



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

CRP(IO) No. 290/2022

RUPALI BAGLARY DUTTA
W/O. LT. HARAKANTA DUTTA,
R/O. DIPHU, NEAR ITI, P.O. AND P.S. DIPHU,
DIST. KARBI ANGLONG, ASSAM, PIN-782460.

.....Petitioner.

VERSUS

1. SMT. PRATIMA DUTTA,
W/O. LT. HARKANTA DUTTA,
VILL. BALIKARIA, P.O. BALIKARIA,
P.S. NALBARI, DIST. NALBARI, ASSAM, PIN-781335.
2. NIBEDITA DUTTA,
D/O. LT. HARKANTA DUTTA
VILL. BALIKARIA, P.O. BALIKARIA, P.S. NALBARI,
DIST. NALBARI, ASSAM, PIN-781335.
3. NITU DUTTA,
D/O. LT. HARKANTA DUTTA,
VILL. BALIKARIA, P.O. BALIKARIA,
P.S. NALBARI, DIST. NALBARI,
ASSAM, PIN-781335.
4. SANJAY DUTTA,
S/O. LT. HARKANTA DUTTA
VILL. BALIKARIA, P.O. BALIKARIA
P.S. NALBARI, DIST. NALBARI,
ASSAM, PIN-781335.

5. SINTU DUTTA,
S/O. LT. HARKANTA DUTTA,
VILL. BALIKARIA, P.O. BALIKARIA,
P.S. NALBARI, DIST. NALBARI,
ASSAM, PIN-781335.
6. SUMAN DUTTA,
S/O. LT. HARKANTA DUTTA
VILL. BALIKARIA, P.O. BALIKARIA,
P.S. NALBARI, DIST. NALBARI,
ASSAM, PIN-781335.

.....Respondents.

Advocate for the Petitioner : Mr. B.P. Borah

Advocate for the Respondents : Mr. D. Choudhury.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Date of Hearing : 13.08.2024

Date of Judgment : **16.08.2024**

JUDGMENT AND ORDER

Heard Mr. B.P. Borah, learned counsel for the petitioner and Mr. D. Choudhury, learned counsel for the respondent Nos.1, 2 and 3.

2. In this petition under Article 227 of the Constitution of India, read with Section 115 of the Code of Civil Procedure and Section 384 of the

Indian Succession Act, 1925, the petitioner Smt. Rupali Baglary Dutta has put to challenge the correctness of judgment and order dated 05.04.2014, passed in Misc (S-C) Case No.30/2012 by the learned District Judge, Nalbari, under Section 372 of the Indian Succession Act. It is to be noted here that vide impugned judgment and order dated 05.04.2014, the learned District Judge, Nalbari, has issued Succession Certificate in favour the respondent No.1 and five others, in respect of the pensionary dues of late Hara Kanta Dutta, who was an employee of the Public Health Engineering Department, Karbi Anglong, Diphu.

3. The background facts, leading to filing of the present petition, is adumbrated herein below:-

"The respondent No.1 Smt. Pratima Dutta is the wife of late Hara Kanta Dutta, who was serving in the office of the Executive Engineer, Public Health Engineering (PHE) Department, Diphu Rural W/S Division, Diphu. He died intestate and after his death on 14.10.2011, the petitioner herein had filed a petition for granting succession certificate before the District Judge, Nalbai in respect of debt and securities amounting Rs. 3,51,791/ of her deceased husband. Upon the said petition, the District Judge, Nalbari has registered a case, being Misc Case No. (S-C) 30/2012, and thereafter, vide impugned judgment and orders dated 05.04.2014 had granted succession certificate in respect of 1/6th share Rs. 3,51,791/."

4. Mr. Borah, learned counsel for the petitioner, submits that the respondent No.1 Smt. Pratima Dutta has filed an application under Section 372 of the Indian Succession Act before the learned District Judge, Nalbari, stating that her husband Hara Kanta Dutta died intestate

on 14.10.2011 leaving behind her and the respondent Nos.2 and 3 as his legal heirs. Mr. Borah further submits that the dues in respect of which the succession certificate was sought for, was lying in the office of the Executive Engineer, Public Health Engineering Department, Karbi Anglong, Diphu and in view of Section 371 of the Indian Succession Act, only the Court of learned District Judge, within whose jurisdiction the deceased ordinarily resides at the time of his death, or if at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under the Indian Succession Act. Mr. Borah further submits that the respondent No.1 knowing fully well that her deceased husband had another wife, namely, Smt. Rupali Baglary, had willfully not made her party in the aforesaid proceeding and no notice was issued and on that count, the impugned judgment and order passed by the learned District Judge, Nalbari, suffers from manifest illegality, as he has no jurisdiction to decide the issue and therefore, it is contended to allow the petition. Mr. Borah has also referred the following decisions in support of his submission:-

- (i) Chief General Manager (IPC) Madhya Pradesh Power Trading Company Limited and Another vs. Narmada Equipment Private Limited, reported in (2021) 14 SCC 548;**
- (ii) Mohd Inam vs. Sanjay Kumar Singhal and Others reported in (2020) 7 SCC 327;**
- (iii) Ouseph Mathai v. M. Abdul Khadir, reported in (2002) 1 SCC 319;**
- (iv) Seth Chand Ratan vs. Pandit Durga Prasad (D) By LRS and Ors. reported in (2003) 5 SCC 399;**

5. Per contra, Mr. Choudhury, learned counsel for the respondent Nos.1, 2 and 3 submits that this petition under Article 227 of the Constitution of India is not maintainable as alternative remedy is available for the same. Secondly, Mr. Choudhury submits that as per Assam Pension Manual, only the first wife i.e. the respondent No.1 is entitled to the pensionary dues of her deceased husband, who died intestate and the petitioner, who happens to be the third wife of late Hara Kanta Dutta, is not entitled to any benefit, as her marriage with late Hara Kanta Dutta was void and as such, making or not making her a party in the proceeding is of no consequence. Under the aforementioned facts and circumstances, Mr. Choudhury has contended to dismiss the petition. Mr. Choudhury has also referred the following decisions in support of his submission:-

- (i) **Sadhana Lodh vs. National Insurance Company Limited**, reported in 2003(3) SCC 524;
- (ii) **Bulu Das and Ors. vs. Moni Das and Anr** reported in 2003(3) GLT 400,
- (iii) **Nandita Shiland Anr vs. State of Tripura**, reported in 2009(3) GLT 153
- (iv) **G.L. Bhatia vs. Union of India** 1999(9) Supreme 308.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the relevant provisions of law. Since the issue of maintainability of the petition is raised in this petition the same has to be addressed at first.

7. In order to adjudge the submissions of learned Advocates of both sides, it would be in the interest of justice to understand the legal

proposition presently holding the field. In the case of *Sadhana Lodh* (supra), Hon'ble Supreme Court has held as under:-

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see *National Insurance Co. Ltd. v. Nicolletta Rohtagi* [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788]). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State

enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

9. Again, in the case of *Mohamed Ali vs. V. Jaya & Ors.* Civil Appeal No. 4114 of 2022, Hon’ble Supreme Court has held as under:-

21. At this stage, the decision of this Court in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*; (2019) 9 SCC 538, is required to be referred to. In the said decision, it is observed and held by

this Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court and therefore, the High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself. While holding so, it is observed and held in paragraphs 11 to 13 as under:-

“11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Code of Civil Procedure, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu v. S. Chellappan* (2000) 7 SCC 695, this Court held that “though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy”.

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms

of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675, pointed out in *Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

22. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex-parte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the ex-parte judgment and decree passed by the learned Trial Court and in quashing and setting

aside the same in exercise of powers under Article 227 of the Constitution of India.

10. In the case of *Ouseph Mathai v. M. Abdul Khadir*, (2002) 1 SCC 319, it has been held by Hon'ble Supreme Court as under:-

“4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In *Waryam Singh v. Amarnath* [AIR 1954 SC 215 : 1954 SCR 565] this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in *Nagendra Nath Bora v. Commr. of Hills Division & Appeals* [AIR 1958 SC 398 : 1958 SCR

1240] . In *Babhutmal Raichand Oswal v. Laxmibai R. Tarte* [(1975) 1 SCC 858 : AIR 1975 SC 1297] this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in *R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw* [(1952) 1 All ER 122 : (1952) 1 KB 338 (CA)] (All ER at p. 128) this Court in *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447]

“20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see *Trimbak Gangadhar Telang* (1977) 2 SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial

Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error.”

6. In *Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi* [(1995) 6 SCC 576] this Court held that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in a dispute regarding eviction of tenant under the Rent Control Act, a special legislation governing landlord-tenant relationship. To the same effect is the judgment in *Koyilerian Janaki v. Rent Controller (Munsiff)* [(2000) 9 SCC 406].

7. In the present appeals, the High Court appears to have assumed the jurisdiction under Article 227 of the Constitution without referring to the facts of the case warranting the exercise of such a jurisdiction. Extraordinary powers appear to have been exercised in a routine manner as if the power under Article 227 of the Constitution was the extension of powers conferred upon a litigant under a specified statute. Such an approach and interpretation is unwarranted. By adopting such an approach some High Courts have assumed jurisdiction even in matters to which the legislature had assigned finality under the specified statutes. Liberal assumption of powers without reference to the facts of the case and the corresponding hardship to be suffered by a litigant has unnecessarily burdened the courts resulting in accumulation of arrears adversely affecting the attention of the court to the deserving cases pending before it.

11. Again in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. v. Tuticorin Educational Society & Ors.** reported in (2019) 9 SCC 538, it has been held that wherein the proceedings are under the Code of Civil Procedure and the forum is Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.

12. Thus, the legal proposition, which can be crystallized from the above discussion, is that the jurisdiction under Article 227 of the Constitution of India is a supervisory jurisdiction on the High Courts. This jurisdiction is confined only to see whether an inferior court or tribunal has proceeded within its parameters. But it cannot be exercised to correct an error apparent on the face of the record, much less of an error of law. While exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. Review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision is also not permissible to a High Court while dealing with a petition under Article 227 of the Constitution. The extraordinary power, under this article, cannot be exercised in a routine manner like the extension of powers conferred upon a litigant under a specified statute. There is, however, no hurdle in exercise of the constitutional powers of the High Court, but it is a well-recognised principle, which gained judicial

recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy. A wrong decision may not be a ground for the exercise of jurisdiction under this article. But, if the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party then it may warrant exercise of such jurisdiction. If a remedy by way of an appeal has not been provided for against the order and judgment of a court, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. But, when remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie.

13. In the instant case, the petitioner has preferred this petition under Article 227 of the Constitution of India, challenging the judgment and order dated 05.04.2014, passed in Misc (S-C) Case No.30/2012, where by the learned District Judge, Nalbari, under Section 372 of the Indian Succession Act, has issued Succession Certificate in favour the respondent No.1 and five others, in respect of the pensionary dues of late Hara Kanta Dutta, who was an employee of the Public Health Engineering Department, Karbi Anglong, Diphu. But, it appears that alternative remedy is available under Section 384 of the Indian Succession Act, which provides for appeal. The section reads as under:-

“Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the

certificate should be granted and direct the District Judge, on application being made therefore, to grant it accordingly, in supersession of the certificate, if any, already granted.”

14. But, the petitioner had, without exhausting the alternative remedy as provided under the Indian Succession Act, chooses to invoke the extraordinary jurisdiction of this court under Article 227 of the Constitution of India. But, in view of the decision of Hon’ble Supreme Court in **Sadhana Lodh** (supra), and in **Mohamed Ali** (supra), **Ouseph Mathai** (supra) when alternative remedy is available to the petitioner under Section 384 of the Indian Succession Act for preferring an appeal the jurisdiction of this Court under Article 227 of the Constitution of India cannot be invoked.

15. This being the factual and legal position, this Court afraid that the petitioner cannot successfully maintain this petition under Article 227 of the Constitution of India. Though Mr. Borah, learned counsel for the petitioner referring to the decision of Hon’ble Supreme Court in the case **Chief General Manager (IPC) Madhya Pradesh Power Trading Company Limited and Another** (supra), **Mohd Inam** (supra) and **Ouseph Mathai** (supra) and also in **Seth Chand Ratan** (supra) submits that even if alternative remedy is available, a revision petition is maintainable if there is gross negligence of duty and violation of the principle of natural justice, yet the submissions so advanced by Mr. Borah, left this Court unimpressed. In the given facts and circumstances of the case, the decision relied upon by him would be of no assistance to him. And accordingly, the same stands repudiated.

16. Further, it appears that in respect of the pensionary benefits, only the first wife of the deceased husband is entitled to the same. The legal proposition, in this regard is settled in catena of decisions of this Court and also of Hon'ble Supreme Court in (i) **Bulu Das** (supra) (ii) **Nandita Shiland Anr.**(supra) (iii) **G.L. Bhatia** (supra). And this aspect is rightly pointed out by Mr. Chaudhury, the learned counsel for the petitioner in his argument and there appears to be substance in the same.

17. Under the aforementioned facts and circumstances, this Court is of the view that this petition is not maintainable and accordingly, the same stands dismissed.

18. In terms of above, this petition stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant