

GAHC010107402023



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

Case No. : CRP(IO)/147/2023

MAHENDRA CHUTIA
SON OF LATE DIMBESWAR CHUTIA ALIAS LATE DIMBESWAR DAS,
RESIDENT OF BALIGAON, WARD NO. 2,
DHAKUAKHANA TOWN,
P.O. DHAKUAKHANA,
P.S. DHAKUAKHANA,
DISTRICT- LAKHIMPUR, ASSAM.

VERSUS

KUKHESWARI DAS AND 12 ORS
WIFE OF LATE DEBO DAS,
RESIDENT OF KONWAR GAON, WARD NO. 3,
DHAKUAKHANA TOWN,
P.O. AND P.S. DHAKUAKHANA,
DISTRICT- LAKHIMPUR, ASSAM,
PIN- 787055.

2:LALIT DAS
SON OF LATE DEBO DAS

RESIDENT OF KONWAR GAON
WARD NO. 3

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

3:RANJIT DAS
SON OF LATE DEBO DAS

RESIDENT OF KONWAR GAON
WARD NO. 3

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

4:BEUTY DAS MORANG
WIFE OF DHANIRAM MORANG

RESIDENT OF RATANPUR
DHEMAJI

MOUZA AND P.S. DHEMAJI

DISTRICT- DHEMAJI
ASSAM

PIN- 787057.

5:JUNMONI CHUTIA DUTTA
WIFE OF SRI ANUPAM CHUTIA

RESIDENT OF KAMARGAON

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

6:CHITTARANJAN DAS
SON OF LATE DIMBESWAR CHUTIA

RESIDENT OF BALIGAON
WARD NO. 2

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

7:PRASANTA BHUYAN
SON OF LATE KRISHNA BHUYAN

RESIDENT OF TOWN TINIALI

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

8:JUNMONI BHUYAN BORUAH
DAUGHTER OF LATE KRISHNA BHUYAN

WIFE OF JAYANTA BORUAH

RESIDENT OF GHAYAN NAGAR

P.O.- PATHALIPAM

P.S. BOGINODI

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787056.

9:LABANYA CHUTIA ALIAS SUJAT CHUTIA
DAUGHTER OF LATE DIMBESWAR CHUTIA

RESIDENT OF BALIGAON
WARD NO. 2

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

10:MANJU CHUTIA
WIFE OF SRI PREMEDHAR CHUTIA
DAUGHTER OF LATE DIMBESWAR CHUTIA

RESIDENT OF VILLAGE- GHARIKHANA

P.O.- SAMARAJAN

DISTRICT- DHEMAJI
ASSAM

PIN- 787026.

11:AKHIM BORUAH
SON OF LATE TIRTHA DAS ALIAS TIRTHA BORUAH

RESIDENT OF TOWN TINIALI
WARD NO. 4

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

12:APURBA KRISHNA BORUAH
SON OF LATE TIRTHA DAS ALIAS TIRTHA BORUAH

RESIDENT OF TOWN TINIALI
WARD NO. 4

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055.

13:ANUPAM BORUAH
SON OF LATE TIRTHA DAS ALIAS TIRTHA BORUAH

RESIDENT OF TOWN TINIALI
WARD NO. 4

DHAKUAKHANA TOWN

P.O. AND P.S. DHAKUAKHANA

DISTRICT- LAKHIMPUR
ASSAM

PIN- 787055

Advocate for the petitioner(s): Mr. R Sarma

Advocate for the respondent(s):

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

27.05.2024

Heard Mr. R Sarma, the learned counsel appearing on behalf of the petitioner.

2. This is an application under Article 227 of the Constitution challenging the order dated 24.03.2023 passed in Petition No.317/2023 arising out of Misc. (L.A) Case No.2/2019 whereby the application under Order VII Rule 14 of the Code of Civil Procedure, 1908 (for short, the Code) was rejected.

3. This Court has duly taken note of the Office Note dated 06.12.2023 which shows that the service upon the respondent Nos.1 to 13 by usual steps have been duly effected. Taking into account the above, this Court takes up the instant proceedings for disposal at this stage.

4. The instant application as stated above is an application by which the learned District Judge, Lakhimpur, North Lakhimpur had rejected the application under Order VII Rule 14 of the Code to produce the death certificate issued on 06.02.2023 as well as the original will. This Court had taken note of that at the time of filing the application seeking probate which has been registered as Misc. (L.A) Case No.2/2019, the petitioner herein had duly enclosed the photocopy of the certified copy of the original will. It is also seen that the death certificate of the testator was obtained on 06.02.2023 i.e. during the pendency of the said proceedings. However, the learned District Judge, Lakhimpur, North Lakhimpur did not take into consideration the contents of paragraphs 2 and 3 of the application wherein due reasons were assigned as to why the original will of the testator could not be produced at the time of filing of the probate application as well as the fact that the death certificate was only obtained on 06.02.2023.

5. Taking into account the above, this Court is of the opinion that the impugned order dated 24.03.2023 suffers from jurisdictional error and accordingly the same stands set aside.

6. This Court further grants leave to the petitioner to produce the original will

as well as the death certificate dated 06.02.2023. This Court also takes note of that vide order dated 24.05.2023, the proceedings in Misc. (L.A) Case No.2/2019 has been stayed. The said stay order stands vacated.

7. It has been informed by Mr. R Sarma, the learned counsel appearing on behalf of the petitioner that the next date is fixed on 31.05.2024 before the Court of the learned District Judge, Lakhimpur, North Lakhimpur. On the said date, the learned Court shall permit the petitioner to produce the original death certificate as well as the original will on the basis of the leave so granted vide this instant order and further proceed with the said proceedings in accordance with law.

8. The instant revision petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant