

GAHC010216172024



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

Case No. : CRP(IO)/419/2024

AMAL KAKATI
S/O- LATE ADHIRAM KAKATI, R/O- SUTAR DEKA CHUK, MOUZA AND P.S.
KHATOWAL, DIST. NAGAON, ASSAM, PIN- 782003.

VERSUS

CHENIMAI BARUAH AND 4 ORS.
W/O- LATE BINADA CHANDRA BARUAH, R/O- VILL.- GUMUTHAGAON,
P.O. URIAGAON, P.S. NAGAON SADAR, MOUZA- SINGIAPUTONI, DIST.
NAGAON, ASSAM-782003.

2:JUNTI BARUAH (BORA)
D/O- LATE BINADA CHANDRA BARUAH
R/O- VILL.- GUMUTHAGAON
P.O. URIAGAON
P.S. NAGAON SADAR
MOUZA- SINGIAPUTONI
DIST. NAGAON
ASSAM-782003.

3:SUNTI BARUAH (BORA)
D/O- LATE BINADA CHANDRA BARUAH
R/O- VILL.- GUMUTHAGAON
P.O. URIAGAON
P.S. NAGAON SADAR
MOUZA- SINGIAPUTONI
DIST. NAGAON
ASSAM-782003.

4:NONI BARUAH (HAZARIKA)
D/O- LATE BINADA CHANDRA BARUAH
R/O- VILL.- GUMUTHAGAON
P.O. URIAGAON
P.S. NAGAON SADAR
MOUZA- SINGIAPUTONI
DIST. NAGAON
ASSAM-782003.

5:DULUMONI BARUAH
D/O- LATE BINADA CHANDRA BARUAH
R/O- VILL.- GUMUTHAGAON
P.O. URIAGAON
P.S. NAGAON SADAR
MOUZA- SINGIAPUTONI
DIST. NAGAON
ASSAM-782003

Advocate for the Petitioner : MS M D MEDHI, MS J KALITA

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

08.11.2024

Heard Ms. M.D. Medhi, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India read with Sections 115/151 of the C.P.C., the petitioner namely, Amal Kakati has put to challenge the correctness or otherwise of the Order dated 28.08.2024, passed by the learned Additional District Judge No. 2, Nagaon in Misc. (Revocation) Case No. 01/2022.

3. The grievance of the petitioner in this petition, is that vide order dated 28.08.2024, the learned Additional District Judge No. 2, Nagaon has allowed the Petition No. 2709/2023, filed by the respondents herein, under Section 65 of the

Indian Evidence Act, for production of the relevant volume book in respect of Will No. 33/2015 from the office of the Sub-Registrar, Nagaon, Sadar, as the petitioners in the aforesaid petition had alleged of fraud upon the court by manipulation of original Will submitted in the Probate Case No. 17/2015, by the present petitioner.

4. Ms. Medhi, learned counsel for the petitioner submits that only in order to cause delay in disposal of the Probate Case No. 17/2015 the respondents herein had filed the Petition No. 2709/2023 and the petitioner has been suffering since the year 2015. Ms. Medhi further submits that in the Probate Case No. 17/2015, probate has already been granted in favour of the present petitioner and since then, the Will is under the custody of the court and as such, the allegation of fraud upon the court and manipulation of the Will does not arise at all. Therefore, Ms. Medhi has contended to set aside the impugned order dated 28.08.2024, passed by the learned Additional District Judge No. 2, Nagaon in Misc. (Revocation) Case No. 01/2022.

5. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 28.08.2024, passed by the learned Additional District Judge No. 2, Nagaon in Misc. (Revocation) Case No. 01/2022.

6. It appears that the learned trial court in Probate Case No. 17/2015, has already granted probate of the Will No. 33/2015 on the petition filed by the present petitioner. Thereafter, the respondents herein filed a petition for revocation of the aforementioned probate and upon the said petition, Misc. Revocation Case No. 01/2022 has been registered and in the said proceeding, the respondents herein had filed one Petition No. 2709/2023, on 12.10.2023, under Section 65 of the Indian Evidence Act for calling of the concerned Volume Book from the office of the Sub-Registrar, Nagaon, Sadar, as the respondents herein have alleged manipulation

of the original Will and further alleged of fraud upon the court. It also appears that the learned trial court having found that if the Volume Book is not called for from the Office of the Sub-Registrar, Nagaon, Sadar, the petitioner/respondents herein will not be able to establish his/her case.

7. Having examined the impugned order dated 28.08.2024, in the light of the given facts and circumstances on the record and also in the light of the submission so advanced by the learned counsel for the petitioner, this court is of the view that no illegality or any jurisdictional error is committed by the learned trial court in calling the Volume Book from the Office of the Sub-Registrar, Nagaon, Sadar, as the respondents herein, in the Petition No. 2709/2023, has alleged of manipulation of the original Will No. 33/2015 and playing fraud upon the court.

8. It is to be noted here that right to fair trial is a fundamental right of both the parties. And in fair trial, fair opportunity has to be afforded to both the parties. If the Volume Book is not called for from the office of the Sub-Registrar, Nagaon, Sadar, then the respondents herein will be deprived of an opportunity to prove his/her case. So, denial of the opportunity to the respondents would amounts to denial of fair trial.

9. In the result, I find no merit in this petition. Accordingly, the same stands **dismissed**.

10. However, the learned Additional District Judge No. 2, Nagaon is directed to conclude the aforementioned proceeding as early as practicable.

JUDGE

Comparing Assistant