(1991) 04 GAU CK 0008

Gauhati High Court (Agartala Bench)

Case No: Civil Revision No. 239 of 1988 (Re No. 15 of 1988)

Subrata Gupta		APPELLANT
	Vs	
Priya Brata Gupta & Ors.		RESPONDENT

Date of Decision: April 11, 1991

Acts Referred:

- Succession Act, 1925 - Section 247, 247

Citation: (1993) GLR 17 Supp

Hon'ble Judges: S.K.Homchaudhuri, J

Bench: Single Bench

Advocate: D.B.Sengupta, S.Deb, S.M.Chakraborty, S.Saha, T.K.Dey, B.Das, D.B.Das Gupta, B.Debnath, A.C.Bhowmik, Advocates appearing for Parties

Judgement

1. In this petition under section 115 C.P.C. the petitioner has impugned the order dated 24.3.88 passed by the learned District Judge, North Tripura, Kailashahar, in Civil Misc. Case No. 2 (Letters of Administration) of 1985. By the impugned order learned District Judge cancelled the earlier order by which the petitioner was appointed as Administrator pendente lite and appointed another beneficiary Sri Priya brata Gupta, respondent No. 1 as Administrator pendente lite in respect of Sarala Tea Estate which is subject matter of Misc. Case No. 2 (Letters of Administration) of 1985.

2. I have heard Mr. B. Das, learned counsel for the petitioner and Mr. S. Deb, learned counsel for the opposite parties. Mr Das has assailed the impugned order on the following grounds;

a) Learned court below in passing the impugned order has acted illegally and without jurisdiction inasmuch as such order of cancellation and appointment can only be passed in exercise of power under section 269 of the Indian Succession Act, 1925 (hereinafter referred to as the Act). But ostensibly the testator was a Hindu and the beneficiaries are also Hindus. So power under section 269 of the Act could not

be exercised by the learned District Judge.

b) The interim order appointing the petitioner as Administrator pendente lite of the Sarala Tea Estate was passed in exercise of power under section 247 of the Act. Section 247 contemplates that every such administrator shall be subject to the immediate control of the Court and shall act under its direction. After getting the allegations, the learned District Judge was in duty bound to investigate into the correctness of the allegations and to issue appropriate direction to the petitioner and the impugned order has been arbitrarily passed without complying with the mandates of section 247 of the Act. As such, learned court below acted illegally and with material irregularity in the exercise of jurisdiction duly vested in law.

c) The impugned order was passed on the basis of the allegation made on 22.3.88, that is, two days after the allegation was made and no reasonable opportunity was given to the petitioner to rebut the allegation. As such, the impugned order is arbitrary and is vitiated by denial of reasonable opportunity to the petitioner which has caused grave failure of justice.

3. Mr. S. Deb, learned counsel for the opposite parties on the other hand has submitted that the revision application is not maintainable and should be rejected in limine. Mr. Deb has drawn my attention to section 299 of the Act and has submitted that in view of the provisions of section 299, an appeal lie and, as such, the application under section 115 CPC is incompetent. Mr. Deb has submitted that even if the revision petition is competent, the learned court below has committed no error of jurisdiction in passing the impugned order which merits interference under section 115 CPC. Mr. Deb has further submitted that under section 247 of the Act the learned District Judge appoints an administrator pendent lite just to manage the subject matter of the will so that properties involved are maintained and protected during the pendency of the application for probate/Letter of Administration. It is not mandatory that the Administrator should only be one of the beneficiaries under the will and that any body can be appointed by the learned court and the Administrator is to work under the control of the court and act under the direction of such Administrator docs not have any vested right to hold the post and that if the court is satisfied that the Administrator, so appointed, is not managing the property properly, he has every right to remove him and to appoint another Administrator. The impugned order has not visited the petitioner with any civil consequences. Mr. Deb has also drawn my attention to the order sheets and has submitted that as early as on 18.7.85 the opposite parties no. 1 brought to the notice of the court about mismanagement of the garden by the petitioner. This was followed by another complaint on 24.3.86. Admittedly, the petitioner did not file any written statement denying and rebutting the allegations. Rather it appears from the order sheet that the petitioner resorted to taking adjournment solely on the ground of illness for more than a year and the allegations contained in the complaint dated 24.3.86 could not be heard by the learned court in spite of fixing a number of dates,

no prayer for filing written statement against the allegations was made. Ultimately another complaint was filed by the opposite party on 22.3.88. From the impugned order it is clear that the learned District Judge has taken into consideration the allegations made earlier on 24.3.86 as well. It is also apparent from the order sheet that the learned counsel for the petitioner was fully heard by the learned court on 23.3.88 before passing the impugned order on 24.3.88. The impugned order is also not solely based on the allegations made on the petition dated 22.3.88 but on allegations made earlier. As such, the petitioner had full opportunity to file objection against the allegations made as early as in the year 1986 and to deny the same, but he did not do so. As such, denial of reasonable opportunity to the petitioner does not arise. Mr. Deb has submitted that the learned court passed the impugned order to protect the interest of all the beneficiaries and that the order has not been passed in exercise of power under section 269 of the Act. The petitioner was appointed by the learned court as Administrator pendente lite in exercise of power under section 247 of the Act and as such, the learned court has the power to remove him also.

4. I have considered the submissions made on behalf of he petitioner as well as on behalf of the opposite parties, I have also perused the impugned order and other materials on record. On the question of maintainability of the revision application, Mr. Das has submitted that even if the application is not maintainable, the Court has power to convert the revision application as appeal for the ends of justice. On the question of maintainability of the petition it is appropriate to quote section 299 of the Act:

"299. Appeals from orders of District Judge Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals." On a plain reading of this section it cannot but held that an appeal lies against the impugned order. As such, there is sufficient force in the submissions made on behalf of the opposite parties that the Civil Revision petition is not maintainable. Instead of rejecting the petition on the ground of maintainability, let me see whether the impugned order merits interference even if the revision petition is taken as appeal.

5. The submission made on behalf of the petitioner that the impugned order is illegal and without jurisdiction has no force inasmuch as the learned District Judge having appointed the petitioner in the exercise of power under section 247 of the Act has the power to remove him from the post of Administrator. It appears from the records that the petitioner made an application in the court of learned District Judge, North Tripura under section 276 of the Act, for granting ''Letter of Administration'' in respect of properties involved in the will stated to have been executed by his father Late Pulin Behari Gupta. The said application registered as Misc. Case No. 2 (Letter of Administration) of 1985, is pending for disposal by the

said court. By order dated 14.5.85, the learned District Judge appointed the petitioner one of the beneficiaries of the WUF as Administrator pendent lite in the exercise of power under section 247 of the Act. The opposite party No. 1 after receipt of notice filed an objection on 13.9.85. Opposite party No. 1 made allegations before the learned court that the petitioner was mismanaging the Sarala Tea Estate and the Tea Estate became bankrupt due to his mismanagement. Opposite party No. 1 also alleged that the petitioner did not pay government taxes, dues phone charges etc. But the learned District Judge, by order dated 1.4.86 held that there was no detail allegation and as such he did not find sufficient ground to revoke the order dated 14.5.85. In the said order the learned District Judge, however, observed that if the opposite party would submit lapses and misdeeds on the part of the petitioner, these would be considered in appropriate time. Thereafter, the opposite party No. 1 filed another written allegations and prayed for cancellation of the order appointing the petitioner as Administrator pendente lite and that by order dated 3,1.87, learned District Judge fixed 17.1.87 for hearing of objection holding the matter as urgent. Although number of dates, adjournment of hearing was sought on behalf of the petitioner on the ground that he was out of station at Calcutta for treatment of his eye. Such prayer for adjournment continued for a long period exceeding a year. Admittedly, the petition did not deny or rebut the allegations of mismanagement and misappropriation of Tea garden properties in writing. Another petition was filed and moved on 22.3.88 for cancellation of the order appointing the petitioner as Administrator pendente lite and the entire matter was heard on 23.3.88 and the learned District Judge after conclusion of the hearing passed the impugned order. I have perused the impugned order. It is apparent that the impugned order has not been passed solely on the allegations made on 22.3.88.The learned District Judge has taken into consideration the allegations of lapses and misdeeds on the part of the petitioner as made earlier in respect of which he fixed number of dates of hearing. As such, the contention of the petitioner that the impugned order has been passed denying reasonable opportunity to meet the allegations, has no force. The learned District Judge has given cogent reasons and grounds for arriving at the decision that continuation of the petitioner as Administrator pendente lite of the Sarala Tea Estate was detrimental to the interest of the Tea Estate. Learned Judge found that the petitioner made advertisement in the local paper on 5.3.86, for sale of land of the Tea Estate for which he had absolutely no authority. The petitioner in para30 of the affidavitinreply in this petition filed on 9.5.89, has admitted that he did not submit any account to the learned court below and there were unintentional laches on his part. He has also admitted that under compelling situation he had to declare lock out of the Sarala Tea Estate on 13.1.86 under his management. The contention made on behalf of the petitioner that before passing the impugned order it was mandatory on the part of the learned District judge to issue necessary direction to the petitioner is without any force. Because section 247 provides that the Administrator so appointed shall be subject to the immediate control of the court and shall act under the direction of court, it cannot be said that in spite of

lapses and misdeeds on the part of the Administrator the court cannot remove him but should give the direction.

6. From what has been stated above, I do not find any infirmity in the impugned order which merits interference even in the exercise of appellate jurisdiction under section 299 of the Act by treating the petition as an appeal.

The petition is, therefore, without merit and is dismissed with costs. I assess the costs at Rs. 500/.