

GAHC010131182022



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

Case No. : CRP(IO)/146/2022

ASHOK TARU DUTTA
S/O- LATE AUSHADHI PATI DUTTA, R/O- UPENDRA NIWAS MALUGRAM,
SILCHAR TOWN, P.O. AND P.S. SILCHAR, CACHAR, ASSAM.

VERSUS

ARINDAM DUTTA
S/O- LATE AUSHADHI PATI DUTTA, R/O- UPENDRA NIWAS MALUGRAM,
SILCHAR TOWN, P.O. AND P.S. SILCHAR, CACHAR, ASSAM. PIN- 788001.

Advocate for the Petitioner : MR. D MOZUMDER

Advocate for the Respondent : MR. S K GHOSH

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 27-02-2023

Heard Mr. S. Biswas, learned counsel for the petitioner. Also heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Ms.S.Todi, learned counsel for the respondent.

2. The present petition is filed assailing the order dated 14.9.2021 passed in

Testamentary Suit No. 7/2018. The said order was passed in connection with Petition Nos. 206/2010 and 207/2012 arising out of the aforesaid Testamentary Suit .

3. The background facts of filing the present petition are as follows:

(i) The respondent as petitioner filed Misc. Probate Case No. 10/2018 before the learned District Judge, Cachar seeking grant of Probate in respect of a will executed by the father of the respondent and the petitioners herein.

(ii) An order of injunction was granted in Misc Case No. 36/2018 arising out of the Testamentary suit restraining the present petitioner from withdrawing any money from the bank account of the testators.

(iii) The petitioner herein also preferred an application u/s 274 of the Indian Succession Act, 1925 for grant of Letters of Administration in respect of another Will dated 5.11.2012 executed by the father of the petitioner and the respondent and the said application was registered as Misc L.A Case No. 2/2018.

(iv) The present petitioner also preferred an injunction application being registered as Misc. Case No. 45/2018 and the learned court of Additional District Judge under its order dated 21.8.2018 restrained the opposite parties from withdrawing any amount from the account of the Testator.

(v) While both the proceedings were pending the present petitioner preferred a petition which was registered as Petition No 206/2018 alleging that the respondent herein has withdrawn an amount of Rs.71,43,209/- from the bank account of the Testator even after the existence of the restraint order dated 21.8.2018 passed in Misc. Case No. 45/2018. The prayer made in the petition

was for a direction to return the withdrawn amount

(vi) Another petition being Petition No. 207/2018 was filed with a prayer to direct the bank authorities to disclose the amount deposited in the bank Account of the testator as per the schedule of the said petition. Both the applications were rejected by the impugned order.

(vii) Learned court below has rejected the said applications, on the ground that the opposite party is a nominee and also legal heirs of Testator and in terms of Section 45 ZA of the Banking Regulation Act, 1949 , all the money receivable by the nominees by virtue of Section 45 ZA(2) would form part of the estate of the deceased depositor and according to the Rule of succession, the depositor may recover.

(viii) Further, the learned appellate court below refused to direct the opposite party to deposit the amount allegedly withdrawn on the ground that there is no specific provision in the Code of Civil Procedure dealing with implementation of order of temporary injunction in that way and the petitioner is having alternative remedy to file an application under Order 39 Rule 2A CPC against the opposite party.

4. This court is in total agreement with such view of the learned trial court and accordingly, is not inclined to entertain the present prayer in exercise of its power under Article 227 of the Constitution of India inasmuch as apparently, there has been no error of jurisdiction or the impugned order has not resulted in any failure of justice.

5. In that view of the matter, this revision petition stands dismissed. However it is made clear that the petitioner shall be at liberty to approach the appropriate forum permitted under the law.

6. It is further clarified that any observation made in this order by this court is only for the purpose of determining the present petition and same shall not be treated as determination on the merit of both the proceedings pending before the learned court below.

JUDGE

Comparing Assistant