

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.20276 OF 2009

Biswa Ranjan Jena

....

Petitioner(s)

Mr.S.P.Mishra,Adv.

-versus-

Tribeni Dalai and anr.

....

Opposite Party(s)

Mr.N.P.Patra,Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
15.12.2022

Order No.

08.

1. Heard the submissions of respective Parties.
2. Short point involved herein, if the appeal against the order involving Intest Case No. 5 of 2006 was maintainable before the District Judge, Mayurbhanj? Challenge involved herein is the rejection order at Annexure-2 by the District Judge, Mayurbhanj observing the dismissal of the appeal on the ground of the maintainability.
3. Learned counsel for the Petitioner submits the question involved herein has been settled by this Court way back observing there is no bar in entertaining the appeal by the District Judge, Mayurbhanj. There is no dispute at bar to such legal position. This Court going through the decision of this Court in Loknath Bhoi Vrs. Gaya Prasad Bhoi and two others reported in 98(2004) CLT 328, finds the observation of the judgment in Para-9 as follows:-

“In between the Act, 1984 and the Succession Act, the later Act acquires the status as special statute to supersede on any matter if there is a

conflict of any legal provision. It is clear from Section 384 of the Succession Act that a succession certificate granted or revoked under Chapter-X of the Succession Act is acceptable to the High Court from an order of a District Judge. Section 388 in the proviso to Sub-section (2) clearly provides that “an appeal from any such order of an inferior Court as is mentioned in Sub-section(1) of Section 384 shall lie to the District Judge and not to the High Court”(underlined to put emphasis). Thus the provision in Section 16 is the general provision of procedure for prescribing the forum for appeal but that is superseded by the above noted proviso to Sub-section(2) of Section 388. For that reason perhaps in Section 20 of the Act, 1984 though it has been provided as to before whom an appeal shall lie against a judgment or order arising out of a proceeding under Indian Divorce Act, 1969, the Guardians and Wards Act, 1890, the Hindu Minority and Guardianship Act, 1956 and the Indian Lunacy Act, 1912 but in that List of Acts proceedings under Indian Succession Act, 1925 has not been added.”

4. For the settled position of law, there is no dispute at bar for such position, this Court finds the impugned order at Annexure-2 is not sustainable in the eye of law. Further, finding the appeal very much being maintainable before the District Judge, Mayurbhanj, this Court remands the appeal for re-adjudication by the District Judge, Mayurbhanj. Parties may appear before the District Judge, Mayurbhanj on 21st December, 2022 along with copy of this order and participating in the hearing process. Appeal proceeding since is of the year 2008, is directed to be disposed of at least within a period of three months from the date of appearance of both parties.

(Biswanath Rath)
Judge