



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 4 of 2024

Date of Decision: 11.09.2024

1.Smti. Brijita Nongbri,
D/o (L) Kwintina Nongbri @ Kwain Nongbri

2.Smti. Trail Nongbri,
D/o (L) Kwintina Nongbri @ Kwain Nongbri

3.Smti. Dlet Nongbri
D/o (L) Kwintina Nongbri @ Kwain Nongbri

4.Shri. Andrias Nongbri,
S/o (L) Kwintina Nongbri @ Kwain Nongbri

5.Shri. Micheal Nongbri,
S/o (L) Kwintina Nongbri @ Kwain Nongbri

6.Smti. Regina Nongbri,
D/o (L) Kwintina Nongbri @ Kwain Nongbri

7.Smti. Sistina Nongbri,
D/o (L) Kwintina Nongbri @ Kwain Nongbri

:::Petitioners

-Vs-

Smti. Jasinta Nongbri,
D/o (L) Kwintina Nongbri @ Kwain Nongbri
R/o Umroh, Mawkasiang, Shillong,
East Khasi Hills District, Meghalaya

:::Respondent



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Appellant(s) : Mr. L. Khyriem, Adv.

For the Respondent(s) : Mr. S. Syngkon, Adv.
Mr. R. Pyngrope, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. This Civil Revision Application filed under Rule 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order 2014, read with Article 227 of the Constitution is with a prayer for setting aside the impugned order dated 24.07.2023, passed by the Additional Judge, District Council Court, Shillong, in Probate (Misc.) Case No. 1 of 2018.

2. The brief facts are that the respondent had filed an application for probate of a will dated 01.09.2017, allegedly executed by the mother of both the parties herein, and the same was registered as Probate (Misc.) Case



No. 1 of 2018. The petitioners on receipt of notice, then contested the probate application by filing a common show cause, and also the suggested issues. By order dated 01.02.2022, the probate court framed 13 issues and on the basis of the issues, the petitioners had then challenged the maintainability of the probate petition, on the ground that the respondent could not have filed for probate, as the Testatrix had appointed an Executor for the will, and that as per Section 222 of the Indian Succession Act, 1925, only an Executor can file for probate. The Lower Court however, dismissed the challenge of maintainability, on the ground that the issue was required to be determined through evidence, and also that the Testatrix had expressly named the petitioner in the will. The preliminary issues as framed therefore, were in the view of the Lower Court, to be decided through evidence. The petitioners being aggrieved thereby are before this Court, assailing the impugned order.

3. Mr. L. Khyriem, learned counsel for the petitioners has submitted that the Court below, came to a perverse finding in rejecting the plea of maintainability raised by the petitioners, inasmuch as, the deceased mother of the party during her lifetime was in absolute possession of two plots of land, which she disposed of by way of sale to the petitioner No. 7, vide Sale Deeds dated 08.10.2007 and 12.07.2006, respectively. The purported will



dated 01.09.2017 he submits, could not have been executed as by this time, the property was already vested with the petitioner No. 7, and as such, in view of the aforesaid facts, the probate case should have been rejected. It is further submitted that all the parties in the instant Revision, being the children of the Testatrix including the respondent, had issued a No Objection Certificate dated 25.01.2008, certifying the ownership of the petitioner No. 7, over the suit properties, and as such, the respondent herself being well aware of the fact that the property no longer vested with her mother, there is no question of a will being executed for the said properties, and it is clear that the will was fabricated and manufactured. He submits that the finding of the Court below that the Testatrix had expressly named the respondent in the will, and hence, she was competent to apply for probate is contrary to law, inasmuch as, probate can be granted only to an Executor, as per Section 222 of the Indian Succession Act, 1925, in this case being one Shri. Arch Angelo Syndor, who was appointed as an Executor of the purported will dated 01.09.2017.

4. He therefore submits that the impugned order dated 24.07.2023, being bad in law is liable to be set aside and quashed.

5. Mr. S. Syngkon, learned counsel for the respondent has submitted that the impugned order deserves no interference, inasmuch as, the question



involved is a mixture of law and fact. He submits that on the one hand, the petitioners have challenged the genuineness and validity of the will, on the ground that the same has been fabricated, as the properties mentioned therein have already been sold before the execution of the will, whereas, on the other hand, they challenge the probate proceedings, on the ground that the same was not presented by the named Executor, which presupposes the genuineness of the will. He contends that these two propositions cannot go hand in hand, and cannot be considered to be limited to a question of law only, and as such, evidence is necessary to be led to determine the issue.

6. In the aforementioned context, the learned counsel has submitted that the probate court to determine the question, had also framed an issue with regard to the aspect as to whether the Testatrix had appointed one Shri. Arch Angelo Syndor, as the Executor as issue No. 12. It is further submitted that the duty of the probate court is limited to the aspect of the valid execution of the will, and does not extend to question of title. The learned counsel has also submitted that with regard to the properties mentioned in the will, two Title Suits are pending namely T.S. No. 20/2019 for Plot A and T.S. No. 23/2019 for Plot B, and that both the suits had been instituted after the date of execution of the will, which is 01.09.2017. In concluding his submissions, it has been reiterated that the question needs to be determined



by adducing evidence, and cannot be decided only on the point of law. As such, he prays that the Revision Application be dismissed.

7. Having heard the learned counsel for the parties, this Court notes that the primary challenge of the petitioners to the application for probate is firstly that both the plots mentioned in the said will had been conveyed by way of sale to Smti. Sistina Nongbri, the petitioner No. 7 herein, as far back as on 12.07.2006 and 08.10.2007, and at the time of execution of the will, the Testatrix no longer possessed any right or title over the same. The other main objection raised is that even though assuming but not admitting that the will dated 01.09.2017, had been executed by the Testatrix, the same should have been presented for probate by the duly appointed Executor, whereas, the person who applied for probate was the beneficiary, that is the respondent. The other challenge was that the will is a false, manufactured document, inasmuch as, the Testatrix was an illiterate person, and could not have written the purported will.

8. In the backdrop of these circumstances, this Court is to discern as to whether the challenge to maintainability of the application for probate, is limited to a question of law only or whether it is a mixture of law and facts. Firstly, it is to be noted that the learned Court below had framed an issue, as observed earlier, as to “*Whether late Kwintina Nongbri in her purported*



will dt 01/09/2017 had appointed one Shri. Arch Angelo Syndor as the Executor”. The fact that this issue had been framed, shows that the probate court itself on the challenge to the genuineness of the will has also deemed it necessary to determine the factum of appointment of an Executor, which would rest on the test as to the genuineness and validity of the will. As such, in this situation with the very important question as to the genuineness of the will, hanging in the balance, which needed to be tested by evidence, the issue of the will having to be presented by the named Executor, by application of Section 222 of the Indian Succession Act, 1925, does not assume great significance as it would have to be presupposed that the will was genuine, to warrant the rejection of the probate application on this ground alone.

9. Another aspect which this Court has noted is that civil suits with regard to the two plots mentioned in the will are pending on being instituted by the petitioner No. 7, for declaration of right, title and interest, on the basis of the sale said to be executed by (L) Kwintina Nongbri, the Testatrix, in favour of the petitioner No. 7. This fact which will necessarily have to be taken into consideration in the process of determining as to whether the will was validly executed, or whether the same is contrived and manufactured, as alleged, also can only be proved through the adducing of evidence.



10. The judgment dated 24.01.2024, as placed by the learned counsel for the respondent namely ***Cecilia Reynold D'souza & Ors. vs. Ruby Cyril D'souza & Ors.*** of the Bombay High Court passed in Testamentary Suit No. 5/2005, Testamentary Petition No. 226/2004, has reiterated and digested the various judgments of the High Courts and the Supreme Court, apart from commentaries thereon, wherein, it is a settled law that jurisdiction of a probate court is limited only to the aspect of valid execution of the will, and is only to decide issues pertaining thereto.

11. In the given facts and circumstances of the case therefore, and as discussed above, the challenge to the maintainability of the probate petition not being confined to only a preliminary issue that can be disposed of on an issue of law only, as both issues of law and fact have arisen, the instant Revision Application fails, and the impugned order dated 24.07.2023, passed by the Additional District Council Court in Probate (Misc.) Case No. 1 of 2018, is accordingly upheld.

12. Revision Application is accordingly dismissed and disposed of.

13. Records to be transmitted back immediately.

Chief Justice (Acting)