

HIGH COURT OF TRIPURA
AGARTALA

WA No.124 of 2023

Shri Gautam Ghosh @ Radhu,

Son of late Manmohan Ghosh, aged about 56 years,

Resident of Thakurpalli Road, Krishnanagar,

P.O:- Agartala-799001, Sub-Division- Agartala,

P.S:- West Agartala, District- West Tripura.

.....Appellant(s).

Versus

1. **The State of Tripura**, represented by
the Secretary, Department of Revenue,
Government of Tripura, Civil Secretariat,
P.O:- Kunjaban-799010, Sub-Division:- Agartala,
P.S:-New Capital Complex, District:- West Tripura.
2. **The Principal Secretary, Department of Revenue**,
Government of Tripura, Civil Secretariat,
P.O:-Kunjaban-799010, Sub-Division- Agartala,
P.S:- New Capital Complex, District:- West Tripura.
3. **The District Magistrate & Collector**,
West Tripura District.

.....Respondent(s).

Along With

WA No.143 of 2023

1. **The State of Tripura**, to be represented by
Secretary, Department of Revenue,
Government of Tripura, Civil Secretariat,
P.O:- Kunjaban-799010, Sub-Division:- Agartala,
P.S:-New Capital Complex, District:- West Tripura.
2. **The Principal Secretary, Department of Revenue**,
Government of Tripura, Civil Secretariat,
P.O:-Kunjaban-799010, Sub Division Agartala,
P.S:- New Capital Complex, District:- West Tripura.
3. **The District Magistrate & Collector**,
West Tripura District, A.K. Road, PS: West Agartala,
PO & Sub Division: Agartala, PIN:799001
4. **The Sub Divisional Magistrate, Sadar**,
West Tripura District, Office Lane, PS: West Agartala,
PO & Sub Division Agartala, PIN:799001

..... Appellant(s)

Versus

Sri Gautam Ghosh @ Radhu,

S/O- Lt. Mohinimohan Ghosh, aged about 54 years,
resident of Thakurpalli Road, Krishnanagar,
PO Agartala 799001, Sub Division Agartala,
PS: West Agartala, Dist: West Tripura.

.....*Respondent(s)*

For Appellant(s)

in **W.A. No.124 of 2023** : Mr. S. Lodh, Advocate.
: Ms. S. Chowdhury, Advocate.
: Mr. S. Majumder, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.

For Appellant(s)

in **W.A. No.143 of 2023** : Mr. M. Debbarma, Addl. G.A.

For Respondent(s) : Mr. S. Lodh, Advocate.

Date of hearing
& delivery of judgment : **02.05.2024**

Whether fit for reporting : **No**

_B_E_F_O_R_E_

HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

We have heard Mr. M. Debbarma, learned Addl. G.A. appearing for the appellants in case W.A. No.143 of 2023 and for the respondents in W.A. No.124 of 2023. Also heard Mr. S. Lodh, learned counsel appearing for the appellant in W.A. No. 124 of 2023 and for the respondent in W.A. No.143 of 2023.

[2] Both the appeals have been taken up together since common questions of law and facts are involved.

[3] While deciding a dispute, Ld. Single Judge in Crl. Rev. P. No.49 of 2017 titled as *Sri Goutam Ghosh @ Radhu vs. The State of Tripura* had passed the following directions:

“25. Having observed thus, the impugned order is set aside and quashed. But the parties are to observe the following directions till the dispute as latent in the controversy are determined or settled:

I) The Secretary, Revenue department shall independently make an inquiry so as to ascertain whether the property is an unclaimed property or not. If the property appears to him as unclaimed, he shall take all the legal steps for vesting the property in the state. If any testament or instrument or transfer appears to him grossly illegal or irregular, he shall within a period of six months from the day when he would receive a copy of this order, approach the court of the competent jurisdiction seeking the appropriate relief in respect of the said property.

II) The petitioner shall not create any third party interest nor shall he change the character of the suit land in any manner. The status of the suit land shall be maintained by him for the next six months as prescribed above.

It is needless to say that this order shall not truncate any right of the legal heirs of Narayan Debbarma, since deceased in whose name the property is recorded conforming to his title and as in this regard, no dispute has been projected as yet.

In the result, this petition stands allowed to the extent as stated above.

A copy of this order be served on the Secretary, Revenue Department, Government of Tripura for purpose of taking action in terms of the above direction.”

[4] Thereafter, the competent authority of the Revenue Department, Govt. of Tripura had passed an Order dated 27.07.2022 holding that the Will executed by one Smt. Anjali Debbarma in favour of Gautam Ghosh was an illegal transfer being executed in violation of Section 187 of TLR & LR Act, 1960 and the Will property was directed to be vested upon the Government taking into consideration the law embodied in Section 29 of the Hindu Succession Act, 1956. This Order dated 27.07.2022 had been challenged by Sri Gautam Ghosh by filing a writ petition being registered as **WP(C) No.197 of 2023** titled as **Sri Gautam Ghosh @ Radhu vs. The State of Tripura & 3 Ors.** Having heard the learned counsel appearing for the parties, Ld. Single Judge vide order dated 28.07.2023 had set aside the Order dated 27.07.2022 passed in W.P.(C) No.197 of 2023 and held that declaration of the Will

property as unclaimed by the Revenue Department was improper and not legally tenable. It was further observed in the said Order dated 28.07.2023 that *“In so far as the claim of the petitioner for title over the said property is concerned, this court is not deciding the same. If advised the petitioner may approach competent court of Law seeking redressal.”* Sri Gautam Ghosh has preferred the instant appeal challenging the said observation, as according to the appellant, the said order suffers from ambiguity. On the other hand, the State of Tripura also has preferred an appeal challenging the Order dated 28.07.2023 passed by the Ld. Single Judge in W.P.(C) No.197 of 2023.

[5] Background of the case, in short, is that one Lt. Anjali Debbarma had executed a Will in favour of appellant Sri Gautam Ghosh though there was no blood relation of Lt. Anjali Debbarma with Sri Gautam Ghosh. But, out of love and affection and since Sri Gautam Ghosh had looked after her, she executed the questioned Will in favour of Sri Gautam Ghosh. Out of some complaints lodged by some of the villagers against the possession of the appellant i.e. Sri Gautam Ghosh over the Will property left behind by Lt. Anjali Debbarma, a proceeding was initiated under Section 145 and Section 146 of the Code of Criminal Procedure, 1973. The Order passed in said proceeding was challenged by the appellant Sri Gautam Ghosh before this Court in Crl. Rev. P. No.49 of 2017 which was quoted here-in-above. From the judgment and order passed by the Ld. Single Judge quoted hereinabove, it is clear that a direction was issued upon the respondents-State to approach the competent Court within a period of six months, if the Revenue Department finds any irregularities or illegalities in the execution of the purported Will on receipt of the copy of the judgment and order. The Revenue Department, Government of Tripura had preferred to keep silent for a considerable period

of time. However, after repeated approach by Sri Gautam Ghosh, the appellant herein, the Principal Secretary, Revenue Department had passed an order dated 27.07.2022 in Case No.12/Rev/P.Secy/2021 titled as ***Sri Goutam Ghosh vs. the State of Tripura*** holding that the execution of the Will was made in violation of the provisions of Section 187 of TLR & LR Act, 1960 and since it was held that the Will was executed illegally, they declared the will property as unclaimed property and directed vesting of the same upon the Government of Tripura taking note of the provision laid down in Section 29 of the Hindu Succession Act, 1956. The said order dated 27.07.2022 was challenged by way of filing a writ petition before this Court. While disposing of the W.P.(C) No.197 of 2023, Ld. Single Judge did not decide the claim of Gautam Ghosh on title over the will property and directed the petitioner to take appropriate course of action before the competent Court of law, seeking redressal.

[6] The State of Tripura has challenged the said direction and observation of the Ld. Single Judge in W.A. No.143 of 2023 on the ground that Ld. Single Judge should not to have interfered with the Order dated 27.07.2022 passed by the Revenue Department, Government of Tripura.

[7] According to Mr. Debbarma, learned Addl. G.A. the Will property has been vested to the Government by dint of the application of Section 29 of the Hindu Succession Act, 1956 for the reason that the executrix Lt. Anjali Debbarma was a member belonging to tribal community and since the property belonged to a tribal woman it could not be transferred to Sri Gautam Ghosh, being barred by Section 187 of the TLR & LR Act, 1960.

[8] On the other hand, Mr. Lodh, learned counsel appearing on behalf of the appellant Sri Gautam Ghosh, has submitted that the Revenue

Department has no authority to decide the legalities or illegalities of the Will executed by Lt. Anjali Debbarma. There was a clear direction of the Court that in case of any doubt of illegalities or irregularities the competent authority of the State should approach the competent Court of law for seeking appropriate declaration about the genuinity or propriety of the said execution of the Will.

[9] In the light of aforesaid submissions we have perused the judgment and order passed by Ld. Single Judge in Crl. Rev. P.49 of 2017 and the order passed by Ld. Single Judge in W.P.(C) No.197 of 2023.

[10] In Crl. Rev. P. No.49 of 2017, we find that the Ld. Single Judge had directed the Secretary, Revenue Department, Government of Tripura to make an independent inquiry so as to ascertain whether the property is an unclaimed property. It was further directed that if any testament or instrument or transfer appears to be grossly illegal or irregular, the Secretary, Revenue Department, Government of Tripura would approach the Court of the competent jurisdiction seeking appropriate relief in respect of the said property within a period of six months from the day when he would receive a copy of the judgment and order passed by the Court.

[11] In the instant case, it is apparent that Sri Gautam Ghosh has been claiming his right, title and interest over the said property by dint of an unregistered Will executed by said Lt. Anjali Debbarma. So, direction passed by the Ld. Single Judge in Crl. Rev. P. No.49 of 2017 as recapitulated earlier has grossly been violated by the Secretary, Revenue Department, Government of Tripura because there is clear existence of the Will executed by Anjali Debbarma. It is not disputed at all.

[12] In view of this, the Revenue Department cannot directly initiate proceeding for vesting of the property declaring the same as an unclaimed property. Before coming to that stage, the Secretary, Revenue Department, Government of Tripura should have complied with the direction passed by the Ld. Single Judge that he should approach the competent Court of law if he finds that there is no existence of any testament or instrument. As we said earlier, there is undisputedly existence of Will. As such, we do not find any illegality in the order dated 28.07.2023 passed by the Ld. Single Judge in W.P.(C) No.197 of 2023 whereby and whereunder Ld. Single Judge had set aside the order dated 27.07.2022 declaring the Will property as an unclaimed property and vesting of the same to the Government of Tripura. We also do not find any ground to interfere with the direction of the Ld. Single Judge upon the petitioner that if he so advised, the petitioner may approach the competent Court of law seeking redressal. In our considered view, the learned Single Judge while passing the said order intended to give liberty to the petitioner to approach the competent Court of law, if his right to enjoy the Will property is threatened by anyone in any manner whatsoever. Accordingly, we clarify that the appellant-writ petitioner, Gautam Ghosh will approach the competent Court of law of appropriate jurisdiction if his title and possession is threatened or tried to be interfered with by any one in any manner whatsoever. We also make it clear that the Secretary, Revenue Department, Government of Tripura by now is barred by taking any action in terms of the direction mentioned in point no.-I of para-25 of the judgment and order dated 29.06.2018 passed by Ld. Single Judge in Crl. Rev. P. No. 49 of 2017 since 6(six) months have already been elapsed over to approach the

competent Court of law from the date he had received of the copy of the said order.

With the aforesaid directions and clarifications, both the writ appeals are disposed of.

Pending application(s), if any, shall also stand disposed of.

(S. DATTA PURKAYASTHA, J)

(ARINDAM LODH, J)

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