

(2021) 07 GAU CK 0113

In the Gauhati High Court

Case No : Criminal Petition No. 72 Of 2020

Sharmila Vijay Shetty

APPELLANT

Vs

B And A Limited And 2 Ors

RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 227
Indian Succession Act, 1925 — Section 211, 213

Citation : (2021) 07 GAU CK 0113

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : K Khanna, P Gogoi

Final Decision : Disposed Of

Judgement

1) Heard Mr. M.K. Choudhury, the learned senior counsel assisted by Mr. D. Das, advocate, appearing for the petitioner as well as Mr. R. Banerjee, the learned advocate assisted by Mr. D. Sharma, advocate appearing for the respondents.

2) Challenge in this petition under article 227 of the Constitution of India, is to the order dated 07.03.2020 passed by the learned Civil Judge, Jorhat in Misc(J) Case No. 222/2020, arising out of T.S. No. 41/2012.

3) The present petitioner the daughter of Late Hemendra Prasad Baruah and is a share holder in the respondent no. 1 Company. This Company is enlisted with the Bombay Stock Exchange. The petitioner has 38 percent equity share in the Company.

4) Late Hemendra Prasad Barua, the father of the present petitioner, instituted a title suit, being T.S. No. 41/2012 against the respondent no. 1

Company, the present petitioner and the respondent no. 2, HDFC Bank Limited,

seeking a declaration that he was the sole and absolute owner of 8, 61, 918 nos. of equity shares of the respondent no. 1 Company, which are lying in the Demat account bearing no. DP ID IN 301151 and Client ID 26424547. Hemendra Prasad Barua died during the pendency of the suit and the present petitioner was the only surviving heir for the said 8, 61, 918 nos. of equity shares in the Company.

5) In the mean time, the respondent no. 3 Somnath Chatterjee, filed an application before the learned Court below for substitution his name in place of late Hemendra Prasad Barua, as the plaintiff.

6) According to the petitioner, with the death of Hemendra Prasad Barua T.S No. 41/2012 stood abated. Since no proper application was filed by his legal heirs. In response to the petition filed by Somnath Chatterjee, the learned Court below strait way did not implead him in place of Late Hemendra Prasad Barua. The learned Court below held that the petition filed by Somnath Chatterjee should be kept in abeyance because an application for probate, in respect of the last Will executed by late Hemendra Prasad Barua, was applied for before the Calcutta High Court.

7) Against the aforesaid order dated 23.12.2013, Somnath Chatterjee filed a revision petition before this Court which was numbered as CRP No. 47/2014. It may be mentioned that against the said order dated 23.12.2013, the present petitioner also filed another revision petition before this Court which was numbered as CRP No. 97/2014.

8) In respect of the aforesaid two petitions, this Court passed a common judgment on 13.11.2014 and upheld the order passed by the learned Court below on 23.12.2013.

9) The petitioner pleaded that T.S. No. 41/2012 stood abated on 29.10.2013, since no proper application was filed by the legal heirs of Hemendra Prasad Barua. At this point, the petitioner filed an application being Misc(J) Case No. 22/2020, before the trial Court praying for dismissal of the suit as abated. The learned Court below issued show cause notices to late Hemendra Prasad Barua, Mr. Somnath Chatterjee, the respondent no. 1 Company and the HDFC Bank Limited i.e the respondent no. 2 herein. The petitioner herein was aggrieved by the aforesaid order and hence the present application has been filed.

10) I have given my anxious consideration to the submission of the learned counsels. It may be mentioned here that Mr. Somnath Chatterjee was

named the sole executor of the Will executed by late Hemendra Prasad Barua, who died on 31.07.2013, and therefore, he has filed an application

before the Honâ??ble Calcutta High Court seeking probate and it is still pending.

11) The respondents pleaded that according to section 211 of the Indian Succession Act, 1925, Sri Somnath Chatterjee, being the sole executor of the

last Will executed by Late Hemendra Prasad Barua, is his legal representative for all purposes and all properties of the deceased person vests in him.

Referring to section 213 of the Indian Succession Act, 1925, the respondents herein pleaded that when the probate would be given to the executor,

then his right as executor or legatee could be established in any Court of law.

12) Section 211 and section 213 of the Indian Succession Act 1925 are quoted as under:

â??211. Character and property of executor or administrator as such-(1) The executor or a administrator, as the case may be, of a deceased

person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

(2) When the deceased was a Hindu, Muhammadan, Buddhist[Sikh, Jain or Parsi] or an exempted person, nothing herein contained shall vest in an

executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

213. Right as executor or legatee when established â?" (1) No right as executor or legatee can be established in any Court of justice, unless a

Court of competent jurisdiction in [India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with

the Will or with a copy of an authenticated copy of the Will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans [or Indian Christians] and shall only apply-(i) in the case of Wills made by

any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57 and (ii) in the case of Wills made

by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962(16 of 1962), where such Wills are made within the

local limits of the [ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay and where such Wills are made outside those

limits, in so far as they relate to immovable property situated within those limits]â??

13) When Mr. Somnath Chatterjee filed an application in TS No. 41/2012, he was not armed with probate because his application for probate was

pending before the Calcutta High Court. Therefore, in view of the law laid down in section 211 and 213 of the Indian Succession Act, 1925, the

learned Court below passed a direction whereby the TS No. 41/2012, was kept in abeyance and that order was challenged before this Court, and this

Court while disposing of CRP No. 47/2014 and CRP No. 97/2014 upheld the order of the learned Court below.

14) Thereafter, the petitioner file another application before the learned Court below praying for passing an order that with the death of Hemendra

Prasad Barua and since his legal heirs did not file any application for impleading them in place of the deceased, the suit TS No. 41/2012 stood abated.

The learned Court below issued notice to the other side. By filing the present revision petition, the petitioner has challenged the said order of the

learned court below.

15) This Court has already agreed that till the probate is granted to Mr. Somnath Chatterjee, TS No. 41/2012, should be kept in abeyance. Therefore,

this Court is of the opinion, that the act of filing the petition before the learned Court below seeking an order that the TS No. 41/2012 stood abated, is

contrary to the spirit of the order passed by this Court in CRP No. 47/2014 and CRP No. 97/2014. I am constrained to hold that the petition Misc (J)

22/2020 filed by the petitioner is a misleading one.

16) Moreover, the Court issued notice only for hearing the respondent of the other side. It is the basic tenet of natural justice that both sides deserve to

be given an opportunity of being heard. This Court finds that while passing the order, for issuing notice to the other side, the learned Court below did

not commit any error. This Court is again constrained to hold that the present revision petition has been filed unnecessarily.

Under the given circumstances of the case, this Court finds that the present revision petition is devoid of merit and therefore the petition stands

dismissed and disposed of accordingly. No cost.