

GAHC040008772023



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

**Intestate Case No. 01(AP)/2023**

**1. Shri Dongsom Sangchoju**

S/o Late Apium Mizi, age about  
54 years, resident Nabolong  
(Lada) village, P.O. Lada & P.S.  
Seppa, East Kameng District,  
Arunachal Pradesh.  
Mobile No. 7627930248

**...Appellant**

**-VERSUS-**

**1. Solung Miji**

S/o Late Apium Mizi, age about  
52 years, resident Nabolong  
(Lada) village, P.O. Lada & P.S.  
Seppa, East Kameng District,  
Arunachal Pradesh.

**2. Shri Kage Miji**

S/o Late Apium Mizi, age about,  
resident Nabolong  
(Lada) village, P.O. Lada & P.S.  
Seppa, East Kameng District,  
Arunachal Pradesh.

**3. Shri Khamo Sangchoju**

S/o Late Apium Mizi, age about  
resident Nabolong  
(Lada) village, P.O. Lada & P.S.  
Seppa, East Kameng District,  
Arunachal Pradesh.

**4. Miss Piba Sangchoju**  
D/o Shri Khamo Sangchoju  
resident Nabolong (Lada) village,  
P.O. Lada & P.S. Seppa, East Kameng District,  
Arunachal Pradesh.

....RESPONDENTS

Advocates for the petitioner : Mr. G. Taloh

**:::BEFORE:::**

**HON'BLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 24.01.2024  
Date of Judgment & Order : 02.02.2024

**JUDGMENT & ORDER (CAV)**

Heard Mr. G. Taloh, learned counsel for the petitioner.

**2.** The present case is proceeded ex-parte against the other respondent Nos. 1, 2, 3 & 4.

**3.** This is an application under Section 384 of the Indian Succession Act, 1925 against the judgement and order dated 13.04.2023 passed by the learned District Judge, Bomdila, West Kameng District in Title Suit Case No. 07/2022, in Succession Application No. 96/2021, Whereby the debt and securities of Late

Kusumi Miji was divided between the appellant and respondent Nos. 2 & 3 in the ratio of 50%, 25% & 25% respectively.

**4.** The facts culminating in this appeal is that Late Kusumi Miji, who is the biological sister of the appellant, went on missing since 16.07.2014. Thereafter, the appellant lodged an FIR on 22.07.2021 & 26.07.2021 before the Officer-In-Charge, Bomdila informing him about her missing and praying for tracing her out. But she could not be traced out by the police and accordingly, he lodged a title suit, for declaration of death of Kusumi Miji before the learned District Judge, Bomdila and considering the fact that she was missing for more than 7(seven) years, vide judgement and order dated 30.09.2021, the learned District Judge, Bomdila passed an order of Civil Death of Kusumi Miji.

**5.** After the declaration from the Civil Court, the appellant filed a succession application, which is registered as 96/2021, seeking issuance of succession certificate for the debts & securities of Late Kusumi Miji. Accordingly, the notice was issued to the respondents and the respondent No. 1 appeared before the learned District Judge, Bomdila and informed that he has no objection if the succession certificate was issued to the appellant. But the respondent No. 4 objected to its issuance and the respondent Nos. 2 & 3 did not appear before the Court and hence, notices were issued through paper publication. But despite publication of notice through the newspaper on 05.05.2022, the respondent Nos. 2 & 3 remain absent and accordingly, vide order dated 30.08.2022, the matter proceeded ex-parte against them.

**6.** Considering the objection raised by the respondent No. 4, the succession

application was registered as title suit No. 07/2022. After commencement of the trial, the respondent No. 4 did not cross-examine the plaintiffs witnesses even after several chances given to her and resultantly, the plaintiff evidence was closed and the matter proceeded ex-parte.

**7.** On the completion of the trial, the learned Court below, vide judgement & order dated 13.04.2023, held that the appellant, respondent Nos. 2 & 3 are entitled to debts and securities left by Late Kusumi Miji, however, it is held that the respondent No. 4 who is the biological daughter of the respondent No. 3 cannot claim as he is still alive. Accordingly, it was directed that the debts and securities of Late Kusumi Miji was to be divided between the appellant and the respondent Nos. 2 & 3 in the ratio of 50%, 25% and 25% respectively.

**8.** On being aggrieved and satisfied with the judgement and order passed by the District Judge, Bomdila, the appellant has preferred this appeal.

**9.** The learned counsel for the appellant further submitted that the appellant had taken steps upon all the respondents and only the respondent No. 1 appeared before the learned Court below and filed his no objection, however, the respondent No. 4 raised objection and on the basis of which the succession case is registered as a title suit. However, the respondent Nos. 2 & 3 remain absent even after publication of notice through newspaper and thus, it can be deemed that service is completed on the respondent Nos. 2 & 3 in substituted manner. But, they never appeared before the learned Court below nor filed any objection to the grant of succession certificate to the appellant. He further submitted that in a civil suit party needs to be vigilant about his rights and those

who sleep over their rights cannot be given any right. In the instant case, the respondent Nos. 2 & 3 remain absent even after issuance of notice through paper publication and thus they waved their right to make a claim on the debts and securities of the deceased. But the learned Court below did not consider all these facts of the case and divided the debts and securities in a ratio, wherein, both the respondent Nos. 2 & 3 were also given shares of 25% each giving the remaining 50% to the present appellant.

**10.** He further submitted that recourse to Section 47 of the Indian Succession Act, 1925 should only be taken where there is a dispute between the parties and thus the learned Court below erred in taking its aid in this matter as there was no objection by the respondent Nos. 1, 2 & 3. The respondent No. 1 already appeared and filed his no objection before the learned Court below as both the respondent Nos. 2 & 3 are also related to him, he may have conveyed his no objection to the respondent Nos. 2 & 3. But, remaining absent in the Court proceeding would otherwise establishes that both the respondent Nos. 2 & 3 also have no objection if the succession certificate is issued in the name of the appellant as prayed for.

**11.** But the learned Court below passed the order in a very whimsical manner without considering on these aspects of the case that the respondent Nos. 2 & 3 already waved their rights over the debts and securities left by the deceased. And accordingly, it is submitted that the judgment and order passed by the learned District Judge, Bomdila, West Kameng District in Title Suit Case No. 07/2022, in Succession Application No. 96/2021 is liable to be set aside.

**12.** Hearing the submission made by the learned counsel for the appellant/petitioner, I have also perused the judgment passed by the learned District Judge, Bomdila in T.S No. 07/2022 in Succession Certificate Case No. 96/2022.

**13.** It is seen that initially the case was filed under Section 372 of the Indian Succession Act, praying for issuance of succession certificate against the debts and securities left by one Kusumi Miji after obtaining a declaration from the Civil Court. The applicant/appellant as well as the O.P No. 1 is own brother of the deceased and O.P Nos. 2 & 3 are the step brothers of the deceased and the O.P. No. 4 is the daughter of the step brother i.e. the respondent No. 3. It is seen that Kusumi Miji was a government servant and she left the service/pensionary benefit as her debts and securities and hence, the plaintiff being the brother of the deceased had prayed for issuance of the succession certificate in his name for the debts and securities left by the deceased.

**14.** It is also seen that though the respondent No. 4 who is the daughter of the respondent No. 3 appeared and filed her objection claiming that she was adopted by the deceased as her daughter and she was always with her during her days of hardship and the applicant being the biological brother never came before the deceased or performed his duty and responsibility. However, the learned Court below after examining 3(three) numbers of prosecution witnesses and after hearing their arguments, it is observed by the learned Court below that though the respondent No. 4 claim herself to be adopted daughter of the deceased, she could not produce any oral or documentary evidence to substantiate the plea, who is the biological daughter of the respondent No. 3.

So, considering the fact that she is the daughter of the respondent No. 3 who is also the step brother of the deceased, and held that the father of the respondent No. 4 is still alive and thus, she is not entitled to debts and securities left by Kusumi Miji. However, it is decided by the learned Court below that other respondent Nos. 1, 2 & 3 being the brothers of the deceased are entitled to debts and securities as well as the pensionary benefits left by Late Kusumi Miji. But as O.P. No. 1 has already appeared before the Court and submitted that he has no objection in the event of issuance of succession certificate to the appellant/applicant. Hence, the learned Court below felt it justified not to give share to the respondent No. 1 who already waved his right over the debts and securities of the deceased.

**15.** But the learned Court below decided that the respondent Nos. 2 & 3 are entitled to share of the debts and securities left by Late Kusumi Miji being the step brothers of the deceased. The learned Court below in paragraph 19 of the order considered the provision of Section 27 of Indian Succession Act, 1925 and discussed details of the provision of the Section 27 of Indian Succession Act, 1925. And accordingly, it is held that all the brothers i.e. the respondent Nos. 1, 2 & 3 along with the applicant entitled equal share on the debts and securities left by the deceased and thus, they entitled 25% each. As the respondent No. 1 has already waved his right, the learned Court below decided the ratio amongst the appellant as well as the respondent Nos. 2 & 3 in the ratio of 50%, 25% & 25% respectively.

**16.** Thus, it is seen that the learned Court below, considering the provision of Indian Succession Act and also considering the fact that all the respondent Nos.

1, 2 & 3 as well as the applicant/appellant being the brothers of the deceased entitled equal share in the property, however, the applicant/appellant was given 50% of the share as the respondent No. 1 already waved his right and claim over the property as well as the debts and securities left by the deceased.

**17.** It is a fact that the case proceeded ex-parte against the respondent Nos. 2 & 3 before the learned District Judge and both the respondent Nos. 2 & 3 also failed to appear before this Court. But, for their non-appearance, it cannot be considered that their rights over their property is extinguished and they have no right over the debts and securities left by Late Kusumi Miji. The learned Court below rightly observed that the respondent Nos. 2 & 3 being the brothers of the deceased are also entitled equal share on the debts and securities of the deceased and accordingly, with the ratio of 50%, 25% and 25%, the learned Court below divided the shares amongst the appellant and the respondent Nos. 2 & 3 respectively. Only for the failure of the respondent Nos. 2 & 3 to contest the case or to appear before the learned Court below, it will not be justified to held that they waved their rights over the debts and securities of Late Kusumi Miji or their rights extinguishes due to their non-appearance who was also happened to be their sister and born from same mother.

**18.** In view of the decision made above, I find the learned District Judge committed no error and mistake to make any interference in the judgment and order passed in Title Suit No. 07/2022 in SA No. 96/2021 by the learned District Judge, Bomdila dated 13.04.2023.

**19.** In the result, I find no merit in this petition and accordingly, the same

stands dismissed. However, there shall be no order as to cost.

**20.** Send down the records to the learned Court below.

**JUDGE**

**Comparing Assistant**