Act only on five grounds incorporated therein while appeal is required to be preferred before the High Court from the order passed by the District Court granting, refusing or revoking a certificate under the Act. According to Mr. M.F. Qureshi, learned Counsel for the Petitioner, the order is palpably passed without jurisdiction and accordingly, it is liable to be set aside and quashed. Mr. Qureshi. while submitting before this Court has led me through the provisions of Sections 383 and 384 of the Act.

5. On the other hand Mr. N. Mozika. learned Counsel representing the sole Respondent submits that the learned Additional Deputy Commissioner, East Khasi Hills District, Shillong acted beyond jurisdiction since the parties to the proceeding are all tribal. Any dispute between the tribals, such dispute is to be resolved by district council court alone. The parties to this proceeding being tribals, learned Additional Deputy Commissioner, East Khasi Hills District, Shillong ought not to have granted the succession certificate on the application of the revision Petitioner or to pass the impugned on the application of the sole Respondent herein. The learned Addl. Deputy Commissioner, East Khasi Hills District ought to have referred the matters to the District Council Court for adjudication. In that view of the matter, learned Counsel for the Respondent submits that since the succession certificate and the impugned order were passed by the learned Addl. Deputy Commissioner, East Khasi Hills District without jurisdiction, the succession certificate so granted vide order dated 10.9.2007 and the order passed dated 10.12.2008 are required to be set aside and quashed and both the matters be directed to be referred to the District Council Court for adjudication afresh.

6. Admittedly, when the parties to a proceeding are tribals such matter is required to be adjudicated by the District Council Court. No jurisdiction is vested on the court of Additional Deputy Commissioner or the Deputy Commissioner.

Facts remain that the succession certificate granted vide order dated 10.9.2007 has not been challenged by the sole Respondent either u/s 383 or u/s 384 of the Act. Therefore, it would not be proper on the part of this Court to set aside the succession certificate so granted vide order dated 10.9.2007. Since the impugned order is passed without jurisdiction not affiliated by any of the provision of the Act, 1925, this Court is of considered view that the same was passed without jurisdiction. The impugned order requires interference by this Court and accordingly interfered with. The impugned order is accordingly set aside and quashed. Since parties to the proceeding are tribal, the Respondent herein would be at liberty to approach any of the forums as indicated u/s 383 or 384 of the Act, 1925, if so advised.

7. This revision is accordingly disposed of. No cost.