

GAHC010081822018



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

Case No. : RFA/43/2018

SRI BIJOY NANDI AND 3 ORS

S/O- LT BHUPENDRA CH. NANDI, R/O- RANGAGORA ROAD, (OPP. PRAMOD MARKET), P.O., P.S. AND DIST- TINSUKIA, ASSAM

2: ON THE DEATH OF BIPUL NANDI HIS LEGAL HEIRS NAMELY (2.1)

TAMAL NANDI AND ANR

S/O LT. BIPUL NANDI

R/O A5/103

VICTORIA GREENS

385 GARIA MAIN ROAD

KOLKATA-700084

2.2: SRI TANMOY NANDI

SON OF LATE BIPUL NANDI

RESIDENT OF 292 SHANTI BHAWAN

FLAT NO. D17

3RD FLOOR

WESTERN MARG

LANE NO.2

SAIDULAJAB SAKET

DELHI-110030.

3: PRANAB NANDI

S/O- LT BHUPENDRA CH. NANDI

R/O- RANGAGORA ROAD

(OPP. PRAMOD MARKET)

P.O.

P.S. AND DIST- TINSUKIA

ASSAM

4: PRABIR NANDI

S/O- LT BHUPENDRA CH. NANDI

R/O- RANGAGORA ROAD

(OPP. PRAMOD MARKET)

P.O.
P.S. AND DIST- TINSUKIA
ASSA

VERSUS

SMTI MIRA NANDI DUTTA AND 3 ORS
W/O- SRI PRASHANTA DUTTA, D/O- LT BHUPENDRA CH. DUTTA, R/O-
APOLLO CLINIC, RANGAGORA ROAD, P.O., P.S. AND DIST- TINSUKIA,
ASSAM

2:SMTI. ANJALI NANDI BHOWAL
W/O- SRI SURAJ BHOWAL
D/O- LT BHUPENDRA CH. NANDI
R/O- LAKE EAST 3RD ROAD
23 (P) SANTOSH PUR
24 P AND S
KOLKATA-75
WEST BENGAL

3:SMTI. SABITA NANDI DAS
W/O- SRI DILIP KR. DAS
D/O- LT BHUPENDRA CH. NANDI
R/O- 1/2 ASHOK NAGAR
REGENT PARK
TOLLUGANJ
KOLKATA-40

WEST BENGAL

4:SMTI. CHANDANA NANDI DUTTA
W/O- DR. RANJIT DUTTA
D/O- LT BHUPENDRA CH. NANDI
R/O- 82(A) SANTOSH PUR AVENUE
SANTOSH PUR
24 P AND S
KOLKATA-75
WEST BENGAL

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : MR. B. DUTTA

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. A.K. Gupta,
Advocate.

For the Respondents: Mr. B. Dutta,
Senior Advocate.

Date of Hearing : 25.06.2024.

Date of Judgment : 27.06.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.K. Gupta, learned counsel representing the appellants as well as Mr. B. Dutta, learned senior counsel appearing for the respondents.

2. This is a Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC) whereby the impugned judgment and decree dated 24.01.2018 passed by the court of learned Civil Judge, Tinsukia in Title Suit No.21/2013 is under challenge.

3. The factual matrix leading to filing of the title suit before the trial court as well as this appeal before this Court lies within an exceptionally short campus.

4. Late Bhupendra Chandra Nandi had four sons and four daughters, namely- Bijoy Nandi, Bipul Nandi, Pranab Nandi, Prabir Nandi, Smti. Mira Nandi Dutta, Anjali Nandi Bhowal, Sabita Nandi Das and Chandana Nandi Dutta.

5. Late Bhupendra Chandra Nandi was the owner of a plot of land measuring 2 Kathas 5 Lechas whereupon his residence was situated. On 13.11.1991, Bhupendra Chandra Nandi expired.

6. By the time, Bhupendra Chandra Nandi had expired, his daughters were already married.

7. His sons demolished the old house and erected a multistoried commercial complex, which was rented out to different tenants.

8. Now, Smti. Mira Nandi Dutta, the daughter of late Bhupendra Chandra Nandi demanded her share in the property left behind her father.

9. The sons claimed that during the lifetime of Bhupendra Chandra Nandi, on 14.08.1991, all his legal heirs had gathered and the married daughters had agreed that they will not demand their shares in the property after his demise.

10. The four sons of late Bhupendra Chandra Nandi filed a counter-claim praying for a decree declaring that they had constructed the building over the suit property with their own money and they are the joint owner of the suit property. They also prayed for a decree declaring that Smti. Mira Nandi Dutta is not entitled to interfere into their peaceful possession of the suit property.

11. On the basis of the pleadings of the parties, the trial court framed the following issues:

- i. Whether this suit and counter-claim are maintainable in law in the present form?
- ii. Whether the mutation over the suit land of the defendants nos.1 to 4 is illegal?
- iii. Whether the plaintiff is entitled to 1/8th share over the suit land and the RCC building over the said suit land?
- iv. Whether the plaintiff is entitled to the 1/8th share of rents and profits collected by the defendants from the commercial rented premises since the death of their father late Bhupendra Chandra Nandi?
- v. Whether the defendants constructed the multistoried RCC building over the suit land at their own cost and the defendants are the lawful owners of the suit property?
- vi. Whether the plaintiff and the defendants are entitled to relief/reliefs as prayed for?

12. The trial court framed an additional issue, which reads as under:

- i. Whether the share of the plaintiff i.e. 1/8th share of suit land is capable to be partitioned as per Assam Notified Urban Areas (Other than Guwahati) Building Rules, 2014?

13. Smti. Mira Nandi Dutta examined three witnesses. The appellants examined only one witness.

14. On the basis of the evidence on record, the trial court decreed the suit of Smti. Mira Nandi Dutta and held that she is entitled to 1/8th share in the suit land. The court also held that she is also entitled to 1/8th share of the rents and profits collected from the rented premises.

15. Being aggrieved by the aforesaid judgment, the present appeal has been filed.

16. I have considered the submissions made by the learned counsel of both sides.
17. The only point for determination in this appeal is as to whether Smti. Mira Nandi Dutta being daughter of late Bhupendra Chandra Nandi, is entitled to a share in the property left behind by her father?
18. For deciding the point for determination, I shall take up the issue nos.1, 3 and 4 together.

Issue Nos.1, 3 and 4

19. At this stage, Section 8 of the Hindu Succession Act, 1956 is relevant. It reads as under:

“8. General rules of succession in the case of males.—

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.”

20. A daughter is a class-I heir according to the schedule of the Act of 1956. The marriage of a daughter has no relevance for inheriting property. As a daughter, she enjoys the same coparcenary rights as a son. When a Hindu inherits the property from his/her father under Section 8, he/she takes it as his/her separate property and not as joint family property. Apart from residential property, the property in Section 8 also includes agricultural land.

21. So, the law is clear. There is no evidence in this case to show that the daughters of late Bhupendra Chandra Nandi had agreed not to demand their shares in the suit property.

22. Under the circumstances, this Court is of the opinion that the learned trial court had correctly answered these issues in favour of Smti. Mira Nandi Dutta. Accordingly, these issues were decided in affirmative.

Issue No.2

23. Before Smti. Mira Dutta Nandi had staked her claim over the suit property, the four sons of late

Bhupendra Chandra Nandi had mutated themselves in the land records in respect of the land left behind by their father.

24. Section 8 of the Hindu Succession Act states that the daughter of a deceased Hindu male is a first class heir like his sons. The 8 children of late Bhupendra Chandra Nandi are class-I heirs and therefore, the mutation of only four sons is illegal. The learned trial has rightly held that the mutation of the names of only four sons in respect of the suit property is illegal and liable to be corrected. This issue is also answered in favour of Smti. Mira Dutta Nandi.

Issue No.5

25. There is no denial on the part of Smti. Mira Nandi Dutta that the commercial-cum-residential complex was erected by her four brothers, over the land left behind by late Bhupendra Chandra Nandi. Admitted fact need not be proved. This is what law of evidence says.

26. By virtue of Section 8 of the Hindu Succession Act, Smti. Mira Nandi Dutta, being the daughter of late Bhupendra Chandra Nandi, is entitled to a share in the property left behind by her father.

27. In spite of existence of this law, the sons had constructed a building, may be with their money. In view of Section 8, the sons of late Bhupendra Chandra Nandi are not the only owners of the building. Smti. Mira Dutta Nandi also has a share in the said property. She is entitled to 1/8th share of whatever is earned from the building.

28. Therefore, this issue is answered in favour of Smti. Mira Dutta Nandi.

Issue No.6.

29. In view of the findings in the foregoing issues, Smti. Mira Dutta Nandi is entitled to a decree, as prayed for. The present appellants being the sons of late Bhupendra Chandra Nandi are not entitled to any decree, as prayed for.

Additional Issue

30. The learned trial court has held that whether the suit property is capable of being partitioned or not is a matter to be considered at the time of passing final decree.

31. I have decided to agree that the learned trial court had rightly decided this issue. This Court is in agreement with the decision arrived at by the trial court.

ORDER

32. The appeal is found to be devoid of merit and stands dismissed and disposed of accordingly.

Interim order if there be any, shall stands vacated.

Return the LCR.

JUDGE

Comparing Assistant