

GAHC010261202022



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

Case No. : WP(C)/8214/2022

SUDHA JAIN
W/O- LATE MAHENDRA JAIN,
R/O PLOT NO. 929, BARKET NAGAR,
KISAN MARG, JAIPUR,
RAJASTHAN 302015.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI, ASSAM.

2:THE PRINCIPAL SECRETARY
HOME AND POLITICAL DEPARTMENT

GOVT. OF ASSAM

DISPUR
GUWAHATI
ASSAM.

3:THE DIRECTOR GENERAL OF POLICE
ULUBARI
GUWAHATI.

4:THE DEPUTY COMMISSIONER OF POLICE (CENTRAL)
GUWAHATI
ASSAM.

5:THE DEPUTY COMMISSIONER CUM DISTRICT REGISTRAR
KAMRUP(M)

ASSAM.

6:THE OFFICER-IN-CHARGE
PALTAN BAZAR POLICE STATION
GUWAHATI
ASSAM.

7:THE SENIOR SUB REGISTRAR
KAMRUP(M)
ASSAM.

8:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
KAMRUP(M)
ASSAM.

9:NEETA JAIN @ NEETA PAHLAJANI
D/O RAM CHANDRA PAHLAJANI

R/O FLAT NO. 2D
PINK ARCADE

K.C. SEN ROAD
PALTAN BAZAR

MORAKHALI
GUWAHATI

ASSAM- 781008

Advocate for the Petitioner : MRS. S ROY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 09-01-2023

Heard Ms. S. Roy, learned counsel for the petitioner as well as Mr. K. Gogoi, learned Govt. Advocate for the respondent nos.1 to 8.

2. The petitioner is the wife of Late Mahendra Kumar Jain. He had a

flat bearing flat no.2D, Pink Arcade, KC Sen Road, Paltan Bazar, Guwahati-781007. The husband of the petitioner namely, Late Mahendra Kumar Jain had died in Jaipur on 15.03.2020 leaving behind the petitioner and three legal heirs.

3. The petitioner came to know that one Neeta Jain @ Pahaljani (respondent no.9) had obtained the Next of Kin certificate, from the office of the Deputy Commissioner, Guwahati claiming to be the wife of the petitioner's deceased husband and using such Next of Kin certificate, the respondent no.9 was trying to dispose of the flat of the petitioner's deceased husband.

4. It is also alleged that the respondent no.9 had prepared a forged will of her deceased husband, showing therein that the respondent no.9 is the beneficiary of the will. It is also alleged that the respondent no.9 also drew money from the account of the petitioner's husband. Resultantly the petitioner had submitted an FIR online on 03.03.2021, which was registered as Paltan Bazar P.S. case no.217/2021.

5. Although the petitioner had send an e-mail to various authorities for forensic examination of the will, but there was no progress in the investigation. The petitioner had applied for mutation of her name in respect of the hereinbefore referred flat, which was rejected. Accordingly, by filing this writ petition under Article 226 of the Constitution of India the petitioner has prayed for a direction to the Paltan Bazar P.S. to expedite the investigation and to have the will examined by the Forensic science laboratory and to also investigate the fraudulent withdrawal of money from the husband's bank account.

6. The learned counsel for the petitioner has submitted that the petitioner is a senior citizen aged about 70 years and therefore she has approached the Court through the legal aid counsel which was appointed by Gauhati High Court Legal Service Committee (Principal Seat) Guwahati.

7. In respect of the prayer made in this writ petition, the learned Govt. Advocate has referred to the case of *Sakiri Vasu Vs. State of Uttar Pradesh and ors.*, (2008) 2 SCC 409 and *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and ors.*, (2016) 6 SCC 277, to project that the Supreme Court of India, has deprecated the exercise of power under Article 226 of the Constitution of India to order investigation, except in rare and exceptional cases.

8. Be that as it may, as there are provisions of Code of Criminal Procedure which can be exercised by the aggrieved informant/petitioner if there is no progress of investigation. The petitioner may be well advised to avail legal remedy as may be available under the appropriate law.

9. We refer to the provisions of Section 156 (3) Cr.PC, which empowers the Magistrate that, if he is prima facie satisfied, to (i) direct registration of FIR, (ii) if an FIR has already been registered, issue a direction for proper investigation and (iii) to monitor the investigation.

10. As alternative and efficacious remedy has been provided for in law, which has not been exhausted by the petitioner, this Court in exercise of power under Article 226 of the Constitution of India shall be a loath to issue direction to the police with regard to investigation.

11. Therefore, the Court does not find any merit in this writ petition and the same is dismissed. However, the petitioner is at liberty to avail appropriate remedy as she may be so advised.

JUDGE

Comparing Assistant