

GAHC010064792022



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

Case No. : Test.App./8/2022

SWAPNA DAS AND 2 ORS.
W/O LATE SITANGSHU SEKHAR DAS,
RESIDENT OF LAKHICHARAN ROAD, WARD NO. 5, KARIMGANJ TOWN,
PO. PS AND DIST KARIMGANJ, ASSAM

2: SRI SIDDHARTHA SANKAR DAS

S/O LATE SITANGSHU SEKHAR DAS

RESIDENT OF LAKHICHARAN ROAD
WARD NO. 5
KARIMGANJ TOWN
PO. PS AND DIST KARIMGANJ
ASSAM

3: SRI SUDIPTA SANKAR DAS

S/O LATE SITANGSHU SEKHAR DAS

RESIDENT OF LAKHICHARAN ROAD
WARD NO. 5
KARIMGANJ TOWN
PO. PS AND DIST KARIMGANJ
ASSA

VERSUS

CHUMKI DAS @ PAUL AND ANR.
D/O LATE PRABHAT CHANDRA DAS,
RESIDENT OF TARANI ROAD, RANGIRKHARI, SILCHAR, PO AND PS
SILCHAR, DIST CACHAR, ASSAM

2:SMTI PINKI DAS

D/O LATE PRABHAT CHANDRA DAS

RESIDENT OF TARANI ROAD
RANGIRKHARI
SILCHAR
PO AND PS SILCHAR
DIST CACHAR
ASSA

Advocate for the Petitioner : MR. S P CHOUDHURY

Advocate for the Respondent : MR. T U LASKAR (r-2)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

11.06.2024

Heard Mr. S.P. Choudhury, the learned counsel appearing for the appellants as well as Mr. P.J. Bayan, the learned counsel representing the respondents.

2. This is an appeal under Section 299 of the Indian Succession Act, 1925 challenging the judgment and order dated 18.11.2021 passed by the learned District Judge, Karimganj in Misc. (Letters of Administration) No.51/2017 arising out of Misc. Probate No.88/2011.

3. Late Prabhat Chandra Das had executed the registered Will dated 05.08.1993. He died on 14.04.1997. Late Prabhat Chandra Das bequeathed his properties in favour of his sons Sitangshu Sekhar Das and late Saroj Kumar Das who died before the death of Prabhat Chandra Das.

4. Apart from Sitangshu Sekhar Das and late Saroj Kumar Das, late Prabhat Chandra Das had left behind his two daughters, namely- Chumki Das @ Chumki Paul and Smti. Pinki Das.

5. The deceased son Saroj Kumar Das had left behind two daughters, namely- Nibedita Das and Nabanita Das.
6. After the death of Prabhat Chandra Das, the son Sitangshu Sekhar Das filed an application before the District Judge, Karimganj seeking a probate.
7. Notices were issued to the legal heirs of late Prabhat Chandra Das.
8. In the meantime, Sitangshu Sekhar Das had expired. At this stage, his three children, namely- Smti. Swapna Das, Siddhartha Sankar Das and Sudipta Sankar Das had entered appearance and filed an application under Section 232 of the Indian Succession Act, praying for grant of a letter of Administration on the basis of the Will of late Prabhat Chandra Das.
9. On the other hand, Smti. Chumki Das and Pinki Das had filed an objection against the prayer made by late Sitangshu Sekhar Das.
10. For these reasons, the probate case was converted into Miscellaneous (Letters of Administration) Case.
11. The learned trial court refused to grant the probate on the ground that the attesting witnesses of the Will were not examined as required under Section 68 of the Indian Evidence Act.
12. During pendency of this appeal, both Smti. Chumki Das and Pinki Das have filed two numbers of affidavits stating that they have no objection if the probate, as prayed for, by late Sitangshu Sekhar Das, is granted.
13. The learned counsel Mr. Bayan representing Smti. Chumki Das and Pinki Das, has submitted that they have no objection if the probate is granted.
14. Under the circumstances, the appeal is allowed. The impugned judgment and order dated 18.11.2021 passed by the learned District Judge, Karimganj in Misc. (Letters of Administration) Case No.51/2017 arising out of Misc. Probate No.88/2011, is set aside.
15. Probate shall be granted accordingly. The court of the District Judge, Karimganj

shall take appropriate steps for issuing probate.

Send back the LCR.

JUDGE

Comparing Assistant