GAHC010192752019

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

Case No. : Tr.P.(C)./63/2019

JAYDEV NARZARY AND 2 ORS.
S/O- LT. JAGAT NARZARY, R/O. VILL.- SHILAKHUTI (SRPUR DEOR), P.O. PAMUA PATHAR, P.S.- MUSHALPUR, MOUZA- MUSHALPUR, DIST. BAKSA, BTC, ASSAM. PIN- 781377.

2: PRASENJIT NARZARY @ BULU NARZARY
S/O- LT. JAGAT NARZARY
R/O. VILL.- SHILAKHUTI (SRPUR DEOR)
P.O. PAMUA PATHAR
P.S.- MUSHALPUR
MOUZA- MUSHALPUR
DIST. BAKSA
BTC
ASSAM. PIN- 781377.

3: DWIMU NARZARY
D/O- LT. JAGAT NARZARY
R/O. VILL.- SHILAKHUTI (SRPUR DEOR)
P.O. PAMUA PATHAR
P.S.- MUSHALPUR
MOUZA- MUSHALPUR
DIST. BAKSA
BTC
ASSAM. PIN- 781377

VERSUS

CHAMPA BORO NARZARY
W/O- LT. BABUL BRAHMA, R/O- VILL. LAOKHATA, MOUZA- JALAH, P.S.- SIMLA, P.O. LAOKHATA, DIST.- BAKSA, BTC, ASSAM, PIN- 781330.

Advocate for the Petitioner : MR. S AHMED

Advocate for the Respondent : MR. S CHAUHAN

BEFORE
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

ORDER

Date : 03-12-2020

Heard Mr. S. Ahmed, learned counsel for the petitioners and also heard Mr. S. Chauhan, learned counsel appearing for the sole respondent.

2. This is an application under section 24 of CPC praying for transfer of the Misc. (S/C) Case No. 25/2018 pending before the District Judge, Udalguri to the court of learned District Judge, Baksa at Mushalpur.

3. The father of the petitioners' late Jagat Narzary who was serving as Sub-Inspector in Assam Police died while he was posted at Hari Singa Police Station in Udalguri district on12.07.2018. After his death, the respondent claiming to be the second wife of the deceased filed an application for issuing a succession certificate in the court of District Judge, Udalguri which was registered as Misc (S/C) No. 25/2018. Aggrieved by the fact that the petition was filed in the district of Udalguri and not at Baksa district, the petitioners are before this court by filing this transfer petition under section 24 of CPC.

4. Mr. S. Ahmed, learned counsel for the petitioners submits that after the death of their father and mother, the petitioners are without any income of their own, therefore, it would be financially difficult for them to contest their case in the court of District Judge at Udalguri. The learned counsel further submitted that the respondent in her petition praying for succession certificate has given her address as Village-Shilakhuti, P.S-Mushalpur in the district of Baksa. Therefore, it would be for the convenience of both the parties if the case is adjudicated by the District Judge at Baksa.

5. Mr. S. Chauhan, learned counsel for the respondent submits that the respondent is ordinarily a resident of Udalguri but at present she is residing at Guwahati. The learned counsel further submitted that the deceased Shri. Jagat Narzary resided within the district of Udalguri, his work place while he was alive, therefore, the District Judge at Udalguri is the right court to decide the case for succession certificate.

6. Section 371 of the Indian Succession Certificate Act, 1925 provides as follows;

- *"**371. The Court having jurisdiction to grant certificate;-** The District Judge within whose jurisdiction the deceased ordinarily resided 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 this **Part**."*

From the provision of the above section, it can be seen that the District Judge within whose jurisdiction the person of whom the succession certificate is applied for resided at the time of his death or the District Judge within whose jurisdiction any part of the property of the deceased may be found if that person had no fixed place of residence at the time of his death are the ones who has the jurisdiction to grant succession certificate.

It may be true that the deceased father of the petitioners was working at the Hari Singa Police Station under Udalguri district but his residence ordinarily was at Baksa. Therefore, this Court is of the view that as per the Act it is the District Judge at Baksa who should adjudicate the case for granting the succession certificate. Besides, in the petition for succession certificate filed by the respondent she had given her residential address withing Baksa district therefore, it would be for convenience of both sides that the court of District Judge at Baksa should adjudicate the petition for succession certificate.

7. In view of what has been stated above, the petition for transfer is allowed and accordingly, the District Judge, Udalguri is directed to transfer the Misc. (S/C) Case No.25/2018 to learned District Judge, Baksa at Mushalpur within 10 days from the date of receipt of a copy of this order. Further, it is also directed that the District Judge at Baksa should adjudicate the Misc. (S/C) Case No. 25/2018 as soon as the record is received.

Return the record.

JUDGE

Comparing Assistant