

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 12 of 2022

Date of Decision: 18.08.2022

Smti. Bernadeth Marwein

Vs.

Smti. Cynthia Khongwet

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. R. Kharshiing, Adv.

For the Respondent(s) :

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. This Revision Application under Rule 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 2014 read with Article 227 of the Constitution of India has been filed impugning

the order dated 01.02.2022, passed in Succession Misc. Case No. 96 of 2011, by the Court of the Learned Judge, District Council Court, Shillong, whereby the application filed by the petitioner under Section 383 of the Indian Succession Act, 1925 was dismissed on the ground that the said application was time barred.

2. Though the sole respondent, as per the office note had been served on 24.05.2022, no appearance had been made on her behalf on successive dates, and as such, this matter is being taken up ex-parte against the sole respondent.

3. Ms. R. Kharshiing, learned counsel for the petitioner submits that the impugned order was passed in the proceedings of Succession Misc. Case No. 96 of 2011, wherein the dispute was between the petitioner and the respondent who both claimed to be the legally wedded spouse of one (L) Morningstar Wanshong, and as such, entitled to his terminal benefits. It is further submitted that, the said tussle started from 2010, when the first objection was filed by the petitioner against the application of the respondent for grant of Succession Certificate. Thereafter, it is submitted on the failure of the petitioner to appear a Succession Certificate dated 15.07.2016, was granted to the respondent which was then, sought to be revoked by the petitioner by way of an application dated 09.05.2019.

4. Learned counsel for the petitioner submits that, as the Indian Succession Act, 1925 does not prescribe a specific period of limitation, the same, would be covered by Article 137 of the Limitation Act, which prescribes a period of 3(three) years, from when the right to apply accrues. In the instant case, she submits the application for revocation was filed within 3(three) years of issuance of the Succession Certificate dated 15.07.2016 by the petitioner, and as such, the rejection of the application was bad in law. Learned counsel has placed reliance in the judgment of *Ramesh Nivrutti Bhagwat v. Surendra Manohar Parakhe* reported in (2020) 17 SCC 284.

5. I have heard learned counsel for the petitioner, and perused the impugned order. Shorn of other details and facts, the only issue that is to be considered by the Court is whether the learned Court below had erred in rejecting the application under Section 383 of the Indian Succession Act, 1925 on the ground that the same was time barred. Article 137 of the Limitation Act, provides for 3(three) years as a period of limitation, on an application for which no period of limitation is provided elsewhere in the division. As the Succession Act, does not prescribe a specific period of limitation in such matters, it would thus imply that Article 137 be applied. The Succession Certificate sought to be revoked having been granted on 15.07.2016, the application for revocation being filed on

09.05.2019 is within the 3(three) year period, and as such, should not have been rejected on the ground of limitation.

6. The judgment relied upon by the learned counsel that is **Ramesh Nivrutti Bhagwat v. Surendra Manohar Parakhe (supra)** at Para-12 reads as follows:

“12. The Succession Act, 1925 does not prescribe a specific period of limitation for the grant of probate, or for moving an application for cancellation of probate or letters of administration. The residuary entry Article 137 of the Act, which covers proceedings for which no period of limitation is stipulated in the Act, provides for a three-year period of limitation. Article 137 reads as follows:

<i>“Description</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>137. Any other application for which no period of limitation is provided elsewhere in this Division.</i>	<i>Three years</i>	<i>When the right to apply accrues.”</i>

7. As such, for the reasons stated above, the instant Revision Application is allowed, and the matter remanded back to the Court of the Judge, District Council Court, Shillong for fresh consideration on the revocation application of the petitioner.

8. Matter accordingly stands closed and disposed of.

9. Lower Court records to be transmitted back immediately.

Judge

Meghalaya
18.08.2022
"D.Thabah-PS"

