

IN THE COURT OF THE DISTRICT JUDGE :: TINSUKIA

Present: **Shri C. Das,**
District Judge,
Tinsukia

Misc. (Probate) Case No. 04 of 2020

Smti Anjali Das,

D/o Late Makhon Das,

R/o Bangali Baliyan Gaon, P.O. Talap,

P.S. Doomdooma,

District: Tinsukia, Assam

..... Petitioner

- Versus -

1. **Smti Phulkuwari Das,**

W/o Late Makhon Das.

2. **Sri Bimol Das.**

3. **Sri Amol Das.**

4. **Sri Tulsi Das.**

Respondent No.2, 3 and 4 are the sons of
Late Makhon Das.

Respondent No.1 to 4 are the residents
of Bangali Baliyan Gaon, P.O. Talap,
P.S. Doomdooma,
District: Tinsukia, Assam.

5. **Smti Kalpana Das,**
W/o Sri Sunil Bhuya,
R/o Ouguri Asamiya Balijan,
P.O. Rupai Siding,
District: Tinsukia, Assam.
 6. **Smti Salpana Das,**
W/o Sri Debashish Sen Gupta,
R/o Uchamati Kalibari Path,
P.O. Doomdooma,
District: Tinsukia, Assam.
 7. **Smti Ranjana Das,**
W/o Sri David Lakra,
R/o No.1 Mankhowa Gaon,
P.O. Rupai Siding,
District: Tinsukia, Assam.
 8. **Smti Dipali Das,**
W/o Sri Prodip Mahali,
R/o Bangali Balijan Gaon,
P.O. Bardalai Nagar (Talap),
District: Tinsukia, Assam
- Respondent No.5, 6, 7 and 8 are the daughters of Late Makhon Das.

..... Opposite Parties

Appearance:

Sri P. Bhowal, Advocate. For the Petitioner

None appears For the Opposite Parties

O R D E R

Date: 05.05.2022

1. This is a petition filed u/s 276/332 of Indian Succession Act by the above-named petitioner, praying for granting of Probate of the Will and Letter of Administration of Late Makhon Das, the father of the petitioner.

2. It is stated by the petitioner that Late Makhon Das, son of Late Honmotia Das Mahara was a permanent resident of Bongali Baliyan Gaon under Doomdooma P.S., Sub-Division Tinsukia, in the district of Tinsukia, who died on 20.05.2020 at his own residence due to his old age. Said Makhon Das executed a Will dated 27.10.2017 and said Will was duly attested by the witnesses, namely; Sri Cyprian Xelxo, son of Late Pius Xelxo, a resident of Khobang Gaon and Sri Ganesh Das, son of Maya Ram Das, resident of Bangali Baliyan Gaon. At the time of execution and attestation of the said original Will, said Makhon Das was in sound state of mind and health and same had been executed without any undue influence or force or coercion, in presence of the above-named witnesses and on the

request of the executor, the attesting witnesses also, put their respective signatures over the said Will as witnesses. The deceased Makhon Das during his lifetime and at the time of his death, was a Hindu, governed by Dayabhaga School of Hindu Law and customs and at the time of death, said Makhon Das had his fixed place of residence and properties at Bongali Balijan Gaon, Circle Office Doomdooma, P.O. Talap, P.S. Doomdooma, in the district of Tinsukia, Assam.

3. The immovable landed properties of said deceased Makhon Das is situated within the jurisdiction of this court and the schedule of the said immovable landed properties is shown as Schedule "A" of the petition. The estimated value of the said landed properties described in the Schedule "A" is about Rs.21,00,000/- and the amount of assets which is likely to come in to the hands of the petitioner is Rs.1,00,000/-, having no outstanding liabilities towards the said properties of the deceased Makhon Das.

4. It is further stated by the petitioner that during the lifetime, said Makhon Das, father of the petitioner, had two wives, namely; Smti Phulkuwari Das and Late Dipali Das. Out of the wedlock with Late Dipali Das, first wife (since deceased), the said deceased Makhon Das had begotten two sons, namely; Bimol Das (respondent No.2) and Amol

Das (respondent No.1) and also, begotten three daughters, namely; Smti Ranjana Das (respondent No.7), Smti Dipali Das (respondent No.8) and Smti Anjali Das (petitioner). Further, the deceased Makhon Das through his second wife; Smti Phulkuwari Das (respondent No.1) begotten two daughters, namely; Smti Kalpana Das (respondent No.5) and Smti Salpana Das (respondent No.6) and one son, namely; Sri Tulsi Das (respondent No.4). The petitioner is the daughter and the respondent No.1 is the second wife of the deceased Makhon Das, while the respondent No.2, 3 and 4 are the sons of the deceased Makhon Das and the respondent No.5, 6, 7 and 8 are the daughters of the deceased Makhon Das and all of them are residing permanently within the jurisdiction of this court. The name of the father and mother of the deceased Makhon Das was Late Hon Motia Das Mahara and Late Bhanumoti Das Mahara respectively and both of them expired long back, before the death of the deceased Makhon Das. The first wife of the deceased Makhon Das, namely; Late Dipali Das also, expired before the death of Late Makhon Das.

5. It is also, stated by the petitioner that through the Will and testament bearing instrument No.44 dated 27.10.2017, executed by Late Makhon Das and notarized before the Notary Public, namely; Sri Sanjeeb Lahkar, Regd. No.05, Tinsukia, as per his wish, desirous and personal volition and without any outside force, undue influence and coercion,

late Makhon Das distributed his estate/landed properties to his legal heirs, namely; Smti Anjali Das (petitioner), Smti Phulkuwari Das (respondent No.1), Sri Bimal Das (respondent No.2), Sri Amol Das (respondent No.3), Sri Tulsi Das (respondent No.4), Smti Dipali Das (respondent No.8), excluding his three daughters, namely; Smti Kalpana Das (respondent No.5), Smti Salpana Das (respondent No.6) and Smti Ranjana Das (respondent No.7). The petitioner is one of the universal legatee and executors of the said Will and is one of the beneficiaries of a part of the properties along with the respondent No.1, 2, 3, 4 and respondent No.8, which is described in the Schedule "A" of the petition and as such, the petitioner is entitled to the grant of Probate and Letter of Administration to the estate of the deceased Makhon Das. A copy of the Will is annexed herewith the petition.

6. Furthermore, it is stated by the petitioner that to the best of petitioner's knowledge and belief, no application for Probate and Letter of Administration of the said Will of the deceased Makhon Das or to his estate has been made before this court or to any other court of the State of Assam. The present petition for granting Probate and Letter of Administration of the last Will of the deceased Makhon Das has been made bonafide, without suppressing any material facts. Hence, the petitioner filed this petition,

praying for granting probate of the Will and letter of administration of the estate of Late Makhon Das.

7. After filing of the instant petition, notices were issued to the opposite parties/ respondents. The opposite parties in spite of receipt of notices, did not turn up to contest the case. Hence, the case proceeded *ex parte* against all of them.

8. Thereafter, the petitioner filed her evidence-in-affidavit in support of her case. She reiterated the same facts, what have been contended in her petition. She exhibited the death certificate of Late Makhon Das and the Will, which are marked as Ext.1 and 2 respectively.

9. The petitioner also, adduced the evidence of one of the attesting witnesses of the Will vide Ext.2, namely; Sri Cyprian Xalxo, in support of her case as PW2. Said PW2 stated that the Will dated 27.10.2017 was duly executed by the deceased Makhon Das and it was duly attested by him and Sri Ganesh Das. At the time of execution and attestation of the said Will, said Makhon Das was in sound state of mind and health and same was executed without any undue influence or force or coercion, in presence of him and Sri Ganesh Das and on the request of the executor, he (PW2) along with witness Ganesh Das put their respective

signatures over the said Will as witness No.1 and 2 respectively. PW2 stated further that the said Will and testament bearing instrument No.44 dated 27.10.2017 was executed by the deceased Makhon Das and notarized before the Notary Public, Tinsukia, as per his wish, desirous and personal volition and without any outside force, undue influence and coercion, distributed his estate/landed properties to the petitioner and to his other legal heirs, namely; Smti Phulkuwari Das (respondent No.1), Sri Bimal Das (respondent No.2), Sri Amol Das (respondent No.3), Sri Tulsi Das (respondent No.4), Smti Dipali Das (respondent No.8), excluding his three daughters, namely; Smti Kalpana Das (respondent No.5), Smti Salpana Das (respondent No.6) and Smti Ranjana Das (respondent No.7). The petitioner is one of the universal legatee and executors of the said Will and one of the beneficiaries of a part of the properties along with the respondent Nos.1, 2, 3, 4 and 8.

10. I have heard the argument being advanced by the learned counsel for the petitioner and carefully perused the materials available with the record. Apparently, from the evidence of the petitioner supported by PW2 makes it clear that the petitioner is one of the legal heirs of late Makhon Das who executed will vide Ext.2 in sound mind and health and without any kind of outside influence or force. The evidence of the petitioner and PW2 remains unshaken and without any rebuttal. Hence, it is clear that the petitioner is

one of the beneficiaries along with opposite party No.1, 2, 3, 4 and 8 of the properties left by late Makhon Das, described in schedule-A to the petition and as such, the petitioner is entitled to get probate and letter of administration to the estate of her late father Makhon Das in terms of Ext.2. So, the petition of the petitioner is allowed.

ORDER

11. Issue probate and letter of administration in favour of the petitioner in respect of properties left by late Makhon Das, which is fully described in schedule-A to the petition as per the will vide Ext.2 after deposit of proper court fees and valuation of the said properties. The instant case is disposed of.

District Judge
Tinsukia