

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Civil Revision No. 2439 of 2013.

Jogmaya Saha Roy.

..... Petitioner.

Vs.

Sree Shekhar Chandra Chakraborty and others
..... Opposite-Parties.

Mr. Ashok Kumar Gosh, Advocate

.....For the Petitioner.

Mr. Shasti Sarker, Advocate

... for the Opposite Party No. 1.

Present:

Mr. Justice Quazi Reza-Ul Hoque

And

Mr. Justice J.N. Deb Choudhury.

Heard on: 31.01.2016

and Judgment on : 01.02.2016.

J.N. Deb Choudhury, J

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 15.07.2013 passed by the learned District Judge, Jhalokathi in Miscellaneous Appeal No. 08 of 1999 reversing the judgment and order dated 24.03.1999 passed by the learned Sub-Judge (now, the Joint District Judge), First Court, Jhalokathi in Succession Suit No. 30 of 1997, should not be set-aside.

Facts necessary for disposal of this Rule, in short, is that the opposite party No. 1 as petitioner filed Succession Case No. 30 of 1997 before the First Court of Subordinate Judge, Jhalokathi and District Delicate Court for issuance of a succession certificate in respect of Tk. 704949.00 regarding SB account No. 7881 with Rupali Bank Limited,

Jhalokathi branch, Jhalokathi on stating that Sree Amalendu died on 25.12.1996 leaving behind the petitioner the nephew, as his sole heir and accordingly the petitioner is entitled to get a certificate for withdrawing the said amount with interest.

The succession case was contested by opposite party Nos. 3 and 4, 5 and 6 by filing two separate written objections on stating inter alia that the Amalendu in the year 1361 B.S. at the age of 19 years became a Sanyasi on renouncing all worldly affairs which tantamount to civil death and accordingly, the petitioner of the succession case is not entitled to get the money as his heir.

The Trial Court by judgment and order dated 24.03.1999 dismissed the succession case on the finding that Amala Nanda after became Sanyasi renamed as Amala Nanda Avadhuta alias Sreemoth Swami Amala Nanda Avadhuta Guru Maharaj and also found that he was a bachelor and on the date of renouncing his worldly affairs his such conversion tantamounts to civil death.

Being aggrieved the petitioner of the miscellaneous case filed Miscellaneous Appeal No. 08 of 1999 before the learned District Judge, Jhalokathi, who by the impugned judgment and order dated 15.07.2013 allowed the appeal and set-aside the order of the Trial Court, mainly on the reasoning that a Sanyasi cannot make savings or cannot open a

bank account and the amount in the savings account shall be inherited by the petitioner as his heir.

Being aggrieved by and dissatisfied with the impugned judgment and order the opposite party No. 6 the Secretary of Guthia Avadhuta Ashram, of the succession case preferred the instant civil revision wherein Rule was issued.

Mr. Ashoke Kumar Ghosh, the learned advocate appearing for the petitioner submits that there is no dispute regarding renouncement of all worldly affairs by the Amalendu and he became a Sanyasi in the year 1361 B.S. at the age of 19 and renamed as Amala Nanda Avadhuta alias Sreemoth Swami Amala Nanda Avadhuta Guru Maharaj and he established an Ashrom at Guthia Gram namely “Guthia Avadhuta Ashrom” and till his death on 25.12.1996 he was in management of the said Ashrom. He next submits that the petitioner of the succession case failed to prove that Amalendu never became Sanyasi by adducing any oral or documentary evidence and accordingly, prays for making the Rule absolute on setting aside the judgment and order of the appellate Court below.

On the other hand Mr. Shasti Sarker, the learned advocate appearing for the opposite party No. 1 submits that for becoming a Sanyasi there are four stages to be performed by a person which is

absent in the present case. He next submits that from the Vedas, the life of a Hindu of the Brahmana and the other twice born classes, was divided into four stages. He had to pass the first stage of his life as Brahmachari or student, living with the Guru or Preceptor of the sacred literature, as a member of his family and supporting himself by begging; the second, stage as Grihastha or Householder, being married when his studentship was over. Third stage as Vanaprastha or one retired from the world, residing in some solitary place with persons of same order, engaged in religious practices and contemplation of the Deity, being free from all worldly cares, and living on the alms, the retirement having the effect of extinguishing his rights to the property he had at the time of retiring and vesting them in his sons or other heirs. Lastly, as Yati or Sannyasi or itinerant contemplative ascetic supporting by what is voluntarily given by people or by begging in the evening and taking no more than what is sufficient for the day and living under a tree or the like shelter. He thereby submits that the contesting opposite parties failed to prove that Amalendu for becoming a Sanyasi performed or pass through these four stages. He next submits that the petitioner of the succession case being the nephew and only heir, entitled to get the money of the savings account as the said savings account has been opened in the personal name of the

Amalendu. He further submits that all the P.Ws. proved the case of the petitioner of the succession case and the appellate court rightly reversed the decision of the trial court and accordingly, prays for discharging the Rule.

We have heard the learned advocates for both sides, perused the revisional application, impugned order, written objection thereto, along with other documents.

It appears that the petitioner of the succession case in paragraph 1 of the succession case admits that Amalendu became a saint and renamed as Amala Nanda Avadhuta alias Sreemoth Swami Amala Nanda Guru Maharaj. The relevant part of paragraph 1 of the case petition is quoted below:

“অত্র আদালত এলেকাধীন ঝালকাঠী জেলার অন্তর্গত ঝালকাঠী থানাধীন ৭ নং পোনাবালিয়া ইউনিয়নের প্রতাব মহল গ্রামের অধিবাসী শ্রী অমলানন্দ অবধূত ওরফে শ্রীমত স্বামী অমলানন্দ অবধূত গুরু মহারাজ পিতা- মৃত বসন্ত চক্রবর্তী একজন সাধু পুরুষ ছিলেন। তিনি বিবাহ করেন নাই। তাহার দিক্ষা গুরু ছিল শ্রীমৎ স্বামী দয়ানন্দ অবধূত। অমলানন্দ বাল্য জীবনে পোনাবালিয়া ইউনিয়নের পৈত্রিক নিবাসে বসবাস করিতেন। পরবর্তীকালে তিনি বরিশাল জেলাধীন উজিরপুর থানার গুটিয়া গ্রামে অবধূত আশ্রম প্রতিষ্ঠা করেন।”

There is no dispute that Amala Nanda Avadhuta established an Ashrom at village Guthia namely “Guthia Avadhuta Ashrom” and he

had many disciples and since 1361 B.S. he did not keep any touch with his personal properties of his own, till his death.

The P.W. 1 Shekar Chandra Chakraborty the petitioner of succession case, stated in his cross examination that,

“অমলেন্দু অবধূতের ৫ বিঘা জমি ছিল। তার মধ্যে কতটুকুতে বাড়ীঘর জানিনা। খালি কতটুকু জানিনা। এই জমি ২ ভাই ভোগ করত। বর্তমানে আমি ভোগ করি। এই জমিতে মোট কয় মন ধান হয় বলতে পারিনা। -----

The P.W. 2 Aiyub Ali stated in his cross examination that,

“ইউনিয়ন পরিষদের মেম্বার সার্টিফিকেট (ওয়ারিশ) দিয়েছে। ঐ সময় ছিলাম না। ---- কুঠিয়া আশ্রমে গিয়েছি এবং সেখানে অমলানন্দকে দেখেছি। ঐ আশ্রম সেই চালাইত।”

P.W. 3 Mohon Khan stated in his cross examination that,

“অমলানন্দ অবধূত সাধু। তার শিষ্য ভক্ত আছে কিনা জানিনা। সে পোনাবাড়িয়া বড় গুরু ছিল। সে বিয়ে শাদি করে নাই। ব্যবসা ছিল কিনা জানিনা। সে আশ্রম, মন্দির ও পুকুর সংস্কার করেছে। অবধূত আশ্রমে এ বছরও অনুষ্ঠান হয়েছে।”

P.W. 4 Santosh Chandra Mondol stated in his cross examination that,

“শুনেছি অমলানন্দ বহুদিন যাবতই সন্যাস হয়েছে এবং সে আশ্রমে থাকত এবং সারা দেশে তার ভক্ত ছিল। সে অনেক মন্দিরও সংস্কার করায়েছে এবং পুকুর

সংস্কার করেছে। তাকে বাড়ী থেকে কোন ফসল কুরিয়া নীতে দেখিনি। সে বড় গুরু ছিল।”

And P.W. 5 Nobi Khan stated in his examination that,

“সে সাধু ছিল কিনা ফসলাদি নিত কিনা কইতে পারিনা।”

The P.Ws. were though examined; but, they failed to prove that Amalendu Avadhuta never renounced his worldly affairs or supervised his paternal immovable properties like other normal man.

Four O PWs. were examined and they proved that Amala Nanda Avadhuta alias Sreemoth Amala Nanda Avadhuta Guru Maharaj became a Sanyasi since 1361 B.S.

It is true that there are no direct evidence of performing the ceremonies of four stages as submitted by the learned advocate for the opposite party, for becoming Sanyasi; but, circumstantial evidence shows along with the admissions made by the petitioner of the succession case that Amalendu became a Sanyasi and renamed as Sreemoth Swami Amala Nanda Avadhuta Guru Maharaj and this being so, the moment he became a Sanyasi tantamounts to civil death.

Avadhuta is a Sanskrit term from some Hindu religions referring to a type of mystic or saint who is beyond egoic-consciousness, duality and common worldly concerns and acts without consideration for standard social etiquette.

One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Entrance to a religious order is tantamount to civil death so as to cause a complete severance of his connection with his relations, as well as with his property. Neither he nor his natural relatives can succeed to each other's properties.

As per Section 111 of the principles of Hindu Law by D F Mulla, which is as follows:

“Where a person enters into a religious order renouncing all worldly affairs, his action is tantamount to civil death, and it excludes him altogether from inheritance and from a share on partition.”

It appears from the record that Amalananda became a Sanyasi at the age of 19 and he died at the age of 61 on 25.12.1996 and the bank account with Rupali Bank Limited was also maintained by him with the address of the Ashrom which appears to us that the amount so deposited in the savings account are not from his personal incomes; but, those are of the Ashrom which the Ashrom got by donations from different persons and donors and being in management of the Ashram, he kept the amount in the said savings account with Rupali Bank.

In view of the above discussions and laws we are of the view that the petitioner of the succession case is not entitled to get the amount of the savings account and as we have already held that the amount of the savings account are not the personal property or cannot be the personal property of a Sanyasi and accordingly, the petitioner is not entitled to withdraw the said amount or get the succession certificate as prayed for.

Accordingly, we are of the view that the amount of the savings account being Saving Account No. 7881 with Rupali Bank Limited, Jhalokathi Branch, Jhalokathi were deposited by Sreemoth Amala Nanda Guru Maharaj from the income of the “Guthia Avadhuta Ashrom” and accordingly, the Ashrom which is situated at village Guthia, Police Station Uzirpur, District- Barisal is entitled to get the amount and none else.

In view of the above, we find substance in the arguments of the learned advocate for the petitioner and do not find substance in the arguments of the learned advocate for the opposite party No. 1.

In the result, the Rule is made absolute without any order as to costs.

The impugned judgment and order dated 15.07.2013 passed by the learned District Judge, Jhalokathi in Miscellaneous Appeal No. 08

of 1999, is hereby set-aside and the order dated 24.03.1999 passed by the learned Sub-Judge, First Court, Jhalokathi in Succession Suit No. 30 of 1997, is hereby upheld.

Send back the lower court's record along with a copy of this judgment to the court concern at once.

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(J.N. Deb Choudhury, J)

I agree.

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(Quazi Reza-Ul Hoque, J)

*Murshedul Hasan,
Bench Officer*