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2026:GAU-AS:16055

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

Case No. : CRP(IO)/231/2026

SMT CHABI DEY
W/O SRI SHIV NATH DEY D/O. LATE NIRANJAN DAS RESIDENT OF KALIMANDIR PATH, OPP. GYAN SCHOOL, JYOTIKUCHI, P.O-ODALBAKRA, P.S-FATASIL AMBARI, DISTRICT-KAMRUP(M), ASSAM, GUWAHATI-781034.

VERSUS

SRI AJOY DAS AND ANR
SON OF LATE NIRANJAN DAS, RESIDENT OF CYCLE FACTORY. P.S- FATASIL AMBARI, P.O- GOPINATH NAGAR, GUWAHATI-781016

2:SRI BIJAY DAS
SON OF LATE NIRANJAN DAS
RESIDENT OF CYCLE FACTORY. P.S- FATASIL AMBARI
P.O- GOPINATH NAGAR
GUWAHATI-781016

::BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Petitioner : Mrs. B Sarkar, Advocate

For the Respondents :Mr.D Bhattacharjee, Advocate

Date of Hearing **: 15.10.2026**
Date of Judgment **: 03.11.2026**

JUDGMENT & ORDER

1. Heard Ms. B. Sarkar, the learned counsel for the petitioner. Also heard Mr. D. Bhattacharjee, the learned counsel for the respondent Nos. 1 and 2.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner, Smt. Chabi Dey impugning the order dated 10/03/2026 passed by the Court of the learned Additional District Judge No. 1,Kamrup (M) on an application filed by the present petitioner, which was registered as Petition Number 161/2026, in the Probate TS No. 13/2024, whereby the prayer for restoration of electricity connection in the shop room owned by the husband of the present petitioner was rejected.

3. The facts relevant for consideration of the instant case, in brief, are that the respondents have instituted a probate case, which was registered as Probate TS No. 13/2024, before the Court of the Additional District Judge No. 1, Kamrup (M) for grant of probate in their favor in respect of the last will dated 26/07/2006of their mother, Late Bhanuprava Das. The present petitioner along with three others, were made respondents in the said Probate Title Suit.

4. The property, which was bequeathed by the will of which the probate has been sought for by the respondents is described in the schedule to the probate application i.e. a plot of land measuring 2 kathas, 10 lechas

covered by Dag No. 1/135/ 130 of Patta No. 1 of village No. 1, Kahilipara Non-K, Green Wood Fee Simple Grant, under Mouza Beltola in the district of Kamrup (M), Assam.

5. Ms. B. Sarkar, the learned counsel for the petitioner submits that the shop room owned by the husband of the present petitioner is situated over the property, which is the subject matter of the will in the probate case. She further submits that, during the pendency of the probate proceeding, the respondents, on 10/01/2026, disconnected the electricity connection from shop No. 2, belonging to the present petitioner, which is run by her husband in the name and style of M/s. Akash Electricals, since 1982. She submits that the present petitioner, who is the defendant No. 3 in the Probate Title Suit No. 13/2024, filed an application under Section 151 of the Code of Civil Procedure in the aforesaid case for reconnection of the electricity supply in the shop room of the present petitioner. However, the Probate Court, by order dated 10.03.2026, has rejected the said prayer, and the said order has been impugned by the petitioner in the instant CRP (IO).

6. She submits that the probate court erred in dismissing the petition filed by the present petitioner under Section 151 of the Code of Civil Procedure, 1908 for restoration of electricity, mainly on the ground that the probate court does not have jurisdiction to grant relief sought for in the petition bearing No. 161/2026. She submits that as per Section 295 of the Indian Succession Act, 1925, in any probate proceeding, where the opposite party opposes the grant of probate, the said proceeding takes the character of a regular suit and provisions of Code of Civil Procedure, 1908 are applicable in such probate proceeding. She further submits that

in such a proceeding, the Probate Court can also pass an order of interim injunction under Section 269 of the Indian Succession Act, 1925.

7. She also submits that the said power may also be exercised by the court under Section 151 of the Code of Civil Procedure. Hence, she submits that the probate court was wrong in rejecting the application filed by the present petitioner, who is one of the defendants *(i.e., defendant No. 3)* in the Probate Title Suit, for restoration of electricity to the shop room situated over the property, which is the subject matter of the probate case.

8. In support of her submission, the learned counsel for the petitioner has cited a judgment of the Coordinate Bench of this court in the case of ***Dr. Rama Mukherjee (Bhowmik) -vs- State of Assam and another*** (Judgment dated 11.12.2012 passed in Review Petition No. 79/2011). The learned counsel for the petitioner has also relied on the judgment of the High Court of Patna in the case of ***Manoj Kumar Yadav and Anr vs Sudhir Kumar Yadav and Ors*** (judgment dated 08.09.2025 passed in First Appeal No. 134/2017).

9. On the other hand, Mr. D. Bhattacharjee, the learned counsel for the respondent submits that there is no error in the order of the probate court, which has been impugned in this CRP (IO). He submits that the shop room in question i.e., the shop No. 2 is owned by the husband of the present petitioner, who is not a party to the probate proceeding, as such, the Trial Court has rightly rejected the prayer for restoration of electricity.

10. He further submits that since the only question before the probate

court is to find out the genuineness of the last will of the mother of the respondents, hence the dispute pertaining to disconnection of electricity is beyond the purview of the probate court. He submits that since the petitioner is not the proprietor of the shop in question, from where the electricity connection has been disconnected and it belongs to someone else(her husband), the appropriate course would have been for the husband himself to approach the appropriate forum seeking redressal and the present petitioner does not have any *locus standi* to file an application for restoration of electricity connection. As such, he prays for dismissal of the instant CRP (IO).

11. I have considered the submissions made by the learned counsel for both sides and also gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both the parties in support of their respective submissions.

12. On perusal of the impugned order, it appears that the Probate Court has rejected the prayer for restoration of the electricity connection in the shop room where the husband of the petitioner is running the business by the name and style of M/s Akash Electricals, mainly on the ground that the dispute regarding electricity connection and payment of electricity bill by the present petitioner is beyond the purview of the jurisdiction of the Probate Court in the aforesaid Probate Title Suit. It was of the opinion that the Probate Court is concerned in the aforesaid Probate Title Suit only with the question as regards the genuineness of the Will dated 26.07.2006 of late Bhanu Prabha Das.

13. This Court does not find any infirmity in the impugned order passed by the Probate Court justifying any interference with the same by this Court

in exercise of its supervisory jurisdiction, for the following reasons.

14. Section 269 of the Indian Succession Act, 1925 provides for the power of the District Judge to interfere for protection of the property in respect of which the probate is yet to be granted. For the sake of convenience, the provisions contained in Section 269 of the Indian Succession Act, 1925 is quoted herein below:

> "***269. When and how District Judge to interfere for protection of property. —***
>
> *(1)Until probate is granted of the Will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property.*
>
> *(2)This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate."*

15. On perusal of the aforesaid provision, it becomes clear that though Section 269 of the Indian Succession Act, 1925 provides for the power and duty of the District Judge to interfere for interim protection of an un-

administered estate, however, there is a specific statutory bar in Section 269(2) of the said Act in case the deceased who bequeathed his property and whose Will is the subject matter of the Probate Title Suit is a Hindu, Muhammadan, Buddhist, Sikh, or Jaina, or an exempted person. This Court is of considered opinion that express statutory bar contained in Section 269(2) of the Indian Succession Act, 1925 operates as an express legislative prohibition. As such, in a probate proceeding involving a Will by Hindu, Muslim, Buddhist, Sikh, or Jain testators, the testamentary Court cannot bypass Section 269(2) by invoking Section 151 of the Code of Civil Procedure, 1908 (inherent powers) to issue protective interim injunction during the pendency of the probate proceedings. There is no dispute to the fact that the testator in the instant case is a Hindu.

16. In the instant case, apparently there is a dispute regarding payment of electricity bill by the proprietor of M/s Akash Electricals for last four years, and said dispute may not be a subject matter of the probate proceeding, and any party seeking substantive interlocutory injunction over the estate property may take recourse to instituting an independent civil suit under the Code of Civil Procedure where the question of irreparable injury can be properly adjudicated taking into consideration the rival contentions of both the parties. Further, in the present case, there is also a question as regards whether the aggrieved party has approached the Court seeking redressal or not. Though the petitioner has claimed that M/s Akash Electricals is her concern which is run by her husband, however, the respondent has contended that the husband of the petitioner is the proprietor of M/s Akash Electricals; however, he himself has not approached the Court. As such, the question of *locus*

standi of the present petitioner in seeking relief of restoration of electricity in the shop premises of which her husband is the proprietor is also a question to be looked into, and same cannot be the subject matter of a *lis* where the only question involved is with regard to the genuineness of the Will of late mother of the petitioner.

17. Moreover, it is also settled proposition of law that High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution of India, interfere with the orders of the Court inferior to it, nor can it, in exercise of this power, act as a Court of appeal over the orders of the Court subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as restraint on the exercise of the powers of the High Court under Article 227 of the Constitution of India.

18. In view of the discussions made and reasons stated in the foregoing paragraph, this Court is of the considered opinion that this is not a fit case to invoke the supervisory jurisdiction of this Court to interfere with the impugned order.

19. As such, the instant CRP (IO) is hereby dismissed.

20. The parties are left to bear their own costs.

JUDGE

Comparing Assistant

Nabajyoti Haloi

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