

GAHC010202702016



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

Case No. : Intest.Cas./4/2016

SMTI RUPJYOTI DUTTA BARUAH
D/O LATE DEHESWAR DUTTA, W/O SRI JITEN BARUAH, R/O DOIGRUNG,
DHULAKHAT GAON, P.O. DOIGRUNG, P.S. GOLAGHAT, DIST. GOLAGHAT,
ASSAM.

VERSUS

AMTI RITA DAS @ RITA DUTTA and ANR
C/O BIKASH MONDAL, R/O BISHNUPUR, P.O. LETEKUJAN, P.S.
NUMULIGARH, DIST. GOLAHAT, ASSAM. PRESENT AND PERMANENT
ADDRESS R/O 2 NO. DOIGRUNG, PURABANGLA, P.O. LETEKUJAN, P.S.
NUMULIGARH, DIST. GOLAGHAT, ASSAM, PIN NO. 785613

2:THE MANAGER

DOLAGURI TEA ESTATE
P.O. LETEKUJAN
P.S. NUMULIGARH
DIST. GOLAGHAT
ASSAM
PIN NO. 78561

Advocate for the Petitioner : MR.J BORAH, MR.S BARMAN,MS.A SARMA

Advocate for the Respondent : MR. M U MAHMUD, MR. M ALI,MR S ISLAM,MS. C
KALITA,MS K GOGOI,MR. M DUTTA (R2),MR. A BHATTACHARYYA (R2)

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 21.05.2024

Date of Judgment & Order : 21.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr. S. Barman, learned counsel for the appellant. Also heard Mr. M. N. Mahmud, learned counsel for the respondent No. 1 and Mr. M. Dutta, learned counsel for the respondent No. 2.

2. This is an appeal under Section 299 of the Indian Succession Act, 1925, read with Order 41 of the Code of Civil Procedure, 1908 against the judgment and order dated 22.12.2015 passed in Misc(S) Case No. 04/2010 by the learned District Judge, Golaghat.

3. The appellant in the present case instituted a Misc(S) Case No. 04/2010 under Section 192 of the Indian Succession Act, 1925, which was originally preferred by Smti. Maichena Dutta, wife of late Daheswar Dutta claimed right of succession to the debts and securities of late Dulal Chandra Dutta, son of late Daheswar Dutta, wherein, the present respondents were also arrayed as respondent. But during the pendency of the case and before cross-examination of the said petitioner Maichena Dutta died on 03.01.2011 and thereafter, the name of Smti. Rupjyoti Dutta Boruah has been substituted in place of the petitioner Maichena Dutta vide order dated 29.05.2013 and she accordingly submitted her written statement in the aforesaid case. But the claim of the

present appellant who impleaded herself as the claimant/petitioner, the learned District Judge, Golaghat had dismissed the petition vide the judgment and order dated 22.12.2015.

4. On being highly aggrieved and dissatisfied by the said impugned judgment and order dated 22.12.2015 passed by the learned District Judge, Golaghat in Misc(S) Case No. 04/2010, the appellant has preferred the present appeal for setting aside and quashing of the impugned judgment and order passed by the learned District Judge, Golaghat.

5. It is submitted by Mr. S. Barman, learned counsel for the appellant that the learned Court below committed serious error of law as well as facts while passing the impugned judgment without arriving at any conclusion on the basis of the issue involved in this case i.e., "*whether the respondent No. 1 is a wife of late Dulal Chandra Dutta and in releasing the provident fund amount the respondent No. 2 has properly verified and applied his mind*". But without considering the aspects of the case, the learned District Judge has passed the order dismissing the claim of the present appellant which is liable to be set aside and quashed.

6. It is further submitted by Mr. Barman, learned counsel for the petitioner that the respondent No. 1 is an unknown person and she is not the wife of late Dulal Chandra Dutta and in fact she is the wife of another man, namely, Sri Bikash Mondal and as such, she is not entitled to receive the provident fund of late Dulal Chandra Dutta. More so, the respondent No. 1 even after receiving the notice in the Misc(S) Case, she did not appear before the learned District

Judge nor contested the case by filing her written statement to prove herself to be the wife and nominee of late Dulal Chandra Dutta.

7. The respondent No. 2 in paragraph No. 14 of his written statement has stated that Assistant Labour Commissioner-cum-Controlling Authority under the payment of Gratuity Act, Golaghat, vide letter No. LGD.28/91/1991, dated 17.09.2009 informed the answering respondent No. 2 that since the deceased Dulal Chandra Dutta had made no nomination under the payment of Gratuity Act, therefore, as per Section 4(1) of the act, his legal heirs Smti. Maichena Dutta, mother and Smti. Rita Dutta, wife will be equally entitled to recover the gratuity being the legal heirs of late Dulal Chandra Dutta. But the learned trial Court below did not consider the vital aspects of the case and thus, he arrived at a wrong finding which is liable to be set aside and quashed.

8. As the respondent No. 1 did not appear before the learned District Judge and contest the case by filing her written statement or the evidence to prove herself to be the wife of late Dulal Chandra Dutta, but, the learned District Judge did not consider this aspects of the case and passed the order by dismissing the claim of the present appellant. He further submitted that the findings of the learned trial Court below are based on non-application of judicious mind and therefore, the same is liable to be set aside and quashed.

9. Mr. Barman, learned counsel for the petitioner submitted that the present appellant is the sister of the deceased and after the death of the original petitioner Maichena Dutta, the mother of the deceased; the present appellant had substituted her name by impleading herself as the petitioner. He further

submitted that the deceased was un-married man but the respondent No. 1 fraudulently shown herself as his wife only to grab the official benefits/provident fund etc., of the deceased Dulal Chandra Dutta. But, the learned trial Court below did not consider the fact that the respondent No. 1 is not the wife of the deceased and passed the order in her favour considering her to be the wife of the deceased and his nominee.

10. Mr. Barman further submitted that some false documents were filed before the authority concerned showing her as the nominee of the deceased. She also failed to produce next of kin certificate before the authority concerned as well as before the learned District Judge to consider that she is the legal heir of the deceased Dulal Chandra Dutta. The next of kin certificate which was issued by the concerned authority, also do not show the name of the respondent No. 1 in the next of kin certificate. After the death of the mother of the deceased Dulal Chandra Dutta, the present appellant is the only legal heir of the deceased and hence, she impleaded herself as the petitioner in the original suit after the death of the mother of the deceased Maichena Dutta.

10. Mr. Barman, learned counsel for the petitioner further submitted that even if for the argument side, it is considered that the name of the respondent No. 1 is shown as a nominee in his official document but in that case also the amount can be claim by the legal heirs of the deceased. The nomination does not confer any beneficial interest on the nominee. In this case, he also relied on the decision of the Apex Court passed in ***Civil Appeal No. 809/2002 (Shipra Sengupta vs. Mridul Sengupta & Ors.)*** and emphasized on paragraph No. 19 of the said judgment, which reads as under:

"19. In view of the clear legal position, it is made abundantly clear that the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case amounts so received are to be distributed according to the Hindu Succession Act, 1956. The State Bank of India is directed to release half of the amount of the Hindu Succession Act, 1956. The State Bank of India is directed to release half of the amount of general provident fund to the appellant now within two months from today along with interest.

11. On the other hand, Mr. M. Dutta, learned counsel for the respondent No. 2/Manager Dolaguri Tea Estate has submitted that the petitioner was the aunt of the deceased and she is no way entitled for any claim of official benefits of the deceased late Dulal Chandra Dutta.

12. Mr. Dutta, learned counsel further submitted that late Maichena Dutta earlier filed a petition before the Assistant Labour Commissioner-cum-Controlling Authority and on the basis of the said letter the tea garden authority furnished the report and the Commissioner was accordingly satisfied with the report and thereafter, the money was released in favour of the respondent No. 1.

13. Mr. Dutta, learned counsel further submitted that the respondent No. 2 also filed their written statement and contested the case and as per the respondent No. 2 based on the nomination form the money was released to the nominee who is the wife and nominee appointed for the purpose of settlement of the provident fund amount and late Dulal Chandra Dutta has nominated his wife Smti Rita Das @ Rita Dutta and executed the nomination form in her favour on 10.08.2002 in presence of the witnesses and the manager of Dolaguri Tea Estate and considering these aspects only the respondent No. 2 had released

the full share of the provident fund after the death of late Dulal Chandra Dutta and the entire amount towards settlement of the provident fund amounting to Rs. 2,61,950.150/- was released in her favour vide cheque No. 314107, dated 30.01.2006. Accordingly, Mr. Dutta, learned counsel has submitted that the respondent No. 2 has not committed any illegality while releasing the amount of provident fund in favour of the respondent No. 1 as she is the wife and nominee of late Dulal Chandra Dutta as per the official record.

14. Mr. Mahmud, learned counsel for the respondent No. 1 submitted in this regard that the appellant has no locus-standi to file this case. The mother-in-law late Maichena Dutta was entitled for share from the official benefits of the deceased Dulal Chandra Dutta being the mother of the deceased but the present appellant is not entitled to any service benefits of late Dulal Chandra Dutta, rather, she has no locus-standi to file the case as well as the present appeal.

15. Mr. Mahmud, learned counsel further submitted that the respondent No. 2 rightly released the provident fund amount in favour of the respondent No. 1 who is the wife and nominee of late Dulal Chandra Dutta and it reveals from the report of the Manager Tea Estate that late Dulal Chandra Dutta had nominated his wife Smti. Rita Das @ Rita Dutta (respondent No. 1) and executed the nomination form in her favour on 10.08.2002 last in presence of witness and the Manager, Dolaguri Tea Estate and hence, the respondent No. 1 is entitled to receive the full share of the amount of the provident fund in the event of death of Dulal Chandra Dutta to be paid by the concerned authority. He further submitted that the original petitioner Smti Maichena Dutta, who was the mother of the deceased, was also a legal heir of the deceased but the present petitioner who is the sister of the deceased has no locus-standi to claim for service

benefits of the deceased Dulal Chandra Dutta.

16. More so, the present appellant got married to another man, namely, Sri Jiten Dutta. As both the appellant and the respondents are the follower of the Hindu religion, they are govern by the Indian law and as per Section 8 of the Hindu Succession Act if in case of male dying intestate, the property will devolved as per Section 8 of the Hindu Succession Act and the class I heirs of the schedule of the Hindu Succession Act are his son, daughter, widow, mother, son of a pre-deceased son, daughter of pre-deceased son, etc., are included and the present appellant comes under the class II legal heirs and in presence of the class I legal heir, class 2 legal heirs has no authority to claim for any succession of the property as per Hindu Succession law.

17. Mr. Mahmud, learned counsel for the respondent No. 1 submitted that there is no reason to make any interference in the judgment and order passed by the learned District Judge, wherein, the learned District Judge has made a detailed discussion in regards to paper of nomination and other evidence on record and also considered the provision under Hindu Succession Act etc., and hence, there is no reason to make any interference in the judgment and order passed by the learned District Judge, Golaghat and the present appeal is liable to be dismissed.

18. After hearing the submissions made by the learned counsels for both sides, I have perused the case record as well as the judgment and order passed by the learned District judge, Golaghat.

19. The appellant of this case claimed herself to be the legal heir of the deceased and accordingly she also impleaded herself as party/petitioner in the Misc(S) Case No. 04/2010 after the death of the original petitioner Smti

Maichena Dutta. Late Maichena Dutta claimed the share of the service benefits of late Dulal Chandra Dutta who was her son and it is alleged that the present respondent No. 1 fraudulently received the entire amount towards the provident fund of late Dulal Chandra Dutta claiming her to be the wife and nominee. It is admitted fact that earlier the petitioner i.e., Maichena Dutta who was the mother of the deceased can be considered as class I heir as per the Hindu Succession Act and she is entitled to receive the service benefits of her son. But after her death the present appellant impleaded herself to be the petitioner stating that she is the only legal heir of the deceased Dulal Chandra Dutta being the sister of the deceased. The Manager of the Dolaguri Tea Estate was also made as opposite party No. 2 in the said Misc(S) Case No. 04/2010 with the allegation that the Manager of Tea Estate has released the provident fund amount without proper enquiry in favour of the respondent No. 1 who claim herself to be the wife/nominee of late Dulal Chandra Dutta.

20. It is seen that the respondent No. 2 contested the said case and filed their written statement stating that as per official record the respondent No. 1 is stated to be the wife and nominee of late Dulal Chandra Dutta and she is entitled to received full share amount of provident fund in the event of death of Dulal Chandra Dutta to be paid by the concerned authority and accordingly, the entire amount towards settlement of the provident fund amounting to Rs. 2,61,950.150/- was given in favour of the respondent No. 1 vide check No. 314107, dated 30.01.2006, which was accordingly sanctioned and approved by the Additional Provident Fund Commissioner, Board of Trustees, Assam, Nidhi Bhawan, Basistha, Guwahati.

21. However, it is seen that the respondent No. 1 who was made as opposite party No. 1 in Misc(S) Case No. 04/2010 did not contest the case even after

receiving of summon and the case proceeded ex-parte against her. But, the claim of the present appellant was dismissed by the learned District Judge, Golaghat vide its judgment and order dated 22.12.2015.

22. It is seen that though the present appellant claim that the respondent No. 1 is not the wife of the deceased and he died un-married and she obtained the service benefits by fraudulently claiming herself to be wife/nominee of the deceased Dulal Chandra Dutta. But from the record, it is seen that the present appellant could not substantiate the plea that the respondent No. 1 is not the wife/nominee of the deceased and accordingly, she is not entitled to be service benefits of the deceased Dulal Chandra Dutta. In absence of any such evidence, the learned District Judge, Golaghat had considered that the respondent No. 1 is the wife/nominee of the deceased Dulal Chandra Dutta and as per official records also the deceased nominated the respondent No. 1 as his wife and nominee in presence of the witnesses and in presence of the Manager Tea Estate and other persons.

23. It is the stand of the present appellant that she is the sister of the deceased and she is the only legal heir left by her deceased mother Maichena Dutta but, as per Hindu Succession Act, she can only be considered as class II legal heir and in absence of first class legal heir only she can claim the right of succession of the debt and securities left by the deceased Dulal Chandra Dutta. But, as the appellant failed to substantiate her plea, that the respondent No. 1 is not the wife/nominee of the deceased, she cannot claim over the debt and securities left by her deceased brother.

24. However, Mr. M. Dutta, learned counsel for the respondent No. 2 further submitted that Maichena Dutta was also the class I heir of the deceased Dulal Chandra Dutta and accordingly, she would have entitled 50% of the share from

the service benefits of her deceased son. After her death, the respondent No. 1 can only be considered as class I legal heir. Further, in presence of the class I heir, the appellant who is admittedly class II heir has no locus-standi to claim over the succession of the debt and securities left by her deceased brother. More so, it is admitted fact that she already got married with another person i.e., one Jiten Dutta.

25. As relied by the learned counsel for the petitioner, the Hon'ble Apex Court in Civil Appeal No. 809/2022 had observed that nomination does not confer any beneficial interest on nominee but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing by them. But, herein the instant case, it is seen that the respondent No. 1 is not only stated to be the nominee of the deceased but she can also be considered as class I legal heir and in presence of class I legal heir as per the Hindu Succession Act, the second class legal heir cannot claim the right of succession.

26. In view of the decision made above, I find that the learned District Judge, Golaghat committed no error and mistake to make any interference in the judgment and order dated 22.12.2015 in Misc(S) Case No. 04/2010 passed by the learned District Judge, Golaghat.

27. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, there shall be no order as to cost.

28. Send down the records to the learned Court below.

JUDGE

Comparing Assistant