

(2015) 05 MEG CK 0012
In the Meghalaya High Court
Case No : MC(FA) No. 4 of 2014

Matilda M. Sangma and Others

APPELLANT

Vs

Tripti Dariango

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Assam Autonomous Districts Administration of Justice (Miscellaneous Provisions) Act,
1957 — Section 2
Limitation Act, 1963 — Section 14, 14(1)

Citation : (2015) 05 MEG CK 0012

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S. Sen, for the Appellant; A.H. Hazarika, Advocates for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. S. Sen, learned counsel appearing for the applicant/appellant and also Mr. A.H. Hazarika, learned counsel appearing for the respondent.

2. This case has a chequered history. The fact of the case sufficient for deciding the present application for condonation of delay is briefly noted. The applicant/appellant is praying for condonation of delay of 1775 (One thousand seven hundred and seventy five) days in preferring the accompanying appeal. It is stated that the respondent claiming herself to be the legally married housewife of (1) Sudhin M. Sangma, who died on 21-01-1997 filed the application under Section 372 of the Indian Succession Act, 1975 before the Additional Deputy Commissioner, Tura and it was registered as Succession Case No. 22/1997, and obtained the order dated 25-08-1997 for succession certificate in her favour to the debts and securities of the deceased (1) Sudhin M. Sangma. The applicant/appellant also applied for issuance of Letter of Administration on the basis of the Will dated 14-08-1996 executed by the deceased (1) Sudhin M. Sangma in her

favour claiming to be legally married wife in the Court of Additional Deputy Commissioner, Tura and the said proceeding was registered as Letter of Administration Case No. 7/1997 of the court of Additional Deputy Commissioner, Tura. The present applicant/appellant also filed an application for revocation of the said Succession Certificate dated 25-08-1997 in Succession Case No. 22/1997. The learned Additional Deputy Commissioner, Tura, after hearing both the parties, passed an order dated 24-08-2000 for revocation of the said Succession Certificate dated 25-08-1997.

3. CR(P) No. 46 (SH) 2000 was filed against the said order of revocation dated 24-08-2000 in this Court. This Court after elaborate discussions held that the Judge, District Council Court has the exclusive jurisdiction to try proceeding under Chapter X of the Indian Succession Act, 1925. Ultimately the Judicial Officer, District Council Court, Garo Hills District Council passed the order dated 21-05-2003 in the Letter of Administration Case No. 1/2002.

4. The present respondent filed a revision petition being Civil Revision Petition No. 9 (SH) 2003, against the said orders dated 21-05-2003 in this Court. The said revision petition had been finally disposed of by this Court by passing judgment and order dated 03-08-2007 for remitting the said cases i.e. the Letter of Administration Case No. 1/2002, and also the said application for revocation of the said Succession Certificate to the District Council Court after setting aside the impugned order dated 21-05-2003 passed by the Judicial Officer Magistrate First Class, District Court, Garo Hills District Council, Tura. After remand, District Council Court i.e. First Class Magistrate, Garo Hills District Council, Tura, passed the impugned judgment and order dated 05-10-2009 granting the Succession Certificate in favour of the present respondent. Against the said order dated 05-10-2009, the appellant filed a revision i.e. CR(P) No. 46/2009 under Section 35 of the Administration of Justice and Police in the Garo Hills District Rules, 1937 before this Court. The said 1937 Rules had been repealed by the subsequent Rule called the Garo Hills Autonomous District (Administration of Justice) Rules, 1953.

5. It is nobody's dispute that the cases between the members of the tribe should be taken up by the District Council Court and not by the Deputy Commissioner. The cases between the tribals and non-tribals are to be taken up and decided by the Deputy Commissioner. Section 2 of the Assam Autonomous District Administration of Justice (Miscellaneous Provisions) Act, 1957, provides that the Deputy Commissioner and the Assistant to him shall have no power to try a case which is exclusively triable by any Court constituted under paragraph 4 of the Sixth Schedule to the Constitution of India and any case which at any stage after the Deputy Commissioner or an Assistant to him has taken cognizance of, transpires to be so triable, shall be transferred to a competent Court as soon as it is so transpires. In the present case, it is an admitted case of both the parties that the appellant and the respondent are members of the tribe and therefore, it is the unanimous submission of learned counsel for the parties that the case of

the appellant and the respondent should be decided by the District Council Court and not by the Deputy Commissioner.

6. It is stated in the present Misc. application for condonation of delay that the applicant/appellant after realizing the bonafide mistake of filing the CR(P) No. 46/2009, by taking recourse to the wrong forum i.e. filing of the revision petition under the Administration of Justice and Police in the Garo Hills District Rules, 1937 which had been repealed by the subsequent Rules i.e. Garo Hills Autonomous District (Administration of Justice) Rules, 1953, sought the leave of this Court to withdraw the said revision petition with liberty to the applicant/appellant to seek appropriate remedy in the appropriate forum. The said prayer of the applicant/appellant was also not objected by the learned counsel appearing for the respondent. Accordingly, the said CR(P) No. 46/2009 was allowed to be withdrawn without prejudicing the right of the applicant/appellant to seek appropriate remedy in the appropriate forum against the said judgment and order dated 05-10-2009 vide order of this Court dated 27-10-2014 passed in CR(P) No. 46/2009. After withdrawal of the said revision petition with liberty to the applicant/appellant to seek appropriate remedy by an order of this Court dated 27-10-2014, the applicant/appellant filed the accompanying appeal against the said order of the Judicial Officer Magistrate First Class, District Court, Garo Hills District Council, Tura, dated 05-10-2009 passed in Succession Case No. 1/02, for issuing the Succession Certificate in favour of the respondent. The said appeal is accompanied with the present application for condonation of delay of 1775 (One thousand seven hundred and seventy five) days. On perusal of the records and also after hearing the submissions of learned counsel for the parties, it appears that the applicant/appellant had approached the wrong forum for assailing the present impugned judgment and order dated 05-10-2009 passed by the Judicial Officer Magistrate First Class, District Court, Garo Hills District Council, Tura.

7. Mr. S. Sen, learned counsel appearing for the appellant by placing heavy reliance on Section 14 of the Limitation Act, 1963 contended that the time taken in proceeding of the said revision petition i.e. CR(P) No. 46/2009, is to be excluded in counting the limitation for filing the accompanying appeal inasmuch as the applicant/appellant through bonafide mistake had taken the wrong course for challenging the present impugned judgment and order dated 05-10-2009, passed in Succession Case No. 1/02 by filing the said CR(P) 46/2009. For easy reference, Section 14(1) and (2) of the limitation Act are reproduced hereunder:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.--

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

8. Mr. S. Sen, learned counsel appearing for the appellant in support of his contention also referred to a decision of Hon'ble the Apex Court in Chaya and Others Vs. Bapusaheb and Others, (1993) 1 JT 267 : (1993) 1 SCALE 195 : (1994) 2 SCC 41 : (1993) 1 SCR 286 . Mr. S. Sen, also further contended the expression "good faith" mentioned in Section 14 of the Limitation Act, 1963, also included the proceeding in the Court with good faith which ultimately found to have no jurisdiction. In support of his submission, he placed heavy reliance in the judgment of Hon'ble the Apex Court in Vijay Kumar Rampal and Others Vs. Diwan Devi and Others, AIR 1985 SC 1669 . Mr. S. Sen, further contended that the applicant/appellant in good faith had proceeded the said revision petition i.e. CR(P) No. 46/2009 which is later on found to be not a proper proceeding for challenging the impugned judgment and order dated 05-10-2009 passed by the Judicial Officer Magistrate First Class, District Court, Garo Hills District Council, Tura, in Succession Case No. 1/02, and also that the High Court in that proceeding has no jurisdiction to interfere with the impugned judgment and order dated 05-10-2009, passed by the Judicial Officer Magistrate First Class, District Court, Garo Hills District Council, Tura, in Succession Case No. 1/02. Mr. S. Sen, further reiterated that the applicant/appellant after realizing the bonafide mistake in approaching the wrong forum against the impugned judgment and order passed by the Judicial Officer Magistrate First Class, District Court, Garo Hills District Council, Tura, had withdrawn the revision petition with liberty to seek appropriate remedy vide said order of this Court dated 27-10-2014 passed in CR(P) No. 46/2009. In the paragraph No. 5 of the present application for condonation of delay, it is stated that the said delay in filing the accompanying appeal because of approaching the wrong forum was due to the bonafide mistake of the appellant's counsel who filed the said revision petition under the repealed rules and also that for the said bonafide mistake of the appellant's counsel, the applicant/appellant should not suffer.

9. Mr. A.H. Hazarika, learned counsel appearing for the respondent strenuously submitted that because of the fault of the present applicant/appellant, there was a considerable delay in filing the accompanying appeal. As stated above, this Court is of the considered view that the period of delay in filing the accompanying appeal because of the bonafide mistake of the appellant's counsel in approaching the wrong course with good faith is to be excluded in counting the limitation for filing the accompanying appeal under Section 14 of the Limitation Act, 1963. On consideration of the submissions of learned counsel for the parties and also on careful perusal of the present application for condonation of delay as well as the record, this Court is of the considered view that the applicant/

appellant could show sufficient cause for condoning the delay of 1775 (one thousand seven hundred and seventy five) days in filing the accompanying appeal. However, for the inconvenience caused to the respondent because of the delay in filing the accompanying application and also for the time taken in pursuing the wrong forum in good faith by the appellant, this Court is of the considered view that some cost is to be imposed to the present applicant/appellant. Accordingly, a cost of 3000/- (Rupees three thousand) only is to be paid by the applicant/appellant to the respondent within a period of one week from today.

10. With the above conditions, the delay of 1775 (one thousand seven hundred and seventy five) days in filing the accompanying appeal is condoned. Miscellaneous application is allowed.