

GAHC030004582023



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

Case No. : RFA/32/2023

Sh Bhuwan Kumar Sarki
S/o Kharka Bahadur Sarki (L)
R/o Venghlui, Aizawl

VERSUS

Smt. Indira Devi
D/o Kharka Bahadur Sarki (L)
R/o Bungkawn Veng, Aizawl

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

Advocate for the Respondent : Mr Lalremtlunga

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

28.11.2024

Heard Mr. Jonathan Lalrintluanga, learned counsel for the appellant and Mr. Lalremtlunga, learned counsel for the sole respondent. This appeal is directed against the Order dated 12.06.2023 passed by the Senior Civil Judge II, Aizawl in Succession Case No. 196 of 2023 by which Succession Certificate was granted to the respondent herein in respect of savings bank account No. 10665660659

with a balance of Rs. 53,41,632/- in the State Bank of India, Mission Veng Branch, Aizawl and Pension PPO: MR/DAT/664 which is in the name of Sh. Mohan Kumar Sarki in favour of the respondent who is the sister of the deceased.

[2.] Be it stated herein that the deceased person, the appellant and the respondent are all siblings and on the demise of the deceased their brother Sh. Mohan Kumar Sarki, an application for succession was submitted by the respondent before the Court of Senior Civil Judge, Aizawl, claiming for a Succession Certificate in respect of the State Bank account, the pension of the deceased brother and also in respect of LSC No. 126/9/8 of 2023 located at Lakhipur Cachar, Assam. The respondent in order to substantiate and establish her claim examined Sh. Arjun Darnal, Smt. Arati Sarki, Smt. Indira Devi and Smt. Seema as her witnesses through an affidavit. The learned Trial Court thereafter passed the impugned Order dated 12.06.2023 and issued the Succession Certificate to the respondent.

[3.] Mr. Jonathan Lalrintluanga, learned counsel for the appellant submits that the appellant is the brother of the deceased person and also of the respondent and that he has every right to claim the properties left behind by his deceased brother. However, the respondent did not give the particulars of the relatives of

the deceased brother in her application submitted before the Senior Civil Judge and as such, without hearing the appellant, the learned Trial Court passes the impugned order and issued succession Certificate in favour of the respondent. He therefore submits that the impugned order as well as the Succession Certificate should be set aside and the matter remanded back for fresh consideration by giving an opportunity to the appellant to contest the claim for Succession Certificate.

[4.] Mr. Lalremtluanga, learned counsel for the respondent submits that the respondent being the sister of the deceased person, she has every right to the property left behind by the deceased brother. That out of the 3 (three) claims made by the respondent, only the bank account and the pension of the deceased was granted to the respondent. However, since the appellant soon after the issuance of the Succession Certificate filed the instant appeal, the respondent has not been able to enjoy the benefit of the Succession Certificate issued in her favour. He therefore submits that the instant appeal should be dismissed and the respondent be allowed to enjoy the benefit of the Succession Certificate.

[5.] I have heard the submissions made by the learned counsels for the rival parties. At the outset, it may be seen that the application filed by the

respondent is stated to be one under Section 372 of the Hindu Succession Act. However, the Hindu Succession Act, 1956 contains only 31 (thirty-one) sections in all. On the other hand, the Indian Succession Act, 1925 under Section 372 provides for submission of an application for the Succession Certificate. It therefore appears that the application that was tendered by the respondent is an application under Section 372 of the Indian Succession Act, 1925. It is further seen that as per the Section 372(1) of the Indian Succession Act, an application for certificate has to be made before the District Judge by way of a petition signed and verified on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908. It may further be seen that as per Section 372 (1) (c) of the same Act, the application should also contained the particulars of the family or other near relatives of the deceased and their respective residences. Under Section 372 (1) (d), it is also provided that the particulars about the right in which the petitioner/applicant claims is also to be provided in the application.

[6.] Coming to the application submitted by the respondent, it may be seen that the application has been filed before the Court of Senior Civil Judge and not before the District Judge. Secondly, the application does not contain the details of the family members and other near relatives of the deceased person

including the right of the applicant/respondent to the property of the deceased person. On the other hand, the present appellant claims to be the brother of the deceased person and therefore, in the absence of an opportunity given to the appellant and to other family members and near relatives of the deceased person before the issuance of the Succession Certificate, the impugned Order dated 12.06.2023 and the resultant Succession Certificate issued on 12.06.2023 is found to be not sustainable for lack of jurisdiction and for violation of the principles of natural justice.

[7.] In the result, the impugned Order dated 12.06.2023 and the Succession Certificate also dated 12.06.2023 issued under Succession Case No. 196 of 2023 are hereby set aside. The parties may approach the competent forum by filing appropriate application under the relevant provisions of law, if so advised.

JUDGE

Comparing Assistant