



2026:GAU-AS:11991

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRP/114/2025

1. Punam Kashyap Sarmah,
S/o Late Amarendra Kumar Sarmah,
R/o No. 1, Borpathar, NaholiaTengaghat,
District-Dibrugarh, Assam,
Pin-786103.
2. Preetam Kashyap Sarmah,
S/o Late Amarendra Kumar Sarmah,
R/o No. 1, Borpathar, NaholiaTengaghat,
District-Dibrugarh, Assam.
Pin-786103

.....Petitioners

-Versus-

1. Smt. Karabika Kashyap Sarma,
W/o Sri Nabajit Barman,
R/o New Development,
Jyotinagar, Tinsukia,
District-Tinsukia, Assam.

.....Respondents

For Petitioner Mr. K. K. Dey, Advocate.

For Respondent(s) Mr. G. Khandelia, Advocate.

Date of Hearing : **20.08.2026**

Date of Judgment : **20.08.2026**

BEFORE**HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA****JUDGMENT AND ORDER**

- [1]** Heard Mr. K.K. Dey, the learned counsel appearing on behalf of the petitioners. Also heard Mr. G. Khandelia, the learned counsel for the respondent.
- [2]** This application under Section 115 of the Code of Civil Procedure, 1908, has been filed by the petitioners, Sri Punam Kashyap Sarmah and Sri Preetam Kashyap Sarmah, impugning the order dated 13.11.2024, passed by the court of learned Additional District Judge (FTC -2), Tinsukia in Misc(J). Case No. 26/2023, arising out of Misc. (Succession) Case No. 17/2021, whereby the succession certificate granted to the petitioners by the court of learned Additional District Judge, (FTC-2), Tinsukia, by its order dated 13.11.2024, passed in Misc. (Succession) Case No. 17/2021, was set-aside.

- [3]** The facts relevant for consideration of the instant revision petition, in brief, are that both the petitioners are the sons of Late Amarendra Kumar Sarmah of village Naholia in Dibragarh District. It is pertinent to mention herein that the respondent is the daughter of Late Amarendra Kumar Sarmah and as such, the petitioners and the respondent are brothers and sisters in relationship. Late Amarendra Kumar Sarmah expired on 27.10.2020 and after his demise, both the petitioners had filed an application under Section 372 of Indian Succession Act, 1925 for grant of succession certificate in respect of debts and securities left by their deceased father. The said case was registered as Misc. (Succession) Case No. 17/2021.
- [4]** It is pertinent to mention herein that the present respondent, who is the daughter of Late Amarendra Kumar Sarmah, was not made a party in the said case, rather it was pleaded in the application filed by the present petitioners, under Section 372 of the Indian Succession Act, 1925, that the present petitioners are the only legal heirs of Late Amarendra Kumar Sarmah. By its order dated 30.11.2021, passed in Misc. (Succession) Case No. 17/2021, the court of learned Additional District Judge (FTC), Tinsukia had initially granted the succession certificate in favour of the present petitioners.

- [5]** Thereafter, on 01.11.2023, the present respondent had filed an application under Order IX Rule 13 of the Code of Civil Procedure, read with Section 151 of the said Code, praying for setting aside the *ex parte* order dated 30.11.2021. On the basis of the said application filed by the respondent, the Misc.(J) Case No. 26/2023 was registered. Thereafter, by order dated 30.11.2021, the court of learned Additional District Judge (FTC), Tinsukia had allowed the application filed by the present respondent and set aside the order dated 30.11.2021 thereby, revoking the succession certificate which was granted to both the present petitioners.
- [6]** Mr. K.K. Dey, the learned counsel for the petitioners has submitted that the court of learned Additional District Judge, Tinsukia has erred in setting aside the order dated 13.11.2024 on the basis of an application filed by the respondent under Order IX Rule 13 of the Code of Civil Procedure, in as much as the present respondent was not even made party to the Misc. (Succession) Case No. 17/2021, therefore, he submits that the question of proceeding *ex parte* against a person who is not made a party in such a proceeding does not arise.

- [7]** He submits that since the Indian Succession Act, 1925 contains a specific provision for revocation of succession certificate, hence, if the present respondent was aggrieved with the issuance of succession certificate, she ought to have filed an appropriate application under Section 383 of the Indian Succession Act, 1925. He submits that the court of learned Additional District Judge, Tinsukia had erred in ignoring these aspects while setting aside the order by which succession certificate was granted to the petitioners.
- [8]** The learned counsel for the petitioners further submits that before his death the father of the present petitioners had executed a WILL on 9th September, 2019 wherein he had bequeathed his landed properties and shops in favour of the present petitioners and nothing was bequeathed to by the deceased father of the petitioners to the present respondent on the ground that she got married long time ago and is living happily in her matrimonial home and the father had already gifted her money earlier in the form of fixed deposit and insurance policy as well as other valuable jewellerys, therefore, he decided not to give her any share in the property mentioned in the schedule of the WILL.

- [9]** The learned counsel for the petitioners further submits that the present petitioners have also filed a Probate Case before the court of learned Additional District Judge, Tinsukia. As such, they had filed an application before the court of learned Additional District Judge, Tinsukia to stay the proceeding of Misc(J). Case No. 26/2023 till disposal of the said Probate Case. However, said prayer was not allowed by the court of learned Additional District Judge, Tinsukia and the succession certificate was revoked.
- [10]** The learned counsel for the petitioners submits that the petitioners may not have any objection if the respondent files an appropriate application before the appropriate court for revocation of the succession certificate and if same is done, they may contest the said case. Under aforesaid circumstances, it is submitted by the learned counsel for the petitioners that the impugned order dated 13.11.2024 is liable to be set aside and quashed.
- [11]** On the other hand, Mr. G. Khandelia, the learned counsel for the respondent has submitted that the court of learned Additional District Judge, Tinsukia has rightly set aside the order dated 13.11.2024, passed in Misc.(Succession) Case No. 17/2021, whereby, the succession certificate was granted to the present

petitioners as it is apparent from the impugned order that the petitioners played fraud upon the court and suppressed material facts from the court by stating that they are the only legal heirs of deceased Late Amarendra Kumar Sarmah. He submits that in suppressing the material fact before the court, the petitioners have also committed an offence under Section 198 of Indian Penal Code, as provided in Section 372(2) of the Indian Succession Act, 1925.

[12] The learned counsel for the respondent submits that though the respondent could have also approached the court which issued the succession certificate by filing an application for revocation of the certificate under Section 383 of the Indian Succession Act, 1925, however, the filing of an application for setting aside the order which was passed *ex parte* against the present respondent is also maintainable in view of the decision of the Apex Court in the case of "**Deepesh Maheswari And Anr. Vs. Renu Maheswari And Ors.**" reported in "**2023 Supreme (SC) 332.**"

[13] He submits that in the aforesaid case, the Apex Court under similar circumstances had allowed an application under Order IX Rule 13 of the Code of Civil Procedure and set aside the *ex parte* order granting succession certificate in that case. He further submits

that the since the respondent is a legal heir of deceased Late Amarendra Kumar Sarmah and she was not made a party in the Misc. (Succession) Case No. 17/2021 and since the judgment dated 13.11.2024, passed in the said case was an *ex parte* order, as indicated in Paragraph No. 7 of the said order, he submits that an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 is maintainable and no infirmity is there in the impugned order. Hence, he prays for dismissing the instant revision petition.

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

[15] On perusal of the materials on record, it appears that though the present petitioners in their application filed under Section 372 of the Indian Succession Act, 1925 before the trial court on the basis of which Misc. (Succession) Case No. 17/2021 was registered, had pleaded that they are the only legal heirs of the deceased Late Amarendra Kumar Sarmah, however, the materials on record clearly indicates that the said statement is a false statement made by the petitioners in the said application.

- [16] It is apparent from the materials on record that the respondent Smt. Karabika Kashyap Sarma is the sister of the present petitioners and daughter of the deceased Amarendra Kumar Sarmah. Hence, she ought to have been made a party in the Misc. Succession Case No. 17/2021. The observations made by the court of learned Additional District Judge, Tinsukia in the impugned judgment that the present petitioners fraudulently and willfully concealed the fact of the existence of another legal heirs of deceased Late Amarendra Kumar Sarmah, i.e., the respondent, who is his daughter, cannot be faulted with on any count.
- [17] The question that as there is a specific provision is there in the Succession Act under Section 383 of revocation of the succession certificate, the respondent ought to have preferred an application under the said provision also is not of much relevance in as much as the fact remains that the court of the learned Additional District Judge proceeded *ex parte* against the present respondent in Misc. (Succession) Case No. 17/2021. In light of the finding of the Apex Court in the case of "**Deepesh Maheswari And Anr. Vs. Renu Maheswari And Ors.**" (supra) wherein, it was held that an application under Order IX Rule 13 of the

Code of Civil Procedure, 1908 is also maintainable where the case for grant of the succession certificate is proceeded *ex parte* without making a legal heir of the deceased a party to case. In the aforesaid case, the Apex Court had quashed the succession certificate granted in a succession case which proceeded *ex parte* against the legal heirs, who was minor at the time of grant of succession certificate. As such, this court finds no fault in the impugned order, whereby the succession certificate granted to the present petitioners on 13.11.2024, passed in Misc. (Succession) Case No. 17/2021 has been set aside.

[18] In view of the discussions made and reasons cited in the foregoing paragraphs, this court finds no grounds to interfere in the impugned order.

[19] Accordingly, this revision petition is dismissed.

[20] The parties are left to bear their own cost.

JUDGE

Comparing Assistant