

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 2 of 2023

Date of Decision: 14.02.2023

Shri. Ashish Dev Roye

Vs.

N.A. (Uncontested)

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Choudhury, Adv.

For the Respondent(s) :

i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The instant Civil Revision Application has been filed under Article 227 of the Constitution of India, against the order dated 26.04.2022 of the Learned Court below of the Additional Deputy Commissioner (J), Shillong passed in the Test (probate) Case No. 01(T)

of 2020 and also order dated 18.10.2022, passed in Review Petition No. 01(T) of 2022 in the petition for probate above stated.

2. In brief, the Court of the Additional Deputy Commissioner (J), Shillong by judgment dated 26.04.2022, had dismissed the petition under Section 276 of the Indian Succession Act, 1925, filed by the petitioner seeking the grant of probate of the last will and testament dated 11.06.2000 of one (L) Debabrata Biswas, in favour of his wife (since deceased) Smti. Arati Biswas, to own the property during her life time, and thereafter, the same to devolve upon his youngest daughter, Smti. Debabani Dev Roye (nee Biswas). The dismissal was on the ground that, the will was hit by the provisions of Section 3(1)(2) read with Section 2(d) of the Meghalaya Transfer of Land (Regulation) Act, 1971, wherein, the Lower Court had held that, if probate was granted, it would involve the transfer of title right and interest over the plot of land in question, which would be in contravention of the above noted sections.

3. Being aggrieved as the error committed by the Court was apparent, inasmuch as, the matter is one of 'testamentary succession', which is permitted as per Section 3A of the Meghalaya Transfer of Land (Regulation) Act, 1971 (as amended), the petitioner had preferred a Review Application, being Review Petition No. 01(T) of 2022, which

however, was rejected by the Learned Lower Court by order dated 18.10.2022.

4. I have heard Mr. R. Choudhury, learned counsel for the petitioner.

5. As the subject matter in issue is very limited, the instant Revision Application is being disposed at the stage of admission hearing itself. It is relevant to note herein, that there is no dispute that, the will in question, bequeaths the property described therein, on the family members of the testator, firstly on his wife and on her demise, on Smti. Debabani Dev Roye (nee Biswas) his youngest daughter. The learned Court below, by the order dated 26.04.2022 passed in the Application, rejected the same, on the grounds as observed earlier in the preceding paragraphs, and also the review petition, it appears without considering Section 3A of the Meghalaya Transfer of Land (Regulation) Act, 1971 (as amended).

6. Without alluding to other attendant facts, a bare perusal of the impugned orders on the face of the record itself, show that the learned Lower Court had grossly erred in law, in not appreciating the provisions of the Meghalaya Transfer of Land (Regulation) Act, 1971 (as amended), in their correct perspective, and holding that, the said will amounted to a transfer, which is barred by the operation of the Act.

7. The will in question as noted by this Court, is by way of testamentary succession and as such, will not come within the meaning of 'transfer' as given in Section 2(d) of the Act, but in fact, will be squarely covered by Section 3A (1)(c) of the Act thereof. A scanned copy of the said Sections of the Act as amended, are reproduced hereinbelow;

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PART - IV

GOVERNMENT OF MEGHALAYA

LAW (B) DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

The 27th April, 2012.

No.LL(B) 190/82/104.—The Meghalaya Transfer of Land (Regulation) Amendment Act, 2010 (Act No. 11 of 2012) is hereby published for general information.

MEGHALAYA ACT NO. 11 OF 2012.

(As passed by the Meghalaya Legislative Assembly)

Received the assent of the President of India on 12th April, 2012.

Published in the Gazette of Meghalaya Extra-Ordinary issue dated 27th April, 2012.

THE MEGHALAYA TRANSFER OF LAND (REGULATION) AMENDMENT ACT, 2010

An

Act

further to amend the Meghalaya Transfer of Land (Regulation) Act, 1971

Be it enacted by the Legislature of the State of Meghalaya in the Sixty first Year of the Republic of India as follows:—

Short title	1. This Act may be called the Meghalaya Transfer of Land (Regulation) Act, 2010.
Substitution of Section 2 (d) in Act 1 of 1972.	2. In Section 2 of the Meghalaya Transfer of Land (Regulation) Act, 1971 (hereinafter called the principal Act), for Clause (d), the following shall be substituted, namely, — “(d) “transfer” means the conveyance of land of one person to another and includes gift, sale, exchange, mortgage, lease, surrender, will other than will covered by clause (c) of sub-section (1) of Section 3A, license or any mode of transfer or any authority which confers rights upon a non-tribal to use or to derive benefits from the land as an owner”.
Insertion of new Section 3A in Act 1 of 1972.	3. After Section 3 of the principal Act, the following new Section 3A shall be inserted, namely, —

Act not to apply in certain cases of transfer.

- "3A (1) Nothing in sub-section (1) of Section 3 shall apply to any transfer of land of an owner taking place : -
- (a) by devolution and succession according to the personal law governing him;
 - (b) by way of partition or settlement amongst the immediate members of his family;

Explanation "Immediate members of his family" means lineal descendants and includes husband, wife, mother, father, mother's brother, father's sister, son, daughter including step-son, step-daughter and adopted son, adopted daughter and son or daughter of the mother's brother or sister, father's sister or brother.

- (c) by a will created by him in favour of his parents, legally married spouse, son or legally adopted son, daughter or legally adopted daughter, grandson or grand daughter, son-in-law or daughter-in-law.
- (2) Every transfer taking place under sub-section (1) shall, within a period of six months from the date the transfer becomes effective, be registered".

L. M. SANGMA,

Secretary to the Government of Meghalaya,
Law Department.

8. It can clearly be seen that, Section 3A(1)(c) provides that, transfer by will, created in favour of parents, spouse, son, daughter, etc.,

such as in the instant case is not barred and comes within the exemptions as provided.

9. In this view of the matter, the impugned orders being patently erroneous in law, interference is called for by this Court in exercise of powers under Article 227 of the Constitution. Accordingly, the impugned orders dated 26.04.2022 and 18.10.2022, are accordingly set aside, and the Revision Application stands allowed.

10. In view of the facts and circumstances of the case and the findings made herein above, the matter is remanded back to the learned Court of the Additional Deputy Commissioner (J), Shillong, who is directed to issue appropriate orders granting probate to the petitioner of the will in question, as expeditiously as possible.

11. Lower Court case records to be transmitted back immediately.

Judge

Meghalaya
14.02.2023
"D.Thabah-PS"