

**IN THE HIGH COURT OF MEGHALAYA AT  
SHILLONG**

**: ORDER :**

# FA No.1 of 2015

Smt. Matilda M. Sangma and Others ..... Appellants

- Versus -

Smt. Tripti Dariang ..... Respondent

**Date of Order:** :: **30.11.2017**

**PRESENT**

**HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE**

Shri HL Shangreiso, for the appellants  
Shri AH Hazarika, for the respondent

**BY THE COURT: (ORAL)**

By way of this appeal under Rule 3 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 2014 read with Sections 299 and 384 of the Indian Succession Act, 1925, the appellants have assailed the order dated 05.10.2009 as passed in Succession Case No. 1 of 2002 whereby the Judicial Officer, First Class Magistrate, District Council Court, Tura has dismissed their claim of succession to the estate of late Shri Sudhin M. Sangma.

The order impugned is assailed essentially on the ground that the learned Magistrate had no jurisdiction to deal with this case involving competing claims of succession between the appellants on one hand and the respondent on the other.

Having heard learned counsel for the parties and having perused the material placed on record with reference to the law applicable, this Court is satisfied that the order impugned suffers from inherent lack of jurisdiction and is, therefore, required to be annulled; and the matter

deserves to be restored for reconsideration in the proper forum. In this view of the matter, dilatation on all the factual aspects is not necessary and only a brief reference to the relevant background aspects would suffice.

The appellant No. 1 claims herself to be the wife of late Shri Sudhin M. Sangma, who expired on 21.01.1997 [hereinafter also referred to as 'the deceased']. It is alleged that though Shri Sudhin M. Sangma was initially married to the respondent but the respondent deserted him and left the matrimonial home along with her daughter; that the said Shri Sudhin M. Sangma resided alone for some time but thereafter, he and the appellant No. 1 started living as husband and wife without any hindrance from any quarter; and that three children (appellants No. 2 to 4) were born out of their relationship. It is further alleged that during the lifetime of deceased, the appellant No. 1 took all his care including that related with treatment during his ill-health and remained with him till his death; and that before his death, Shri Sudhin M. Sangma, left a Will dated 14.08.1996 by which, he bequeathed all his self acquired properties in favour of the appellant No.1.

After the demise of Shri Sudhin M. Sangma, the appellants applied for Letters of Administration in the Court of Additional District Magistrate (Judicial), West Garo Hills, Tura. These proceedings were registered as Letter of Administration Case No. 7 of 1997 and after receiving notice, the respondent filed her objections thereto. On the other hand, the respondent applied for grant of Succession Certificate in the Court of District Magistrate, West Garo Hills, Tura in respect of the debts and securities left by the deceased and these proceedings were registered as Succession Case No. 22 of 1997. It is the case of

the appellants that without serving any notice upon them and while concealing the existence of Will dated 14.08.1996, the respondent illegally obtained an order dated 25.08.1997 for issuance of Succession Certificate in her favour.

It is noticed that on acquiring knowledge of the said order dated 25.08.1997, the appellant No. 1 filed a petition for amalgamation of both the cases i.e., the Letter of Administration Case No.7 of 1997 and Succession Case No.22 of 1997 which was allowed and the matters were transferred to the Court of the Additional Deputy Commissioner, Tura who, by order dated 24.08.2000, revoked the earlier order dated 25.08.1997 for issuance of Succession Certificate in favour of the respondent.

The respondent challenged the aforesaid order dated 24.08.2000 in Civil Revision Petition No. 46 (SH) of 2000 before the then jurisdictional High Court<sup>1</sup> while questioning the jurisdiction of the authority concerned. The then jurisdictional High Court, in its order dated 06.05.2002, examined the Rules for Administration of Justice and Police in Garo Hills District, 1937; the Assam Autonomous District Administration of Justice (Miscellaneous Provisions) Act, 1957 and the Notification dated 30.01.1978, as issued by the Governor of Meghalaya; and found that such proceedings under Part X of the Indian Succession Act, 1925 in relation to the parties in question could have been tried only by the Judge, District Council Court and the Deputy Commissioner or his Assistants had no jurisdiction to deal with the matter. The High Court in its order dated 06.05.2002, inter alia, observed and held as under:-

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<sup>1</sup> Shillong Bench of Gauhati High Court.

*“.....On a conjoint reading of the relevant provisions of the 1937 Rules, the Notification dated 30.1.78 and Section 2 of the 1957 Act and the provisions of the Sixth Schedule to the Constitution of India, it is to be construed that The District Council court being a court constituted under sub paragraph 1 of paragraph 4 of the Sixth Schedule to the Constitution of India, for the purpose of exercise of power under Chapter X of the Indian Succession Act, 1925 in relation to parties who belong to the Scheduled Tribe within the areas of the Autonomous Districts of Garo Hills, it would be the Judge, District Council Court who alone can exercise the same, it being deemed to be a District Judge for the purposes of Part X of the said Act by virtue of the aforesaid notification. In view of the conferment of powers on the Judge, District Council Court, to act as the District Judge for the purposes of Chapter X of the Indian Succession Act, 1925 by the Governor in exercise of his powers under sub paragraph 1 of paragraph 5 of the Sixth Schedule to the Constitution of India, the general power of administering civil justice as available to the Deputy Commissioner, his assistants and the laskars as provided in 1937 Rules would stand abrogated to that limited extent. In that view of the matter, this Court is constrained to hold that the learned court below had no competence or jurisdiction to try the instant proceedings for grant of Letters of Administration. On that ground alone, the impugned order dated 24.8.2000 is liable to be set aside.”*

In view of the findings aforesaid, another submission was made on behalf of the present appellant that the Succession Certificate as granted in favour of the respondent was also required to be revoked for the same reason of want of jurisdiction of the authority concerned. Though this contention was not accepted by the High Court for the reason that grant of Succession Certificate to the respondent had not been challenged as such by the appellant but the Court found it just and proper to extend a liberty to the appellant to assail the aforesaid order of grant of Succession Certificate in a proper forum; and while permitting such steps to be taken within one month, the Court injected the respondent from realizing the assets and securities within this period. The Court concluded on the Revision Petition with the following observations and directions:-

*“14. Considering the fact that the parties claim themselves to be the legally married wives of Sudhin M Sangma and are staking their claims in respect of the moveable properties left behind by him, I deem it fit and proper to pass an order to the effect that the opposite party, if so advised, would take appropriate steps against the order of grant of Succession Certificate in a proper forum within a period of one month herefrom. It will be open for the learned court before which*

*such steps are taken, to pass necessary orders as it may think fit under law. For this period of one month, the petitioner would not act on the order granting Succession Certificate in her favour and withdraw and/or realize the assets and securities covered by the said Certificate. Any observation made by this Court in this matter would in any way influence the learned court below in deciding the claims of the parties on their merits.*

*15. With the above observations and directions, the petition is disposed of.”*

It is further noticed from the record after the aforesaid order of the High Court, the appellant submitted an application under Section 383 of the Indian Succession Act, 1925 for revocation of the Succession Certificate issued in favour of the respondent. Now, the matter was registered as ‘Succession Letters of Administrative Case No. 1 of 2002 of Garo Hills’ and was taken up for disposal by the Judicial Officer, First Class Magistrate, District Council Court, Tura who, by the order dated 21.05.2003, dismissed the application filed by the appellant essentially on the ground that the respondent was the legally wedded wife of Sudhin M. Sangma who could not have made any such Will in favour of the appellant No.1.

The appellant No.1 challenged the aforesaid order dated 21.05.2003 in Civil Revision Petition No.9 (SH) of 2003 in the then jurisdictional High Court that was considered and decided by the order dated 03.08.2007. The High Court found that the matter had not been examined by the subordinate Court as per the procedure envisaged by Sections 276, 278 and 283 of the Indian Succession Act, 1925 and hence, set aside the impugned order dated 21.05.2003 and restored the said Letter of Administration Case No.1 of 2002 for decision afresh in accordance with law. In this order dated 03.08.2007, though the Court took note of its earlier order as passed in Civil Revision Petition No. 46 (SH) of 2000, wherein it was clearly held that Judge, District Council Court alone had the jurisdiction to deal with such proceedings

under Part X of the Indian Succession Act, 1925 but it appears that the basic fact got overlooked that the Magistrate First Class was not the Principal Judge of District Council Court and could not have been equated with a District Judge for the purpose of Indian Succession Act, 1925. In the result, the matter again got restored to the Court of the Judicial Officer, First Class Magistrate, District Council Court, Tura, now as Succession Case No.1 of 2002; and the same was decided by the impugned order dated 05.10.2009 whereby, the learned Magistrate rejected the claim of the appellants after finding several faults in the Will propounded by the appellant No.1.

Assailing the order so passed by the Judicial Officer, First Class Magistrate, District Council Court, Tura, learned counsel for the appellant has contended that the learned Magistrate had no jurisdiction whatsoever to deal with the said succession case and has yet proceeded to decide the matter without taking conscious note of the substance of the directions of the High Court as also the fact that such power to deal with succession case lies only with the Judge, District Council Court or the Additional Judge, District Council Court. Learned counsel has also referred to the orders made by the Hon'ble Governor dated 30.01.1978 and 15.09.1988. Learned counsel for the respondent has, in all fairness, not disputed the legal position that the learned Magistrate had no jurisdiction to deal with the matter.

Having given thoughtful consideration to the submissions made, more or less *ad idem* by the learned counsel for the parties and having examined the aforesaid orders dated 30.01.1987 and 15.09.1988 as issued by the Hon'ble Governor with Section 370 of the Indian Succession Act, this Court has no hesitation in holding that the order

impugned suffers from inherent lack of jurisdiction and is, therefore, required to be annulled.

Reference to the background aspect makes it clear that the competing claims of the contesting parties as regards succession to the estate of late Shri Sudhin M. Sangma have gone through several rounds of litigation and despite two orders of the High Court, the matter is yet to be dealt with by the competent Court in accordance with law. Per the force of the order dated 06.05.2002, the matter regarding grant of succession certificate was required to be dealt with in the appropriate forum but unfortunately, the matter was taken up by the said Magistrate and was decided on 21.05.2003. The High Court again did not approve of this order dated 21.05.2003 and remitted the matter for decision afresh but unfortunately, the matter was again taken up by the said Magistrate though it had already been held, even in the earlier round of litigation, that the Judge, District Council Court alone was having the jurisdiction in the matter.

For the indisputable position that the concerned Magistrate had no jurisdiction to deal with the matter, it appears rather unnecessary to elaborate on the omissions at every stage where the question of jurisdiction was not attended at, despite the High Court having made it explicit and clear in the order dated 06.05.2002 that the matter was to be dealt in the proper forum.

Having regard to the circumstances, this Court is of the view that the only proper course in the matter is to set aside the impugned order and to restore Succession Case No. 1 of 2002 for its consideration by a competent Court.

Accordingly, this appeal is allowed to the extent and in the manner that the impugned order dated 05.10.2009 is set aside; and Succession Case No.1 of 2002 is restored to the file. However, this Succession Case No.1 of 2002, which was earlier taken up by the Judicial Officer, First Class Magistrate, District Council Court, Tura, shall stand transferred to the Court of the Judge, District Council Court, Tura for disposal in accordance with law.

The record of Succession Case No.1 of 2002 as received from the Court of Judicial Officer, First Class Magistrate, District Council Court, Tura be transmitted to the Court of Judge, District Council Court, Tura with a copy of this order. The parties through their respective counsel shall stand at notice to appear before the learned Judge, District Council Court on 23.01.2018.

In the interest of justice, it is made clear that this Court has not pronounced on the merits of the case either way; and the entire matter is left open for adjudication by the Judge, District Council Court, Tura in accordance with law.

No costs.

**CHIEF JUSTICE**