
(1989) 03 GAU CK 0005
In the Gauhati High Court
Case No : Civil Revision No. 3 (SH) of 1988

S.H.K.Nongrum

APPELLANT

Vs

Bimalendu Dasgupta

RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:

Meghalaya Transfer of Land (Regulation) Act, 1971 — Section 3(a), 3(a)

Citation : (1989) 1 GLJ 342 : (1989) 2 GLR 125

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : J.N.Deb Choudhary, H.Ahmed, B.Endow, Advocates appearing for Parties

Judgement

1. This petition arises from an order dated 29.6.88 passed by the District Judge/ Additional Deputy Commissioner, Shillong in MiscCivil Appeal No. 9(/T) of 1987 dismissing the appeal from an order passed in T. S. No. 50 (T)/82.

2. In this petition I have been called upon to answer the question whether "will" is included within the meaning of ""transfer" under the Meghalaya Transfer of Land (Regulation) Act, 1971, for short the "Act".

3. Sub section (1) of section 3 of the Act provides :

?No land in Meghalaya shall be transferred by a tribal to a non tribal or by a nontribal to another nontribal except with the orevious sanction of the competent authority.?

4. Clause (e) of section 3 of the Act defines "transfer" in the following terms :

?Transfer" means the conveyance of land of one person to another and includes gift, sale, exchange, mortgage, lease, surrender or any other mode of transfer;?

5. Mr. H. Ahmed, learned counsel for the petitioner, has submitted a "will" will be within the meaning of "any other mode of transfer"; and that the Courts below have misread the Government notification dated June 13th, 1979 issued by the

Joint Secretary to the Government of Maghalaya, the relevant passage is:

?Any family partition or settlement, mutation, share of will resulting therefrom, will not, therefore, come under the purview of the said Act.

As regards the notification, the executive instruction will not help the petitioner for the purpose of interpretation of a statute.

6. A reading of section 3 and clause (e) of section 2 of the Act, makes it clear that an act of the parties by which title to property is conveyed from one living person to one or more living persons. In section 2(e) of the Act, the word "conveyance" has been employed. The term "convey means to pass or transmit the title to property.

7. Will has been defined under clause (h) of section 2 of the Indian Succession Act, 1925 and it reads as follows:

? "Will? means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death."

8. At this stage it will be helpful to consider the meaning of ?succession?. "Succession" means the passing of property on the death of a person to a living person or persons under the law of descent and distribution. Therefore, transfer inter vivos, or from one living person to one or more living persons, has no application to the succession. In such a situation, "will" may aptly be called "testamentary succession." For these reasons, "any mode of transfer" under section 3 of the Act does not include "will".

9. As regards the submission of the learned counsel for the petitioner about the validity of the "will", the question is left open as the question cannot be decided at this stage.

With the said observation and direction, the petition is dismissed.