

(2002) 01 GAU CK 0018
In the Gauhati High Court
Case No : First Appeal No. 36 of 1997

Surja Kumar Gayan

APPELLANT

Vs

Putul Borah

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, 115
Succession Act, 1925 — Section 383, 384, 387

Citation : (2002) 1 GLT 493

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : A.K. Purkayastha, for the Appellant; D.R. Bora, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—This is purported to be an appeal u/s 384 of the Indian Succession Act, 1925 directed against the judgment and order dated 26.9.94 passed by the learned Addl. District Judge, Nagaon in M.J. Case No. 157/90 dismissing the application filed u/s 383 of the Act for revocation of the Succession Certificate granted to the Respondent in Misc. (Succ) Case No. 76/1990.

2. Mr. Purkayastha, learned Counsel for the Appellant, submits that the learned Addl. District Judge failed to exercise the jurisdiction inasmuch as being the original Court it ought to have come to the findings on the basis of the evidence on record. That the Court below committed a serious illegality in not examining the witnesses produced by the Appellant and that the learned Court committed a grave error in not examining such witnesses when the Appellant brought and produced them before the Court. That the findings of the learned Court below to the effect that the Appellant failed to prove his case by examining Bhutan Das whom Court considered to be the sole material witness wholly overlooking the fact that there was no failure on the part of the Appellant to examine him inasmuch as he filed the list of witnesses under Order 16, Rule 1 Code of Civil

Procedure. Mr. Purkayastha, learned Counsel has also strenuously argued that the Court below acted without jurisdiction in disputing the validity of the adoption which is outside the parameter of the said Court inasmuch as the question of validity or otherwise of the adoption can only be considered by a civil Court.

3. Mr. D.R. Bora, learned Counsel appearing for the Respondent has raised the preliminary point that the impugned order of the learned Addl. District Judge rejecting the application for revocation is not maintainable u/s 384 of the Indian Succession Act, 1925. Section 384 of the Act reads:

384. Appeal - (1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefore, to grant it accordingly, in supersession of the certificate, if any, already granted.

4. By the impugned order the learned District Judge has not revoked the Succession Certificate granted to the Respondent and hence I agree with the learned Counsel Mr. Bora that no appeal lies against the order u/s 384 of the Act. That being so, I propose to treat this appeal as revision against the impugned order. Mr. Bora, learned Counsel submits that even if this petition is treated as a revision petition this Court can interfere only if the learned Addl. District Judge appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity as envisaged in Section 115 of the Code of Civil Procedure.

5. In the absence of any Class-I heir as per the Schedule to the Indian Succession Act, the right of inheritance goes to the Class-II heir as specified in the said Schedule, and admittedly the Respondent is sister of the deceased and hence the Class-II heir and since the claim of the Appellant Petitioner that he is the adopted son of the deceased is disputed and since it is outside the purview of the Succession Act to decide the matter whether or not the Appellant is adopted son of the deceased, the learned Addl. District Judge had to grant the Succession Certificate in favour of the Respondent who is admittedly the Class-II heir of the deceased.

6. Having given my anxious consideration to the rival contentions made by the learned Counsel for the parties, I have not found anything on record to hold that the learned Addl. District Judge exercised any jurisdiction not vested in him by law or that he has failed to exercise the jurisdiction so vested or that he had acted in the exercise of its jurisdiction illegally or with material irregularity. That being the position, this petition initially filed as an appeal and now treated as revision petition shall have to be dismissed. However, it shall be open to the Petitioner Surja Kr. Gayan to approach the appropriate civil Court for any declaration that he is the adopted son of the deceased Bulumai Gayan. Section

387 of the Succession Act says -

387. Effect of decisions under this Act, and liability of holder of certificate thereunder - No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefore to the person lawfully entitled thereto.

Hence the decision of the Succession Court as to the matter whether or not Petitioner is adopted son of the deceased shall be no bar for trial of the same question in any civil Court or in any other proceeding that may be filed by the Petitioner and any such civil Court shall not be influenced by the decision or observation made by the learned Addl. District Judge in M.J. Case No. 157/90.

7. This F.A. No. 36/97 treated as Revision Petition stands dismissed with the above observations.