

GAHC010118452023



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

Case No. : CRP(IO)/166/2023

KANIKA RABHA KALITA
W/O- LATE DHARMESWAR RABHA, VILLAGE- THEKASU PART I,
DUDHNOI, P.O. DUDHNOI, P.S. DUDHNOI, DIST.- GOALPARA, ASSAM, PIN-
783124

VERSUS

NINDESWARI RABHA
DIVORCED WIFE OF- LATE DHARMESWAR RABHA, R/O- VILL-
BHOGDABI, KRISHNAI, GURIA PART-II, P.O. KRISHNAI, P.S. KRISHNAI,
DIST.- GOALPARA, ASSAM, PIN- 783126

For the petitioner (s) : Mr. T. R. Sarma, Advocate

For the respondent (s) : Mr. H. Das, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

04.03.2024

The instant writ petition has been filed under Article 227 of the Constitution challenging the order dated 04.02.2023 passed by the learned District Judge, Goalpara in Misc. Revocation Case No.01/2020 arising out of Misc. Succession Case No.27/2018.

2. From a perusal of the record, it reveals that the petitioner herein claims to be the legally wedded wife of one Dharmeswar Rabha (since deceased) who was a Grade-IV employee in the establishment of A.S.O.,

Matia Revenue Circle. Her husband expired on 24.04.2017. After the demise of her husband, it is the case of the petitioner that the respondent by misleading had filed the Misc. Succession Case No.27/2018 to the effect that Late Dharmeswar Rabha used to reside at Bhogdabi, Krishnai at the time of his death and the deceased had no other legal heirs except those as mentioned in her petition, i.e. in Misc. Succession Case No.27/2018. On the basis thereof, the learned District Judge, Goalpara had issued a Succession Certificate on 23.09.2019 pursuant to the order dated 22.08.2019. This Succession Certificate was challenged by the petitioner by filing a Misc. Revocation Case No.1/2020.

3. During the said proceedings, the petitioner examined three witnesses including herself. However, on account of legal advice, the petitioner did not submit the original documents at the time of submission of her evidence in affidavit. In the meantime, without submitting the original documents, the examination of the witnesses on behalf of the petitioner was complete. Subsequently, on account of the change of counsel who advised that there was the requirement of bringing on record the original documents, an application was filed which was rejected vide the impugned order dated 04.02.2023 which is the subject matter of the instant proceedings.

4. This Court has duly perused the Lower Court Records which were called for by this Court and from a perusal of the Lower Court Records, it reveals that only after the order impugned in the proceedings has been passed, an application under Order VII Rule 14 read with Section 30 of the CPC was filed to bring on record those original documents. However, the said application still remains pending taking into account that in the

meantime on 30.05.2023, the petitioner herein had approached this Court and an order was passed on 05.06.2023 staying further proceedings of the said Misc. Revocation Case No.1/2020.

5. This Court has duly heard the learned counsels appearing on behalf of the parties. It appears from the perusal of the materials that the original documents were not enclosed at the time of submission of the evidence which the petitioner ought to have done. However, this Court cannot be unmindful of the fact that the petitioner is a widow and may not be aware of the legal niceties of tendering the original document at the time of filing the evidence on affidavit. The lawyer who was engaged ought to have properly guided the petitioner in doing so. Under such circumstances, on account of the fault of the lawyer, the petitioner cannot be penalised taking into account that those documents have a vital relevance in the adjudication of the proceedings.

6. Considering the above, this Court is of the opinion that the interest of justice would be met if the petitioner is given an additional opportunity to bring on record those documents which were filed along with the petition on 16.06.2023 by adducing additional evidence.

7. Consequently, this Court therefore, directs the learned District Judge Goalpara, to permit the petitioner to submit an additional evidence on affidavit by herself thereby to adduce the five documents which were made a part of the petition bearing No.110/2023 dated 16.06.2023. The said evidence on affidavit, if so filed by the petitioner on the basis of the liberty hereby granted, shall be subject to cross-examination by the respondent.

8. Taking into account that both the parties are hereby represented, the stay in respect of Misc. Revocation Case No.1/2020 is hereby vacated and the parties are directed to appear before the learned District Judge, Goalpara on 27.03.2024.

9. The Registry is directed to forthwith send the Lower Court Records to the learned Court of the District Judge, Goalpara so that the said Court is in a position to take up the matter on the date so fixed.

10. This Court has also taken note of that on account of the petitioner not submitting the original documents at the proper time, judicial time has been unnecessarily lost and thereby causing a delay in the said proceedings. This Court is of the opinion that a reasonable cost is required to be imposed. Apart from that, while adjudicating the said aspect, this Court has also taken note of that the petitioner is a widow and her husband was a Grade-IV employee. On the other hand, the respondent herein also is a widow.

11. Taking into account the above, this Court imposes a cost of Rs.5,000/- to be deposited by the petitioner before the learned District Judge, Goalpara on the date of submission of the additional evidence on affidavit which is required to be filed on the next date so fixed, i.e. on 27.03.2024.

12. With the above observations and directions, the instant petition stands disposed of.

JUDGE