

THE HIGH COURT OF TRIPURA

AGARTALA

CRP No. 40 of 2009

Petitioner :

Smti. Aditi Debbarma (Ghosh),
W/o. Sri Mintu Ghosh,
D/o. Late Maharaja Kumar Nakshatra Bikram Kishore Debbarma
Vill. Lichubagan, P.O- Kathal Bagan,
P.S. West Agartala, Dist.-West Tripura.

By Advocate :

Mr. I. Chakraborty, Adv.

Respondents :

- 1. Sri Nakul Bikram Kishor Debbarman,**
S/o. Late Maharaja Bir Bikram Kishore Manikya Bahadur,
Resident of Palace Compound West, Agartala, West Tripura.
- 2. Sri Pradyot Bikram Kishore Manikya Bahadur.**
S/o. Late Maharaja Kirit Bikram Kishore Manikya Bahadur,
Resident of Ujjyanta Palace, Agartala, West Tripura.

By Advocates :

Mr. M. Kar. Bhowmik, Sr. Adv.
Mr. R. R. Dutta, Adv.
Ms. K. Biswas, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **4th February, 2015.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

Briefly stated the facts of the case are that Sri Nakul Bikram Kishore Debbarman and Sri Nakshatra Bikram Kishore Debbarman filed a petition under Section 372 of the Indian Succession Act, 1925 praying that a succession certificate be granted in their favour in respect of the estate of deceased Sri Sahadev Bikram Kishore Debbarman. The allegations made by the petitioners were that they were the sons of Late Maharaja Bir Bikram Kishore Manikya Bahadur and that the deceased Sri Sahadev Bikram Kishore

Debbbarman was their brother. It was alleged that Sri Sahadev Bikram Kishore Debbbarman died on 02.08.2006 and he left behind as his heirs, his three brothers, the two petitioners, Sri Nakul Bikram Kishore Debbbarman, Sri Nakshatra Bikram Kishore Debbbarman and Sri Kirit Bikram Kishore Manikya. It was stated that Sri Kirit Bikram Kishore Manikya also expired on 27.11.2006 i.e. after the death of Sri Sahadev Bikram Kishore Debbbarman but prior to the filing of the petition. According to the petitioners, the legal heirs of Late Kirit Bikram Kishore Manikya were the two petitioners and Sri Pradyut Bikram Kishore Manikya who was a nephew of the deceased. It was alleged that the petitioners were governed by tribal laws and that though they were members of the ruling family of the erstwhile kingdom of Tripura they being tribals were governed by tribal law. It was, therefore, contended that the petitioners being the step brothers of the deceased and Sri Pradyut Bikram Kishore Manikya being the nephew of the deceased were entitled for grant of succession certificate in respect of the estate of the deceased.

[2] Notice of this petition was issued to Sri Pradyut Bikram Kishore Manikya but the notice was never served upon him. Firstly, it was stated that he is residing at Shillong and was not available at Agartala and, therefore, the petitioners before the trial Court were directed to take steps for service of the said private respondent. Thereafter it appears that on 19.03.2008 an application was filed for issuing notice to the State Bank of India and then notice was issued to the State Bank of India but no attempt was made to serve Sri Pradyut Bikram Kishore Manikya. On 19.06.2008 the Civil Judge, Sr. Division without caring to see whether the private respondent, Sri Pradyut Bikram Kishore Manikya had been served or not directed that the petitioners may file an examination-in-chief on affidavit on the next date.

[3] Section 372 of the Indian Succession Act, 1925 (for short, the Act) reads as follows:

"372. Application for certificate. — (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]"

One of the essential requirements of Section 372 of the Act is that in the application to be filed by the petitioners claiming succession certificate they must give the names of the family members or the other near relatives of the deceased and their respective residences. The procedure to be followed while deciding a petition under Section 372 of the Act is laid down in Section 373 of the Act which reads as follows:

"373. Procedure on application.— (1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing

thereof and cause notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.”

Sub Section (1) of Section 373 of the Act clearly provides that where the Judge dealing with the succession and heirship application is satisfied that the application should be entertained he must cause notice of the application and date of hearing to be issued to any person who in the opinion of the Judge should be given notice. More importantly, the Act specifically provides that notice of the petition filed under Section 372 of the Act must be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf thinks fit and proper. There may be many cases in which there are no private respondents in a petition for grant of succession certificate, such as where all the close relatives jointly file an application for grant of succession certificate. Even then notice must be issued to the general public by posting the application in the court-house and

by publication of the notice in such manner as the Court deems fit. This publication should normally be done by publishing the notice in a newspaper having wide circulation in the area where the deceased was living.

[4] Petition for grant of certificate of succession may be filed on various grounds. The legal heirs may seek a succession certificate. Even the legatees under a Will in a State where the Will is not required to be probated under the law may claim succession certificate on the basis of the Will. Notice is necessarily required to be issued to the persons who may be directly or indirectly affected by the decision which may be passed in such application. The rights of some natural heirs may be affected. The law requires that notice must be given to all these persons and it is also the requirement of law that these affected persons have a right to be impleaded as parties and be heard in a claim petition.

[5] As far as the present case is concerned on going through the record I find that notice was in fact published in the newspaper, "VIVEK". It is also clear that notice was ordered to be issued to Sri Pradyut Bikram Kishore Manikya but he was not served and after some dates no effort was made to serve notice on him.

[6] In any event, on 1st July, 2008 the petitioner No.1, Sri Nakul Bikram Kishore Debbarman submitted his evidence by way of affidavit and he was also re-examined in Court. The matter was adjourned since the death certificate of Sri Nakshatra Bikram Kishore Debbarman had not been filed and the case was adjourned time and again for this purpose. Thereafter it appears that the present petitioner, Smt. Aditi Debbarman (Ghosh) daughter of Sri Nakshatra Bikram Kishore Debbarman filed a petition claiming that she

is the only child of Late Sri Nakshatra Bikram Kishore Debbarmar and as such is entitled to his properties.

[7] Be it noted that her name as the daughter of the deceased had not been reflected in the petition filed under Section 372 of the Act and till she filed the application the Court had no knowledge of this fact. It appears that during the course of hearing Smt. Aditi also produced a gift deed purported to have been executed by her father in her favour. This gift deed was, however, returned to the counsel by the learned Court along with survival certificate and death certificate without the Court even caring to record the details of the documents returned to the party and without even caring to keep photocopies of the documents on record. This Court on the administrative side vide notification No.F.40(24)-HCT/BENCH/MISC/2013/4769-70 dated 18th July,2013 has passed detailed instructions that what is the procedure to be followed when documents which have been filed by the party in Court are to be returned. Therefore, they need not be repeated in this case.

[8] The original petitioners filed written objections to the application filed by Smt. Aditi Debbarmar(Ghosh). By the impugned order the learned trial Court below has rejected her application to be impleaded as a party in the succession application and has held as follows:

*******Heard both sides at length.**

In view of authoratative book of Rajmala the tribals of Tripura are guided by patriarchal society norms. Moreover, the Gift deed submitted by the petitioner, Aditi Debbarmar executed by Maharaj Kumar Makshtra Bikram Kishore Debbarmar whereas the signature of Nakshtra Bikram Kishore Debbarmar of Gift deed and signature of Nakshtra Bikram Kishore Debbarmar in the original petition are not same as compared by this Court and creates doubt in the mind of this Court.

Thus the prayer filed by Aditi Debbarmar to be added as a party stands rejected.

Fix 30.7.09 for order”

[9] To say the least, the learned Court below rejected the application of Smt. Aditi Debbbrman(Ghosh), without even giving her a chance to prove her case. This Court at this stage is not expressing any opinion on the genuineness of the claim set up by other side. However, two things need to be stated. Firstly, when a party claims some right on the basis of customary law that custom must be pleaded and proved in accordance with law. It is not for this Court in these proceedings to guide the parties how a custom is to be proved but there are innumerable judgments both by the Apex Court and many other High Courts which clearly show that the party relying on custom must lead cogent evidence to show that the community to which the party belongs has been falling the custom from times immemorial and that such custom or usage is a practice which has evolved into law. Merely relying upon one text or the other is not sufficient to prove custom. The Court below has not even made reference to the provision of the Hindu Succession Act. Whether Hindu Succession Act will apply or tribal law will apply is not for this Court to decide and it is for the trial Court to decide this issue. But one thing is clear that the manner in which the Court has just brushed away the contention of Smt. Aditi Debbarman(Ghosh) is totally wrong.

[10] Secondly, it must be clearly spelt out in these proceedings that proceeding under Section 372 of the Act are against the world at large, they are proceedings in rem and any persons who shows the slightest interest in the estate of the deceased is bound to be made a party to the petition. The application for being impleaded as a party by the daughter could not have been rejected. That application had to be allowed and thereafter the trial

Court could have decided whether the daughter is entitled to inherit the property of her father or not?

[11] The trial Court in fact put the cart before the horse and decided the main issue against Smt. Aditi Debbarman(Ghosh) without even impleading her as a party in the proceedings. This is highly improper. The rights of Smt. Aditi Debbarman(Ghosh) have been decided against her without even giving her an opportunity of leading evidence to prove her case. The order under challenge has virtually disposed of the matter as far as the Smt. Aditi Debbarman(Ghosh) is concerned and, therefore, I am of the considered view that this petition under Section 115 of the CPC is maintainable.

[12] In view of the above discussion, the petition is allowed. The matter is remanded to be heard by the learned Civil Judge, Sr. Division, Court No.2, Agartala who shall now proceed to act as follows:

(1) He shall issue notice to Sri Pradyut Bikram Kishore Manikya on whom no notice had been served till date.

(2) He shall permit the petitioner, Smt. Aditi Debbarman (Ghosh) to be added as a party in the petition.

(3) After giving Sri Pradyut Bikram Kishore Manikya (if he appears before the Court) and Smt. Aditi Debbarman (Ghosh) an opportunity of filing their opposition in writing to the petition for grant succession certificate he shall frame issues and therefore, shall decide the matter after giving both the parties reasonable opportunity of leading oral and documentary evidence in support of their case.

Since the matter is an old one, the learned trial Court is directed to dispose of the matter as early as possible and in any event not

later than 31st March 2016. The parties who are present i.e. the petitioners and Smt. Aditi Debbarmar(Ghosh) are directed to appear before the learned trial Court on 2nd March, 2015 on which date the learned trial Court shall send notices to Sri Pradyut Bikram Kishore Manikya and fix the matter in the 1st week of April, 2015 and thereafter proceed as per law. The notice to Sri Pradyut Bikram Kishore Manikya can also be affixed at his residence at Agartala if he is not available.

[13] Petition is disposed of in the aforesaid terms. No costs.
 Send down the LCRs forthwith.

CHIEF JUSTICE