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SLP(C)No. 1163 OF 2003

ITEM No.53

Court No. 1

SECTION XIV
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.1163/2003

(From the judgement and order dated 20/12/2002 in CRP 407/2002
of The HIGH COURT OF GAUHATI)

BHARADWAJ MRINAL CHOUDHARY

Petitioner (s)

VERSUS

PUTULI CHOUDHURY & ORS.

Respondent (s)

(With prayer for interim relief and office report)

Date : 11/08/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)Mr. Manish Goswami, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent (s)Dr. Gobind Lal, Adv.
Nos. 1,2,6 & 7Mr. L.C. Goyal, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed. There shall be no order as to costs.

(Alka Dudeja) (Suraj Parkash)
Court Master Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6300 OF 2003

ARISING OUT OF SPECIAL LEAVE PETITION [C] NO. 1163 OF 2003

Bharadwaj Mrinal Choudhary... Appellant (s)

Versus

Putuli Choudhary and Ors.... Respondent(s)

O R D E R

Leave granted.

One Abhoy Charan Choudhary was appointed as Mouzadar of Ulubari Mouza by the Deputy Commissioner, Kamrup and as a result thereof, he was receiving commission from the Government. While he was in office, certain commissions which accrued were not paid to him. Appellant is the son of A.C. Choudhary. A.C. Choudhary executed a Will in favour of the appellant herein whereby he bequeathed the entire arrears of commissions, which were due to him while he was in office as Mouzadar. Subsequently A.C. Choudhary died. After his death, the appellant herein filed a probate case before the District Judge, Kamrup at Gauhati for grant of probate with respect to the Will of his deceased father, who was a Mouzadar of Ulubari Mouza. After the death of Abhoy Charan Choudhary, his wife,

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Smt. Putuli Choudhary, Respondent No. 1 herein, was appointed as Mouzadar. Clause 7 of the said letter of appointment provided that newly appointed Mouzadar shall be responsible and liable to discharge the financial liabilities of the outgoing Mouzadar, Late Abhoy Charan Choudhary. Before the learned District Judge, respondent No. 1 herein contested the matter. The appellant herein also moved an interlocutory application restraining respondent No. 1 herein from collecting commission, which was due to his father and bequeath to him under the Will. That application was rejected. Aggrieved, the appellant filed a revision petition before the High Court, but the same was dismissed. It is against the said order and judgment, the appellant has come in appeal by way of special leave petition.

Learned counsel on the strength of the judgment of the Constitution Bench in the case of State of Assam and Ors. Vs. Shri Kanak Chandra Dutta, reported in 1967 (1) SCR 679, argued that the commission payable to his father was in the nature of remuneration and, therefore, by virtue of the Will executed by him, he is entitled to receive the commission. We find substance in the argument. In Shri Kanak Chandra Dutta's case (supra), it was held that the remuneration payable to the Mouzadar carries with it a remuneration by way of a commission on collections of Government dues. In that view of the matter, it was held that the appellant is entitled to receive remuneration which was due to his late father.

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However, we find that by clause 7 of the letter of appointment respondent No. 1 could be saddled with the financial liabilities of the outgoing Mouzadar. Such a liability could not have been fastened upon the newly appointed Mouzadar. In fact it is the liability of the State. For the aforesaid reasons, the judgment under appeal is set aside. The appeal is allowed. There shall be no order as to costs.

.....CJI.

.....J.
(S.B. Sinha)

New Delhi,
August 11, 2003.

