
(2011) 07 GAU CK 0054
In the Gauhati High Court
Case No : Regular First Appeal No. 14 of 2011

Smt. Hema Chhetri (L)	Vs	APPELLANT
Smt. Pompha Chhetri, Dinthar Veng and Smt. Mala Chhetri		RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2011) 07 GAU CK 0054

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : P.C. Prusty, for the Appellant; C. Lalramzauva and T.J. Lalnuntluanga, for the Respondent

Final Decision : Allowed

Judgement

H. Baruah, J.—Heard Mr. P.C. Prusty, learned Counsel for the Appellant as well as Mr. C. Lalramzauva, learned Sr. counsel assisted by Mr. T. J. Lalnuntluanga, learned Counsel for the Respondents.

2. The judgment and order dated 24-2-2011 is put in challenge in this instant appeal whereby and whereunder the learned Addl. District and Sessions Judge, Aizawl granted a succession certificate in favour of the Petitioners therein, the Respondents herein in respect of landed property and a building standing thereon covered under LSC No. AZL-741 of 1979.

3. The Respondents herein jointly filed an application u/s 372 of the Indian Succession Act, 1925 for a succession certificate in respect of the landed property and with the building thereon covered under LSC No. AZL-741 of 1979 left by their deceased father Dal Bahadur Chhetri, who died intestate at his permanent residence at Maubawk, Aizawl. The aforesaid application was resisted by the Appellant herein stating inter alia therein that her deceased husband Mohan Chhetri was the only surviving son and inherited the property of his late father Dal Bahadur Chhetri. Said Dal Bahadur Chhetri was the son of Gaibir

Chhetri, a permanent resident of Maubawk, Aizawl. He died intestate on 8-7-2001. He was predeceased by his wife. He left behind his son Mohon Chhetri and two daughters, namely, Pompha Chettri and Mala Chhetri. Said Dal Bahadur Chhetri died leaving no Will nor bequeathed his landed property to anybody.

4. The Additional District and Sessions Judge, Aizawl taking into consideration of the facts and the other materials on record granted succession certificate in respect of the landed property and the building thereon covered under LSC No. AZL-741 of 1979 left by Dal Bahadur Chhetri.

5. Mr. P.C. Prustry, learned Counsel appearing for the Appellant strenuously argues that the impugned judgment and order cannot sustain in law since the same was passed by a court, which does not have jurisdiction to grant a succession certificate in respect of landed property. It is submitted by Mr. P.C. Prustry, learned counsel for the Appellant that succession certificate would only be available to the Appellant(s) in respect of debt and security left by the deceased and the court would not have jurisdiction to grant succession certificate in respect of immovable property. Mr. Prusty in support of his contention relies in the decision rendered in the case between Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others, . In para-25 the Apex court held as under:

25. The Court then proceeded to rely on Bahrein Petroleum Company Ltd. V. P.J. Pappu and observed in para 32 that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. The Court further observed that: (Harshad Chiman Lal Case, SCC p. 804, Para 32)

32. ...It is well settled and needs no authority that where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing". A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.

6. In the case between Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, the Apex court also adopted the same view. In paragraph-19, the Apex Court held as under:

19. We, however, while taking that fact into consideration must place on record that we are not oblivious of the fact that a decision rendered without jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. See Chief Engineer, Hydel Project v. Ravinder Nath, wherein inter alia the decision of this Court in Kiran Singh v. Chaman Paswan was followed, stating: (Ravinder case, SCC p. 361 para 26)

26. The Court also relied upon the decision in Kiran Singh v. Chaman Paswan and quoted (in Harshad Chiman Lal Case, SCC pp. 804-05, para-33) therefrom: (Kiran Singh case AIR p. 342 para 6).

"6. ...It is a fundamental principle well established that a decree passed by a

court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, ...strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

7. In the cases (supra), the Apex Court held that a decree passed by a court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon , even at the stage of execution or even in the collateral proceedings. A decree passed without jurisdiction strikes at the very authority of the court and such decree cannot be cured even by the consent of the parties.

8. The provisions of the Indian Succession Act gives an authority/jurisdiction to a competent court only to grant succession certificate in respect of debt and security left by the deceased. The provisions however, do not authorize or give jurisdiction to the court to grant succession certificate in respect of immovable property left by the deceased in favour of the applicant(s). The impugned judgment appears to have been passed by the Additional District and Sessions Judge, Aizawl in respect of immovable property left by late Dal Bahadur Chetri, the predecessor-in-interest of the applicants. The court of Additional District and Sessions Judge, therefore, appears to be a coram non judice and therefore, the impugned judgment and order would be a nullity. This Court finds force in the submissions advanced by Mr. P.C. Prusty, learned Counsel for the Appellant.

9. Mr. C. Lalramzauva, learned Sr. counsel in his usual fairness in view of the law laid down by the Supreme Court in the cases (supra) submits that the impugned judgment cannot sustain in law since the same is passed by a court which does not have jurisdiction.

10. In view of the law laid down by the Apex Court in the cases (supra), this Court finds no impediment to accept the contention of the Appellant that the impugned judgment and order appears to be passed by the court having no jurisdiction and it would therefore be a nullity. This Court, therefore, finds grounds to interfere with the impugned judgment and order. It is accordingly interfered.

11. In the result, the impugned judgment and order is set aside and quashed.

12. Appeal stands allowed. No costs.