

GAHC010172102022



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

Case No. : Intest.Cas./3/2023

DIPAK CHOUDHURY
S/O NIRONJAN KISHORE CHOUDHURY, RESIDENT OF WARD NO. 3,
BALURCHAR (NEAR JYOTI PRASAD LP SCHOOL) PO, PS AND DIST
DHUBRI, ASSAM

VERSUS

MADHABI DAS CHOUDHURY AND ANR. B
W/O LATE JAYANTA CHOUDHURY, RESIDENT OF WARD NO. 3,
BALURCHAR (NEAR JYOTI PRASAD LP SCHOOL) PO, PS AND DIST
DHUBRI, ASSAM

2:THE BRANCH MANAGER
LIFE INSURANCE CORPORATION OF INDIA

DHUBRI BRANCH
PO
PS AND DIST DHUBRI
ASSA

Advocate for the Petitioner : MS. C PATOWARY

Advocate for the Respondent : MR. K BHATTACHARJEE (R-1)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

03. 04. 2023

Heard Mr. MK Sarma, learned counsel for the appellant. Also heard Ms. P Bhattacharya, learned counsel for the respondent No. 1 and Mr. AL Mandal, learned counsel for the respondent No. 2.

2. The present appeal under Section 384 of the Indian Succession Act, 1925 is filed against an order dated 15.03.2022, whereby succession certificate was granted in respect of debt and liability of deceased Jayanta Choudhury to his wife i.e. respondent No. 1.

3. The background of the present litigation can be summerized as follows:

I. The respondent No. 1 filed an application under Section 372 of the Indian Succession Act, 1925 before the learned District Judge, Dhubri for grant of succession certificate in respect of debts and securities left by her husband, Jayanta Choudhury, which includes four numbers of LIC policies. The said application was registered as Misc (S/C) case No. 6/2020.

II. In the aforesaid application at paragraph 3, the following statement was made:

“3. That the following are the legal heirs and near relatives of the deceased, Jayanta Choudhury:-

(i) Smti. Madhobi Das Choudhury aged 45 years (wife)

(ii) Sri Joydeep Choudhury aged 12 years (son)

(iii) Smt. Chhaya Rani Choudhury aged 70 years (mother).”

III. During the pendency of the said application, the present appellant, who was nominee in the aforesaid LIC policies and is the brother of the deceased was impleaded as OP No. 1 and the LIC was impleaded as OP No. 2.

IV. An application under Order 39 Rule 1 and 2 read with Section 151 of the CPC was also filed, which was registered as Misc (J) case No.

02/2020. Through the aforesaid Misc Case the succession petitioner/respondent No. 1 made a prayer to restrain the LIC Corporation not to disburse the benefit of the insurance policy in favour of the present appellant being nominee. Accordingly, an order of restrain was passed.

V. The present appellant filed an objection in the aforesaid Misc case and also filed written statement in the succession case.

VI. The basic stand taken by the appellant was that deceased left one minor son, who is aged about 12 years and therefore, without being appointed a guardian by a competent court, the mother of the minor son is not entitled to get succession certificate for the amount of the minor's share.

VII. The second stand was that a nominee is having heavy responsibility to see that not a single rupee of the insurance policy amount is misappropriated by any person.

VIII. Yet another contention was that the interest of the minor son and old mother and other legal heirs would not be safe in the hands of the petitioner. Therefore, a final prayer was made not to grant succession certificate to the wife of the deceased person i.e. the respondent No. 1.

IX. The learned court below after hearing the parties by impugned order dated 15.03.2022 allowed the petition by granting succession certificate with a condition that the petitioner i.e. respondent No. 1 herein shall execute one indemnity bond to the effect that she will reimburse share of other legal heirs who are entitled to get a portion out of the total amount.

X. Being aggrieved by the aforesaid order, the present appeal has been preferred under Section 384 of the Indian Succession Act, 1925.

4. Mr. Sarma, learned counsel for the appellant argues the followings:

I. The succession certificate has been applied, including for the minor

without there being appointment of any guardian by a competent court.

II. There is no pleading in the petition that the petition has been filed on behalf of the minor or minor is represented by her natural guardian. Therefore, the learned court below ought not to have entertained such petition.

III. The learned court below has committed serious error by not apportioning the amount in respect of the legal heirs of the deceased and thus left the other legal heirs out of their shares.

IV. As during the pendency of the succession certificate, the mother had died, therefore, the learned trial court ought to have specifically apportioned the share amongst the legal heirs of deceased mother.

5. Per contra, Ms. Bhattacharya, learned counsel for the respondent No. 1 submits that the present appellant cannot be said to be an aggrieved person against the order passed by the learned trial court inasmuch as a nominee is only a trustee of the insured and therefore trustee cannot claim any share of the deceased. The learned counsel further submits that the appellant has not raised any substantial defence before the learned court below, and his only stand was the interest of the minor and the other legal heirs. However, the so called other legal heirs had not come before this court and the appellant cannot be the representative of other legal heirs. Therefore, the learned trial court has protected the interest of the legal heirs by asking the respondent No. 1 to give an indemnity bond and such apportionment amongst the legal heirs, if at all they are entitled, can be granted in a suit and not in proceeding for issuance of succession certificate.

6. This court has given anxious consideration to the submissions advanced by the learned counsel for the parties. The present appellant admittedly was a nominee of the insurance policies. Law is by now well settled that nominee is nothing but a trustee of the insured on behalf of his legal heirs and it is the only

responsibility of the nominee to apportion the amount amongst the legal heirs of the deceased insured. In the case in hand, when the succession application was filed, the mother herself was alive and all the names of class-1 legal heirs of deceased Jayanta Choudhury were disclosed in the succession petition.

7. The present appellant was brought into the proceeding as party respondent only for the reason for an injunction to restrain the Insurance Corporation from releasing the amount to the nominee as the wife of the deceased apprehended that such money may be miss-appropriated. Therefore, this court is also of the considered opinion that the present appellant is having no substantive right to contest the succession certificate issued by the learned trial court below.

8. The further contention of Mr. Sarma that without appointment of the guardian of the minor by a competent court succession certificate could not have been granted cannot also be entertained inasmuch as there is no dispute that the respondent No. 1 is the mother of the 12 years old child from the deceased Jayanta Choudhury. That being the position and there being no dispute on that issue, it is not necessary to plead that she is the natural guardian.

9. Further, the other contention that the interest of the minor will not be protected in the hand of the mother cannot be determined in a proceeding for issuance of succession certificate and other remedy is opened for any aggrieved party in that regard. Further, no material is also brought before the learned court below to show any action on the part of the mother which is prejudicial to the minor child. Therefore, such contention is also rejected.

10. Coming to the entitlement of the share being the legal heirs of the deceased mother, the learned trial court has rightly protected the interest of the other legal heirs and rightly not apportioned the amount inasmuch as without evidence or pleading, who are the legal heirs and what are their entitlement,

apportionment cannot be determined in a proceeding for issuance of succession certificate.

11. In view of the above, this court do not find any merit in this appeal preferred by the nominee of insurance policy of the deceased, who is not a class 1 legal heir of the deceased, challenging the grant of succession certificate to the wife of the deceased. Accordingly, this appeal stands dismissed.

JUDGE

Comparing Assistant