
(2014) 09 MEG CK 0009
In the Meghalaya High Court
Case No : FAO. No. 1/2014

Marcelia A. Sangma

APPELLANT

Vs

Bionecia Nongkhlaw

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20
Succession Act, 1925 — Section 372, 383

Citation : AIR 2015 MG 1

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. A.H. Hazarika, learned counsel appearing for the appellant as well as Mr. HL Shangreiso, learned counsel appearing for the respondent. This appeal is directed against the judgment and order dated 24-4-2013 passed in revocation case No. 12 of 2011 for revocation of succession certificate dated 1-11-2010 issued in Succession Case No. 61 of 2010 in favour of the appellant.

2. The present appellant, Smti. Marcelia A. Sangma, and the respondent, Smti. Bionecia Nongkhlaw, are claiming to be the first wife of (Late) Shri Joyraj M. Sangma, who was an employee of the State Bank of India and expired while in service on 23-9-2010.

3. The present appellant filed the Succession Case No. 61 of 2010 in the court of the Judicial Officer/Garo Hills Autonomous District Council, West Garo Hills, Tura, u/s 372 of the Indian Succession Act, 1925 for issuing a succession certificate for the debts and securities of (Late) Shri Joyraj M. Sangma. It is the case of the appellant that the appellant married with (Late) Shri Joyraj M. Sangma, and 3(three) children namely, (1) Miss Noamchi A. Sangma (Daughter), Miss Dimchi A. Sangma (Daughter) and Miss Tracy A. Sangma (Daughter) were born to the present appellant by her husband (Late) Shri Joyraj M. Sangma. It is also stated

in the said application for succession certificate that (Late) Shri Joyraj M. Sangma, expired on 23-9-2010 at Tura, Chitotak Village. The learned Judicial Officer/Garo Hills Autonomous District Council, West Garo Hills, Tura issued the succession certificate dated 1-11-2010 for the debts and securities of the appellant amounting to Rs. 23,33,434/- in favour of the appellant.

4. The respondent after coming to know the succession certificate dated 1-11-2010 issued in favour of the appellant, filed the revocation petition u/s 383 of the India Succession Act, 1925 for revocation of the succession certificate dated 1-11-2010 issued in favour of the appellant in the court of the Additional District Commissioner, West Garo Hills, Tura, and the said revocation application was registered as revocation case No. 12 of 2011. In the said application, the respondent pleaded that the respondent married with (Late) Shri Joyraj M. Sangma in the Church as per the provisions of the Christian rites and rituals in the presence of relatives and friends of both the parties in Shillong on 29-6-1981 and 5(five) children were born. The respondent and (Late) Shri Joyraj M. Sangma, lived together as husband and wife in the house of the respondent in Shillong before their marriage was legally solemnized in the Church. (Late) Shri Joyraj M. Sangma, was transferred from Shillong and posted at State Bank of India, Baghmara Branch, South Garo Hills, Meghalaya in the year 1993, and the marriage between the respondent and her husband, (Late) Shri Joyraj M. Sangma, had not been dissolved or terminated. Therefore, the marriage of the respondent and her husband, (Late) Shri Joyraj M. Sangma, continued to remain intact till the death of (Late) Shri Joyraj M. Sangma, while in service in 23-9-2010. Respondent further pleaded in the said application that during the subsistence of the marriage of the respondent with (Late) Shri Joyraj M. Sangma, the appellant cannot marry (Late) Shri Joyraj M. Sangma, and if there be a relationship between the appellant and (Late) Shri Joyraj M. Sangma, that will be only an illicit relationship.

5. The appellant also filed the written statement/rejoinder in the said revocation case No. 12 of 2011, wherein the appellant categorically denied the averments of the respondent in the said revocation application. Mr. HL Shangreiso, learned counsel appearing for the respondent by drawing the attention of this Court to the copy of said written statement/rejoinder of the appellant, contended that there is no specific averment regarding the type of marriage of the appellant with (Late) Shri Joyraj M. Sangma, but in the application u/s 372 of the Indian Succession Act, 1925, filed by the appellant, it is stated that the marriage of the appellant with the deceased Joyraj M. Sangma, was solemnized as per provisions of Christian rites and rituals. Mr. HL Shangreiso, learned counsel appearing for the respondent further contended that in the memo of present appeal, the appellant had taken the ground that the appellant's marriage with (Late) Shri Joyraj M. Sangma was in accordance to Garo Customary Law, Practice and Usage during the year 1979, and the Garo Customary Law has a force of law. Therefore, it is his submission that there is a clear variance in the pleadings of the present appellant regarding the type of marriage she had with (Late) Shri

Joyraj M. Sangma, in her application u/s 372 of the Indian Succession Act and the present memo of appeal. Mr. HL Shangreiso, learned counsel appearing for the respondent by placing heavy reliance on the decision of the Apex Court in *Vinod Kumar Arora vrs Sujit Kaur*, AIR 1987 SCC page 2179 contended that the pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a new and different case. Mr. HL Shangreiso, learned counsel appearing for the respondent further contended that the present appellant cannot make out a new case in the present memo of appeal which is contradictory to the case of the appellant pleaded in the said application u/s 372 of the Indian Succession Act, 1925. This point is not deciding in the present appeal inasmuch as the present case is being remitted to the court below for deciding the revocation case No. 12 of 2011.

6. Mr. HL Shangreiso, learned counsel appearing for the respondent further contended that the appellant is praying for remitting the present case to the court below for filling up the lacuna in proving the case. It is clear from the record that the learned court below while deciding the revocation case No. 12 of 2011, did not examine the witnesses of the parties in support of their rival contentions. Mr. HL Shangreiso, learned counsel appearing for the respondent contended that the examination of the witness may not be required in the present case as the respondent had produced the marriage certificate. In this regard, this Court made an observation that the marriage certificate is required to be proved and exhibited in the manner provided by law. For deciding the disputed question of facts between the parties, this Court is of the concerned view that examination of oral evidence as well as documentary evidence are required, and over and above, parties should be allowed to produce both documentary and oral evidence in support of their respective case. It is also made clear that the court below while deciding the said revocation case No. 12 of 2011 de novo shall look into the respective pleadings inasmuch as the party cannot make out a new case and the party have to succeed their case on the basis of their pleaded case.

7. Since there is a disputed question of fact between the parties, the learned court below while trying the revocation case No. 12 of 2011 de novo shall frame the issues and the parties shall be allowed to produce their evidence in support of the issues so framed. The learned trial court as provided under Order 5 Rule XX of the CPC shall state his finding on the issues with the reason therefor.

8. For the foregoing discussions, the impugned order dated 24-4-2013 passed in revocation case No. 12 of 2011 is hereby set aside. The case is remanded to the court below for deciding the case de novo keeping in view of the observations and directions of this court in the foregoing paragraphs of this judgment. The parties are directed to appear on 15-10-2014 in the court of the Judge, District Council Court, West Garo Hills, Tura. Registry is directed to send down the records to the court below expeditiously.

9. To the extent indicated above, the appeal is allowed.