

GAHC040010012022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : FAO 5/2022

1: Sakter Gocham and 2 Ors.

S/o Late Gocham Taga, Permanent Resident of Raga, PO/PS Raga, District Kamle,
Arunachal Pradesh and Presently residing at C.C.F Colony, Banderdewa, PO/PS
Banderdewa, District Papum Pare, Arunachal Pradesh

2: Timi Gocham

S/o Late Gocham Taga
a Permanent Resident of Raga
PO/PS Raga
District Kamle
Arunachal Pradesh and presently residing at Apostolos Bible College
G Sector
Itanagar
PO/PS Itanagar
District Papum Pare
Arunachal Pradesh.

3: Rotom Yama (Gocham)

W/o Late Gocham Taga (Ex DIPRO)
a permanent Resident of Raga
PO/PS Raga
District Kamle
Arunachal Pradesh
and Presently residing at C.C.F. Colony
Banderdewa
PO/PS Banderdewa
District Papum Pare
Arunachal Pradesh

VERSUS

1: THE STATE OF AP and 2 Ors.

Represented by the Chief Secretary, Govt. of Arunachal Pradesh.

2:The Deputy Commissioner
Raga
District Kamle
Govt. of Arunachal Pradesh.

3:Tsering Dekey
District Tourism Officer (DTO)
Tawang
PO/PS Tawang
Arunachal Pradesh

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : GA (AP)

-BEFORE-

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

-O R D E R-

09.02.2023

Heard Ms. T Y Bhutia, learned counsel for the appellants. Also heard Mr. N Ratan, learned counsel for the respondent No. 3 and Ms. P. Sangita, learned counsel for the respondent Nos. 1 and 2.

2. The present application is filed assailing an order being Order No. R/JUD/SC-16/2015/449-04 dated 26.03.2021 passed by the learned Deputy Commissioner, Kamle District, Raga, Arunachal Pradesh.

The respondent No. 3 herein had filed a petition on 29.09.2020 under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate to her for collection of service benefits and other debts and securities and the family pension on the death of Gocham Taga, husband of the respondent No.

3/petitioner. In the said petition, the present appellant Nos. 1 and 2 being son of the deceased Gocham Taga from his first wife was arrayed as respondent Nos. 1 and 2.

The appellant No. 3, who is the first wife of the deceased got her impleaded in the aforesaid succession case and contested the same.

3. In the aforesaid proceeding, the impugned order was passed with the following direction:

“All pensioner benefits and other debts and property are hereby order for settlement by Gocham Society and they shall conduct proceeding in open darbar sitting and record their proceeding with clear directives for property share and fix deposits in the name of Timi and Sakter and also Smti Tsering Dekey on following ratio.

- 1. 30% to Shri Gocham Timi*
- 2. 30% to Shri Gocham Sakter*
- 3. 40% to Smti Tsering Dekey*
- 4. Vehicle and Gun with Licence to transferred to eldest son Gocham Timi*

Given under my Seal and Signed.”

4. A bare reading of the order reflects that the learned Deputy Commissioner has failed to record any reason why the debts and property are distributed in the manner as provided in the aforesaid order.

The learned Deputy Commissioner further directed settlement of the property by Gocham Society and directed the said society to conduct a proceeding in open darbar sitting and record their proceeding with clear directive for the property share.

5. The learned Deputy Commissioner while passing the aforesaid order

was exercising power under the Indian Succession Act, 1925 and was dealing with an application under Section 372 of the said Act and was not exercising any administrative power or any power under Customary Law.

Such power to adjudicate dispute under Indian Succession Act was conferred to learned Deputy Commissioner by the State of Arunachal Pradesh in the name of Governor in term of Article 236 of the Constitution of India read with Section 3 of the Code of Criminal Procedure, 1973 and Sub-section 23 and 24 of Section 3 of Arunachal Pradesh Interpretation and General Clause Act, 1982 by way of a notification issued on 17.08.2022. Such notification was issued conferring powers under Section 388 of the Indian Succession Act, 1925 upon the court of JMFC cum Civil Judge (Jr.) and CJM cum Civil Judge (Sr.) to exercise to function of a District Judge under Part-X of Indian Succession Act, 1925.

6. It was also provided in the said Notification that when such judicial officers were not available, the Deputy Commissioner cum District Magistrate and Additional Deputy Commissioner cum Additional District Magistrate shall continue to exercise the function of District Judge for issue of succession certificate till regular judicial officers are posted. Therefore, the Deputy Commissioner could not have passed such an order beyond his jurisdiction conferred under Indian Succession Act, 1925 by delegating his power to Gocham Society while adjudicating the petition in question. The Deputy Commissioner was to follow the procedure laid under the Indian Succession Act, 1925 and pass order in terms of the Act, 1925, by giving reason. However, as discussed herein above, the Deputy Commissioner has failed to exercise his jurisdiction and also exceeded the same. On this count, the impugned order dated 26.03.2021 passed by the learned Deputy Commissioner, Kamle District, Raga, Arunachal Pradesh is liable to be interfered with and accordingly same is

interfered with.

7. The second contention raised in the present petition is that the deceased ordinarily resided and died at Bomdila, the competent court at Bomdila shall have jurisdiction to entertain such an application under Section 371 of Indian Succession Act, 1925. Such contention of the learned appellate has not been objected by the learned counsel for the respondent No. 3.

8. In view of the aforesaid, the impugned order dated 26.03.2021 passed by the learned Deputy Commissioner, Kamle District, Raga, Arunachal Pradesh is set aside and quashed and it is directed that the learned Deputy Commissioner, Kamle District, Raga to remit the record of the succession case in question to the court of learned District Judge, West Kameng District, Bomdila for adjudication. On receipt of such record, the learned District Judge, West Kameng District, Bomdila shall proceed with the matter afresh and adjudicate the same in term of the Indian Succession Act, 1925.

9. While parting with the record, it is clarified that the objection raised by the learned counsel for the respondent No. 3/ petitioner in succession case that the appellant No. 3/ respondent No. 3 in succession case is not entitled for any grant of succession certificate in view of she being married to some other person before the death of the deceased. Such issues cannot be decided at this appellate stage, however, the learned District Judge shall consider all aspect of the matter as per law and pass a reasoned order in term of the Indian Succession Act, 1925.

10. With the aforesaid observation and direction, this appeal stands allowed. Registry to communicate the order to the learned Deputy Commissioner, Kamle district, Raga and also to learned District Judge, West Kameng District, Bomdila.

Parties shall appear before the learned District Judge, West Kameng District, Bomdila on 07.03.2023. And on such appearance, the learned District Judge, West Kameng District, Bomdila shall proceed as per law.

JUDGE

Comparing Assistant