

(2019) 05 GAU CK 0103

In the Gauhati High Court

Case No : Miscellaneous Appeal (F) No. 6 Of 2013

Kusha Phukan

APPELLANT

Vs

Mahananda Sinha And 5 Ors

RESPONDENT

Date of Decision : 28-05-2019

Acts Referred:

Indian Succession Act, 1925 — Section 372

Hindu Succession Act, 1956 — Section 15, 15(1)

Citation : (2019) 05 GAU CK 0103

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : M A Sheikh, D Dey

Final Decision : Dismissed

Judgement

1. Heard Mr. M.A. Sheikh, learned counsel for the appellant. Also heard Mr. D. Dey, learned counsel appearing for the respondents.

2. This appeal is directed against the judgment and order dated 12-03-2010 passed by the learned District Judge, Lakhimpur, North Lakhimpur in connection with Misc. (Succession) Case No. 45/2007 filed by the present appellants as petitioner whereby the prayer for issuance of succession certificate was rejected by the learned court below. The appellant herein, who was the petitioner in Misc. (Succession) Case No. 45/2007, is the brother of Late Amiya Phukan Baruah. Amiya Phukan Baruah had died leaving behind valuable immoveable properties. The deceased sister of the appellant was a Govt. servant and has retired from service under the "Voluntary Retirement Scheme" (VRS) whereby she had received substantial retirement benefits from her employer. The husband of the deceased sister of the petitioner had predeceased her. After the death of her husband late Amiya Phukan Baruah started living with the appellant and ultimately died in his residence. After the death of late Amiya Phukan Baruah, the appellant had instituted the aforesaid succession case under Section 372 of the Indian Succession Act, 1925 praying for issuance of a succession certificate

with regard to the debt and securities left behind by his sister to the tune of Rs. 3,54,186.65/-. By the impugned judgment and order dated 12-03-2010, the learned District Judge had rejected the prayer of the petitioner by relying upon Section 15(1) of the Hindu Succession Act, 1956, inter alia, holding that after the death of Amiya Phukan Baruah even the self acquired property of the deceased would devolve upon the legal heirs of the husband and therefore, the appellant did not have any locus standi to institute the aforesaid proceeding. Aggrieved thereby, the present appeal has been filed.

3. A question of similar nature arose for decision before the Hon'ble Supreme Court in the case of Omprakash & Ors. Vs. Radhacharan & Ors. reported in (2009) 15 SCC 66 wherein the Supreme Court had interpreted Section 15(1) of the Hindu Succession Act, 1956 and held that even the self acquired properties of the wife would devolve upon the legal heirs of the husband. Following the decision of the Hon'ble Supreme Court rendered in the case of Omprakash & Ors. (Supra) this Court had also held in the case of Anima Das Vs. Samaresh Majumder reported in 2018 (4) GLT 689 that the legal heirs of the husband alone would be entitled to claim right over the self acquired property of the deceased wife.

4. After examining the decision rendered by the Hon'ble Supreme Court as well as this Court, Mr. Sheikh has fairly submitted that the appellant case would be covered by the law laid down in the aforesaid decision. However, by relying upon another decision of this Court in the case of Basanta Kr. Nath & Anr. Vs. Lakshma Moni Nath & Ors. reported in AIR 1968 Assam & Nagaland 57, Mr. Sheikh has tried to persuade upon this Court to take a different view in the matter. In the case of Basanta Kr. Nath (Supra) a Division Bench of this Court, after interpreting Section 15 of the Hindu Succession Act, 1956 had held that property of the deceased wife in that case would amount to 'streedhana' and therefore, the same would devolve upon the legal heirs of the deceased wife, the same being self earned property of the woman.

5. After a careful reading of the judgment rendered in the case of Basanta Kr. Nath (Supra), it appears that the law laid down in that case has been prospectively overruled by the decision of the Hon'ble Supreme Court by the decision in the case of Omprakash & Ors. (Supra).

6. The law laid down by the Hon'ble Supreme Court would be binding upon this Court. Further this Court would be obliged to follow the decision rendered in the case of Anima Das (Supra). If that be so, there is no scope for this Court to take a different view in the facts and circumstances of this case. It is, therefore, held that the self acquired property of the deceased Amiya Phukan Baruah would devolve upon the legal heirs of her deceased husband by virtue of Section 15(1) of the Hindu Succession Act, 1956.

Such being the position, I do not find any infirmity in the impugned order dated 12-03-2010 passed by the learned District Judge, Lakhimpur, North Lakhimpur in

Misc. (Succ.) Case No. 45/2007. This appeal is, therefore, held to be devoid of any merit and the same is accordingly dismissed.

There would be no order as to cost. Send back the LCR.