

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **Intest.Cas. 4/2009**

1. Smti Krishna Das Choudhury,
W/o Samir Ranjan Choudhury

2. Miss Samishna Choudhury

3. Miss Sandipshna Choudhury

No. 2 and 3 are the daughter of

Late Samir Ranjan Choudhury & being minor are represented
by their mother i.e. the appellant No. 1.

All are resident of Shantipur, Bhutnath,

P.S. Bharalumukh, Dist- Kamrup, Assam.

..... Appellants

-Versus-

1. Musstt. Parbin Rahman Hazarika,

W/o Late Saydur Rahman Hazarika @ Samir Ranjan
Choudhury.

2. Musstt. Farhanaza Rahman Hazarika,

D/o. Late Saydur Rahman Hazarika @ Samir Ranjan
Choudhury.

3. Md. Salidur Rahman Hazarika,

S/o Late Saydur Rahman Hazarika @ Samir Ranjan Choudhury.

All are resident of Dhirenpara (Masjid Galli)

P.O. Fatasil Ambari, Guwahati-25

Dist- Kamrup, (Assam).

..... Respondents

-BEFORE-

HON'BLE MR. JUSTICE N. CHAUDHURY

For the Appellants : Mr. YS Mannan
Advocate

For the Respondents : Mr. PK Kalita
Mr. GN Kakati
Advocate

Date of Hearing : 08.12.2015

Date of delivery of
Judgment and Order : 23.12.2015

JUDGMENT AND ORDER (CAV)

This is an appeal under section 384 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act') preferred by the opposite parties in Succession Case No. 432/2006 of the Court of learned Additional District Judge (FTC) No. 3, Kamrup at Guwahati thereby challenging the judgment and order dated 23.12.2008 passed in the aforesaid case. The Additional District Judge by that order held that the appellant herein is not entitled to succession certificate with respect to the debts and securities of Late Samir Ranjan Choudhury alias Saydur Rahman Hazarika although her two daughters are entitled to share along with respondent No. 1 Parbin Rahman Hazarika and her one son and daughter.

2. The Succession Case No. 432/2006 was registered upon an application filed by Musstt. Parbin Rahman Hazarika, her daughter Musstt. Farhanaz Rahman Hazarika and her son Md. Salidur Rahman Hazarika under section 372 of the Act against the present appellants as opposite parties. According to the petitioners of

the case, Late Saydur Rahman Hazarika was a Muslim and he was a permanent resident of Dhirenpara in Guwahati. He died at the age of 49 years within the jurisdiction of the learned District Judge at Kamrup and thereafter the petitioners being his widow and two off-springs performed the last religious rites and formalities. The petitioners stated that Saydur Rahman Hazarika alias Samir Ranjan Choudhury married Parbin Rahman Hazarika on 14.07.1982 and from their wedlock, the petitioners No. 2 and 3, namely, Musst. Farhanaz Rahman Hazarika and Md. Salidur Rahman Hazarika were born. Thereafter, in the year 1993 he lived with Smt. Krishna Das, an alleged concubine and out of that living together the opposite parties No. 2 and 3, namely, Smt Samishna Choudhury and Smt. Sandipshna Choudhury were born who were 12 years and 2 years respectively at the time the application was filed. Saydur Rahman alias Samir Ranjan Choudhury suddenly died in the year 2006 living behind three petitioners as his legal heirs. He was maintaining a pharmacy. He left behind a sum of Rs. 38,000/- in account No. 16979853601 dated 05.08.2003, Rs. 6,260/- in account No. 169798565661 dated 09.09.2003 and Rs. 64,900/- in fixed deposit vide Account No. 16979201278 with Sahara India, Maligaon Branch. He had also Rs. 50,000/- in Policy No. 481604161 dated 28.01.1999 and Rs. 5,00,000/- in Policy No. 481916984 dated 28.12.1999 with Life Insurance Corporation of India, Guwahati Branch I, Panbazar and Rs. 18,000/- in daily deposit account No. 17306 with Guwahati Cooperative Urban Bank Limited. It was further stated that in all these accounts Smt. Krishna Das, an alleged concubine was made nominee. This Krishna Das has been claiming the amount and if she gets the same, the applicants would be deprived from their legitimate right being legally married

wife and legitimate son and daughter respectively. With these averments of fact, the three petitioners prayed for issuance of succession certificate in favour of petitioner No. 1, Musstt. Parbin Rahman Hazarika, so as to enable her to withdraw the money mentioned in schedule to the petition.

3. After service of notice, the opposite parties appeared and submitted objection on 17.11.2006 stating that the application under section 372 of the Act is not maintainable, that applicant No. 1 (Parbin Rahman Hazarika) was no longer wife of the deceased who had converted himself from Islam to Hinduism and so the applicant No. 1 has no locus standi to file the application. Moreover, the objector No. 1, Smt. Krishna Das Choudhury was the legally married wife of Samir Ranjan Choudhury after he became a Hindu by conversion and assumed the Hindu name of Samir Ranjan Choudhury in the year 1983. She claimed that she is legally entitled to get the succession certificate. According to her, Samir Ranjan Choudhury died in her presence on 20.07.2006 but the applicants forcefully took away the dead body on the teeth of great opposition of the objector and other people of the locality. She, however, performed Shraddha ceremony as per Hindu rites. She denied her status of concubine or a kept. She was legally married to Samir Ranjan Choudhury and consequent to the marriage two minor daughters were born to her who are named as Samishna Choudhury and Sandipshna Choudhury. The deceased had a pharmacy under the name and style of Krishna Clinical Chamber at Bhutnath, Guwahati. She denied all other allegations made in the applications and prayed that the application filed by the applicants be rejected with cost.

4. Thereafter by order dated 17.11.2006, the learned court asked the parties to prove their respective cases and fixed the matter on 05.12.2006 for evidence of the first party. On the fixed date, the applicants filed four affidavits, the first one is by the applicant No.1, Musstt. Parbin Rahman Choudhury, the second one is by Md. Tamizur Rahman Hazarika, the third one is by Md. Jamal Ahmed and the fourth one is filed by Musstt. Piyara Begum.

5. PW 1, Parbin Rahman Hazarika reiterated the statements made by her in the application. She stated that on 14.07.1982 Saydur Rahman Hazarika alias Samir Ranjan Choudhury who is the son of Md. Tamizur Rahman Hazarika married her at Shantipur Hill Side as per Muslim law and thereafter she started living with him. On 27.06.1984 she gave birth to a female child and named her as Farhanaz Rahman Hazarika. On 23.07.1987 she gave birth to a male child who has been named as Salidur Rahman Hazarika. In the year 1987 the family shifted to Dhirenpara Masjid Galli and started living with the in-laws. Her husband was a pharmacist and had a shop in a rented room of one Raghunath Choudhury. In the year 1993, objector Smt. Krishna Das 'managed to acquire' her husband Saydur Rahman Hazarika alias Samir Ranjan Choudhury who kept Smt. Krishna Das in various rented houses from time to time and lived occasionally with her as a result of which Krishna Das gave birth to two daughters, namely, Samishna Choudhury and Sandipshna Choudhury. Her husband died on 20.07.2006 whereupon his landlord Chandan Sharma informed Wahebur Rahman Hazarika, her brother in law over telephone and thereafter she rushed to Sanjivani Hospital and found him dead. No one was present there and so took away the dead body with the help of other family members to Dhirenpara and then buried his dead

body at Guwahati Kabarsthan, Athgaon. Religious function was also subsequently held as per Muslim custom on the occasion of her husband's death. She claimed that her husband was a Muslim and never renounced Islam. He died as a Muslim. Even in 2003 and 2004 he had sworn two affidavits identifying him as Islam for the purpose of obtaining birth certificate of daughter and son. She claimed to be the only legally married wife of Saydur Rahman Hazarika alias Samir Ranjan Choudhury and claimed succession certificate for a total sum of Rs. 6,77,160/-. She proved birth certificate of her daughter and son as Ext. 1 and 2 respectively, the certificate issued by Guwahati Kabarsthan on 29.11.2006 as Ext. 3 and death certificate of Saydur Rahman Hazarika as Ext. 4.

6. She was thoroughly cross examined by the objectors. She disclosed in course of cross examination that her father was late Karuna Sharma and she was a Hindu before her marriage. She could not produce any document to show that she was converted to Islam at any point of time. She admitted that her husband identified himself as Samir Ranjan Choudhury in some papers and as Saydur Rahman Hazarika in some papers. He started identifying himself as Samir Ranjan Choudhury in some papers since 1993 but she was not fully aware about the same. She was married as per Muslim rites. After marriage she stayed in Shantipur hill side and thereafter shifted to own house at Dhirenpara in the year 1993 to live with father in law, brother in law, sister in law and others. At the time of her marriage, her husband had a pharmacy in the rented house of Raghunath Choudhury under the name and style of Hazarika Medical Hall and later on it was renamed as Krishna Medical Hall. She denied that her husband converted himself to Hinduism by swearing an affidavit on 28.09.1993. She

denied her knowledge as to registered marriage of her husband with Krishna Das after converting himself into Hinduism. She denied the suggestion that after becoming Hindu, her husband accepted Raghunath Choudhury as his father or that he abandoned the applicants to live together with Krishna Das. She, however, admitted that the opposite parties No. 2 and 3 are the two daughters of her husband. The debts and securities mentioned in the application were not acquired by her husband prior to 1993. Her daughter and son were aged about 23 years and 20 years respectively as on the date of cross examination and they gave no objection in her favour for obtaining succession certificate with respect to the schedule debts and securities. She denied the suggestion that till his death her husband lived with Krishna Das or that he made Krishna Das as his nominee or that Krishna Das and her sisters were also entitled to money.

7. PW 2, Md. Tamizur Rahman Hazarika was the father of the deceased. He testified that Saydur Rahman Hazarika alias Samir Ranjan Choudhury being his eldest son, married Parbin Rahman Hazarika as per Muslim customary law on 14.07.1982 at his residence in Shantipur hill side and started living with her. Out of their wedlock Farhanaz Rahman Hazarika was born on 27.06.1984 and Salidur Rahman Hazarika was born on 23.07.1987. In the year 1987 he shifted to Dhirenpara masjid Galli. Saydur was a pharmacist and used to run a pharmacy at Bhutnath till his death in a rented room of Raghunath Choudhury. In the year 1993 Krishna Das 'somehow managed to acquire his son Saydur Rahman Hazarika' and thereupon he kept her in rented house and occasionally lived with her in various rented houses whereupon two daughters, namely, Samishna Choudhury and Sandipshna Choudhury were born out of that cohabitation.

Suddenly he heard on 20.07.2006 from his son Wahebur Rahman that Saydur was taken to Sanjivani hospital in serious condition. He immediately sent Parbin Rahman Hazarika there along with Wahebur Rahman and his grand children who found the dead body of Saydur Rahman Hazarika alone and brought the same to Dhirenpara whereafter burial was done at Guwahati Kabarsthan on the same day. They performed necessary religious rites as per Mahameddan law. According to him, Parbin Rahman Hazarika is the only wife of Saydur whose mother Zaheda Begum had died long back on 16.04.1997.

9. This witness was duly cross examined by the objectors when he admitted that he had described his son as Samir Ranjan Choudhury in his examination in chief but he did not know anybody by that name. He later on came to know that Raghunath Choudhury accepted Saydur as his son and thereupon named him as Samir Ranjan Choudhury. While marrying Parbin, his son lived with him in the rented house at Durgasorovar. Now he lives in his own house at Dhirenpara. He had purchased 1 K 5 L of land at Dhirenpara on 07.02.1986 in the name of his wife. Now his four sons, three daughters and five grand children are living with him. Samir Ranjan Choudhury had a pharmacy at Bhutnath by the name of Hazarika Medical till his death. He was not aware if Saydur had sworn affidavit to become a Hindu. He came to know about registered marriage of his son with Krishna Das two months later. Subsequently he came to know that Saydur lived with Krishna as husband and wife. He denied the suggestion that Saydur had severed all his relations with them but admitted that on the date of death Saydur was with Krishna. After death of Saydur, Krishna did not permit to take the dead body from the house at Bhutnath and so the dead body had to be brought by

taking help of police for burial purpose at Athgaon Kabarsthan. Saydur had two daughters from Krishna. He admitted that he was not aware as to what was written in the affidavit evidence and he signed the same without knowing the content but he believed it to be correct. He denied that Krishna Das Choudhury and her two daughters are also entitled to the money left behind by Saydur. He did not admit that Krishna Das was socially and legally married wife of Saydur.

10. PW 3, Md. Jamal Ahmed, claimed to be the maternal uncle of the deceased. He stated that his nephew, Saydur Rahman Hazarika alias Samir Ranjan Choudhury married Parbin Rahman Hazarika on 14.07.1982 as per Muslim customary law and started living with her in their residence at Shantipur hill side. Out of the wedlock a daughter was born in 1984 and a son was born in 1987. The family shifted to Dhirenpara masjid Galli in the year 1987 and have been living there. Saydur had a pharmacy in the rented house of Raghunath Choudhury at Bhutnath, Guwahati-9. He suddenly died on 20.07.2006 and the dead body was taken from the hospital to Dhirenpara residence and then to Guwahati Kabarsthan for burial. He was an Islam by faith till his death and the applicants are his only legal heirs.

11. This witness was also cross examined by the objectors when he admitted that he had come to know from his lawyer that in the year 1993 Saydur had taken the name of Samir Ranjan Choudhury. He was not aware about the name of the pharmacy described in paragraph 5 of his affidavit. He came to know over telephone that Samir Ranjan Choudhury died in Sanjivani hospital and he himself did not go there. He did not see the dead body being taken from Sanjivani hospital to Dhirenpara. He heard about the same from others. But there was a

dispute about burying the body of Saydur in Athgaon Kabarsthan. He was not aware as to whether Saydur used to live in Dhirenpara house till his death. He was also not aware if Saydur started living with the opposite party since 1993 by assuming the name of Samir Ranjan Choudhury. He denied the suggestion that he was falsely deposing.

12. PW 4 was Piyara Begum. She claimed to know the applicants since 1987. According to her, Parbin Rahman Hazarika was the legally married wife of Saydur Rahman Hazarika alias Samir Ranjan Choudhury and they used to live with their son and daughter in Dhirenpara which she knew being a neighbour. Tamizur Rahman Hazarika and Zaheda Begum were the parents of Saydur. Zaheda died earlier. Saydur died on 20.07.2006 and his dead body was buried at Athgaon Kabarasthan. Parbin Rahman Hazarika and their family performed the last rites. Saydur was a Muslim till his death and Parbin Rahman Hazarika is the only legally married wife of Saydur who never married for the second time. In course of her cross examination she admitted that she cannot read and write and she did not know what is there in her evidence in affidavit. She could not say since when Saydur assumed the name of Samir Ranjan Choudhury. She could not say as to when was Parbin Rahman married to Saydur although she claimed to be present in their marriage. She did not know that Saydur became a Hindu by swearing affidavit in the year 1993. She was not aware if Saydur had married Krishna Das after assuming the name of Samir Ranjan Choudhury. She had no knowledge if Krishna Das was the legally married wife of Saydur.

13. The objectors examined 4 witnesses, namely, Smt. Krishna Das Choudhury (DW 1), Santosh Choudhury (DW 2), Anil Bezbaruah (DW 3) and Dinesh Das (DW 4).

14. Krishna Das reiterated her statements made in the objection. She stated that on 30.11.1993 she got married to Samir Ranjan Choudhury before the Marriage Officer, Kamrup at Guwahati before which Saydur Rahman Hazarika had converted himself into a Hindu and assumed the name Samir Ranjan Choudhury by swearing an affidavit on 28.09.1993. Ext. A is the marriage certificate and Ext. B is the copy of the affidavit. Raghunath Choudhury accepted Samir Ranjan Choudhury as his son after the latter had become a Hindu and performed all religious rites as per Hindu customs. They started living together as husband and wife in a rented house at Shantipur and out of the wedlock two daughters, namely, Samishna Choudhury and Sandipshna Choudhury are born. Samir Ranjan used to run a pharmacy under the name and style of Krishna Clinical Chamber at Bhutnath till his death on 20.07.2006 and left behind her and her two daughters in misery. They performed Shraddha ceremony on 02.08.2006 at Bhutnath. Ext. C was the death certificate and Ext. D is an invitation card of Shraddha ceremony of Samir Ranjan Choudhury. She further stated that her husband opened accounts with Sahara India Maligaon Branch, Life Insurance Policy and bank account in Guwahati Cooperative Apex Bank Limited, Fatasil Branch and the total amount of money was 4,77,160/-. This was the hard earned money from pharmacy business and she herself used to sit along with him in the pharmacy during the evening hours to extend all helps. This money was saved by her husband for better education and marriage of their two daughters and she

was appointed as nominee in these accounts. She and her two daughters are entitled to the aforesaid money left behind her husband Samir Ranjan Choudhury. He was a popular figure in the locality. In the year 2003 he donated the idol of Mother Goddess Durga in the Puja held in the locality. After sudden death of Samir Ranjan, the applicants with the help of anti-social elements forcibly took away the dead body for which she lodged a complaint with Officer In-charge, Bharalumukh Police Station who for reasons not known to her, did not take any action. She claimed to be entitled to succession certificate under section 370 of the Indian Succession Act.

15. In course of her cross examination she stated that she had read her affidavit evidence before swearing. She writes story, poems etc. and her occupation is business. Tamijul Rahman Hazarika is the father of Saydur Rahman Hazarika who by Ext. B changed his name to Samir Ranjan Choudhury but showed his father's name as Tamizur Rahman Hazarika. There is no document to show that Raghunath Choudhury accepted Samir Ranjan Choudhury as his son. She has not submitted any document to show that Saydur gave up Islam to become a Hindu. Saydur ran a pharmacy in a rented shop belonging to Raghunath Choudhury. As per Ext. A her marriage was solemnised with Samir Ranjan Choudhury, son of Raghunath Choudhury. In the month of December, 1993 she was married to Samir Ranjan in Kamakhya temple. She was not aware if Samir Ranjan was married to Parbin Rahman earlier and if they had a son and daughter out of that marriage. Now she has seen them in the court. She disclosed names of various persons in the house of whom she lived with Samir Ranjan. In all the documents of bank and L.I.C. the name of Samir Ranjan is

shown. Ext. D invitation card was published in Piyali Press. She denied the suggestion that Ext. D was printed for litigation purpose. At the time of death, Samir Ranjan used to live in a house opposite to the pharmacy. Men of Parbin Rahman took away the dead body of Samir Ranjan from Sanjivani hospital. The dead body was first brought to pharmacy. Thereafter she informed Bharalumukh police station but as no action was taken, Parbin Rahman took away the dead body from pharmacy. She was not aware if Parbin Rahman had buried the dead body as per Muslim custom. But she claimed that Parbin Rahman was not the legally married wife of Saydur Rahman. She denied the suggestion that she is not entitled to any money of Saydur Rahman.

16. DW 2, Santosh Choudhury, deposed that he knew Krishna Das Choudhury and Samir Ranjan Choudhury for last 13/14 years as they used to reside in the same locality as husband and wife with minor daughters. He and his family used to maintain good relation with them and used to visit their home on the occasion of birth day, annaprasan, puja etc. Samir Ranjan Choudhury became a Hindu from Islam by swearing an affidavit and happily followed Hinduism. Samir Ranjan had a pharmacy under the name and style of Krishna Medical in his locality and both he and his wife played active role in organising Durga Puja in the locality. Samir Ranjan died on 20.07.2006 but his dead body could not be cremated by his wife as his in-laws took away the dead body and buried at Athgaon Kabarsthan. However, he was not present on that day and came to know about the same from others. Thereafter his Shraddha ceremony was held in the rented house by Krishna Das. Now Krishna Das and her daughters are facing financial hardship due to sudden death of Samir Ranjan.

17. He stated in cross examination that he knew Samir Ranjan and Krishna Choudhury but he was not present in their marriage. He knew that Samir Ranjan was originally a Muslim and later on became a Hindu. He gave the money for purchase of Durga Idol during puja. He could not say to where was the dead body of Samir Ranjan brought. He did not go to the Shraddha ceremony of Samir Ranjan. He denied the suggestion that Samir Ranjan did not marry Krishna Das or that Samir Ranjan did not become a Hindu. He had no occasion to see affidavit of Samir Ranjan for becoming a Hindu. Krishna Das Choudhury was a tenant in the house of his younger brother. He calls her as 'bou'.

18. DW 3, Anil Bezbaruah stated that he knew Samir Ranjan Choudhury and Krishna Das Choudhury for 15 years. He knew that they got married in the year 1993 by registration. Before entering into wedlock Samir Ranjan became a Hindu and changed his name. As a pharmacist, he was popular in the locality and took part in social activities. She played active role during Durga Puja. The witness claimed that he used to pay visit to the house of Samir Ranjan during birth days of their daughters and Bishnu Puja. Samir Ranjan was adopted as son by Raghunath Choudhury and took care of him till his death.

19. In course of cross examination he stated that he was not present in the marriage of Samir Ranjan and Krishna Das. Samir Ranjan Choudhury was initially a Muslim. His father also used to reside in Santipur earlier and thereafter shifted to Dhirenpara. He knew the father of Samir Ranjan. During registered marriage Samir Ranjan described himself to be the son of Raghunath Choudhury but he knew nothing about the adoption. He did not know Parbin Rahman Hazarika. He used to purchase medicine from the pharmacy of Samir Ranjan some times and

Samir Ranjan used to visit his house for giving injections, saline etc. He later on came to know that Samir Ranjan Choudhury had a son and a daughter through Parbin Rahman Hazarika. He denied the suggestion that Samir Ranjan never married Krishna Das and he never became Hindu.

20. DW 4, Dinesh Das claimed to know Samir Ranjan and Krishna Das for 13 years last. He had a pharmacy in the locality and was known for pleasant behaviour. He became a Hindu from Islam and was adopted as a son by Raghunath Choudhury. He died due to sudden illness and the family members took away his dead body. The opposite parties have been suffering from all problems after death of Samir Ranjan.

In course of cross examination, he could not say anything about marriage of Samir Ranjan and Krishna Das but claimed to see them living as husband and wife. He knew nothing about conversion of Samir Ranjan into Hinduism or adoption by Raghunth Choudhury. He heard that dead body of Samir Ranjan was taken by his father. Earlier he did not know that Samir Ranjan had another wife and two off-springs earlier. He did not know as to whether Krishna Das Choudhury was the legally married wife of Samir Ranjan. Krishna Das Choudhury was a tenant in his house when Samir Ranjan Choudhury was also living with her.

21. Upon perusal of the evidence led by the parties both oral and documentary, the learned trial court passed the impugned judgment and order on 23.12.2008 disposing the succession case and thereby held that petitioner Parbin Rahman Hazarika being legally married wife of Samir Ranjan Choudury alias Saydur Rahman Hazarika and her one daughter, namely, Farhanaz Rahman

Hazarika and son Md. Salidur Rahman Hazarika along with the two daughters of Smt. Krishna Das Choudhury, namely, Smt. Samishna Choudhury and Smt. Sandipshna Choudhury are legal heirs of Late Samir Ranjan Choudhury and they are entitled to inherit the debts and securities mentioned in schedule to the application in equal share. The learned trial court arrived at the finding of facts that Samir Ranjan Choudhury was initially a Muslim and while following Islam he married petitioner No. 1, Parbin Rahman Hazarika whereupon one daughter and a son were born to him. But before his marriage with opposite party Krishna Das Choudhury, he got converted to Hinduism and thereafter solemnised marriage with the opposite party and thus as on the date of marriage with the opposite party Saydur Rahman Hazarika alias Samir Ranjan Choudhury was a Hindu. As on that date he had another wife, namely, Parbin Rahman Hazarika alive and so the second marriage with Krishna Das Choudhury was not valid as because by that time he was governed by Hindu law. The two daughters born out of the wedlock with Krishna Das Choudhury, though illegitimate, became legal heirs of the deceased and so they are entitled to get succession certificate to the extent of one-fifth of the total amount. From perusal of the impugned judgment it would appear that the learned court held 5 persons to be legal heirs of deceased Samir Ranjan Choudhury applying the principle of Hindu Succession Act, 1956 and thereby found them to be entitled to equal shares being $1/5^{\text{th}}$ each with respect to the schedule properties.

22. This judgment and order has been challenged by Smt. Krishna Das Choudhury and her two daughters before this court under section 384 of the Indian Succession Act, 1925. The respondents have not challenged the findings

of facts arrived at by the learned trial court that Saydur Rahman Hazarika became Hindu by conversion and started identifying him as Samir Ranjan Choudhury and thereafter he married Krishna Das. There is no dispute that appellants No. 2 and 3, namely, Samishna and Sandipshna are not daughters of Saydur Rahman Hazarika alias Samir Ranjan Choudhury. So these findings of facts need not require any interference. Having noticed the findings of the learned trial court and upon perusal of the materials available on record the following points for determination arise in the present case:-

- (i) Whether Muslim marriage subsists after a Muslim becomes an apostate?
- (ii) Whether off-springs born out of a Mohameddan marriage would inherit property of their father on death if he became a Hindu before death?

23. I have heard Mr. YS Mannan, learned counsel for the appellants and Mr. PK Kalita and Mr. GN Kakati, learned counsel for the respondents. I have perused the lower court records entirely.

- (i) ***Whether Muslim marriage subsists after a Muslim husband becomes an apostate?***

24. Mr. YS Mannan, learned counsel for the appellants, submits that admittedly in the case in hand the deceased had become an apostate by converting himself into Hinduism. It is evident from Ext. B dated 28.09.1993 that Saydur Rahman Hazarika declared on 28.09.1993 by swearing an affidavit that he became a Hindu. In paragraph 3 of Ext. B he stated that this affidavit would be produced as a piece of evidence to prove his name and religion and his

conversion whenever necessary. He declared that from the date of swearing he would be known as Samir Ranjan Choudhury instead of Saydur Rahman Hazarika. This affidavit was sworn before a Magistrate at Guwahati and has gone into evidence without objection. The learned court, therefore, has held that the deceased became a Hindu. On 30.11.1993 vide Ext. A, he married Smt. Krishna Das, daughter of Anil Das and thereupon marriage certificate No. 407/1993 was issued to him by the Marriage Officer, Kamrup at Guwahati under section 13 of the Special Marriage Act, 1954. This marriage has not been annulled or challenged by anybody. According to him, immediately on conversion of Saydur Rahman Hazarika from Islam to Hinduism, his marriage with his Mohameddan wife, namely, Musstt. Parbin Rahman Hazarika became automatically dissolved and so as on 30.11.1993 when Samir Ranjan Choudhury married Smt. Krishna Das vide Ext. A, he did not have another spouse living as on that date and so his marriage with Krishna Das could not have been held to be invalid by the learned trial court.

25. Conversion of a Muslim into any other faith is called Apostasy. The church of Islam declared apostasy as a danger to the state and abandonment of Islam came to be considered as renunciation of allegiance to the Islamic commonwealth and consequently it was understood to be nothing short of treason. Islamic law prescribes death penalty for such offence but not at the stake or by drowning or hanging. The extreme penalty was given only to the adult male, *murtedd*, the traitor apostate provided he was a born Muslim. However, the converts to Islam were exempted from death penalty. Jurist Ameer Ali made this revelation in his illustrious commentary by quoting from *Dar-ul-*

mukhtar; Fatwa-i-Alamgir (Vol. II;p-357). In case of women who abandoned Islam she was to be imprisoned until she returned to the faith. As observed by Ameer Ali, among the Hanafis whose views are reflected in *Hedaya, the fatwa-i-Alamgiri* and other works, considered that on apostasy from Islam of either husband or wife whether it takes place before or after consummation of marriage, ipso facto the marriage die. It is held that in modern times the practice has been considerably modified and it is generally recognised that when the husband renounces Islam but his wife continues to remain a Muslim, their connection becomes unlawful. However, if the husband returns to the faith before completion of her *iddat* (the probation she has to observe as if he were dead) there would be no need for remarriage between them. This means that if he returns after expiry of *iddat* period in that moment they have to get remarried. This is only an indication to the fact that on apostasy his marital tie with his Mohameddan wife gets automatically snapped without pronouncement of *talak*.

26. The effect of conversion of a Muslim in regard to marriage received attention of **the Law Commission of India**. In its 18th report the following two paragraphs found place:

“8. So far, we have considered the position arising on conversion to Islam from a monogamous faith. Taking next, the converse case of conversion from Islam to some other faith, the effect of such conversion is, under Muslim law, that the marriage stands automatically dissolved. An exception to this has been enacted by section 4 of the Dissolution of Muslim Marriages Act, 1939. Section 2 of that Act provides that a woman married under the Muslim law

should be entitled to sue for dissolution of the marriage on the grounds mentioned therein. Under section 4, conversion of a Mahomedan wife to another religion does not operate to dissolve the marriage, but this does not affect her right to sue for dissolution of the marriage under section 2. Thus, so far as the wife is concerned, conversion does not dissolve the marriage. But as regards the husband, the law still is that on his conversion the marriage or marriages previously contracted by him are ipso facto dissolved.

9. Now reviewing the entire field of the law relating to conversions to and from Islam, it will be seen (i) that the effect of conversion to Islam is the same as that of conversion to Christianity or Hinduism – the marriage is not dissolved; (ii) that the effect of conversion of a wife from Islam is the same as that from Christianity or Hinduism – the marriage subsists notwithstanding the conversion, but it may be dissolved on the grounds stated in section 2 of the dissolution of Muslim Marriages Act, 1939; and (iii) that the effect of conversion of the husband from Islam is, that the marriage stands dissolved by reason of such conversion, and it is only in this particular that the Muslim law differs from other system. We are of opinion that this difference is not so substantial as to require the exclusion of conversion from Islam from the purview of the proposed legislation. It is to be noted in this connection, that even the Dissolution of Muslim Marriages Act, 1939, in so far as it enacted that by conversion the marriage of a Muslim wife was not dissolved, was a modification of the pre-existing law on the subject, and the proposed legislation only seeks to extend the principle of that enactment to conversion of husbands as well.”

27. The position has been made clear by enactment of Dissolution of Muslim Marriages Act, 1939. Under section 4 of that Act conversion will operate as a

dissolution of the marriage. Section 4 of the Dissolution of Muslim Marriages Act, 1939 is quoted below for ready reference:-

“4. Effect of conversion to the other faith – The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage.

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam for some other faith who re-embraces her former faith.”

28. Sir D.F. Mullah considered this aspect of the matter in his commentary on Mohammedan Law and thereupon inserted a complete paragraph under section 321 with a separate and a distinct title “Apostasy from Islam”. He has also considered the effect of section 4 of the Dissolution of Muslim Marriages Act, 1939. Various case laws including Abdul Ghani v. Azizul Huk (1912) 39 Cal. 409, Karan Singh v. Emperor (1933) All.L.J. 733 were considered in the notes under this paragraph of the commentary and observed that when a Mohameddan husband gets converted to Christianity and his wife then married another man before the expiration of *iddat* period, she is not guilty of bigamy under section 494 IPC because apostasy operates as an immediate dissolution of marriage. Section 321 of Mullah’s Mohameddan Law is relevant for the present purpose and accordingly the same is quoted below for ready reference:-

“321. Apostasy from Islam. – (1) Before the Dissolution of Muslim Marriages Act, 1939, apostasy from Islam of either party to a marriage operated as a complete and immediate dissolution of the marriage.

(2) Under sec. 4 of the dissolution of Muslim Marriages Act, 1939, however, mere renunciation of Islam by a married woman or her conversion to any other religion cannot by itself operate to dissolve her marriage but she may sue for dissolution of nay of the grounds mentioned in sec. 2 of the Act. Under this Act, therefore, the decisions mentioned below are no longer good law.

(3) Sec. 4 only applies to the case of apostasy from Islam of a married Muslim woman, and apostasy of the Muslim husband would still operate as a complete and immediate dissolution of the marriage.

(4) The provisions of sec. 4, however, do not apply to a woman converted to Islam from some other faith, who re-embraces her former faith. In such a case, the law as it stood before teh dissolution of Muslim Marriages Act, 1939, will apply, and the conversion will operate as a dissolution of the marriage.

(Emphasis supplied)

(5) Apostasy from Islam of the husband operates as a complete and immediate dissolution of the marriage.

29. It is thus clear from above that the moment a Muslim commits apostasy, he gets excluded from the Islamic Commonwealth and all his rights, interests, status and relations get automatically extinguished. His marital tie with his Mohameddan wife automatically gets snapped and his Mohameddan wife becomes free to remarry at least after completion of the *iddat* period. Applying this law in the case in hand, Saydur Rahman Hazarika became guilty of apostasy on 28.09.1993 with the swearing of affidavit Ext. B and so his marriage with

Parbin Rahman Hazarika became automatically dissolved. Her *iddat* period expired after three months and so even if he had returned to Islam after that period he ought to have remarried her. Here the undisputed findings of fact is that Saydur became a Hindu on 28.09.1993 and thereafter he married Krishna Das on 30.11.1993. He got two daughters from the second marriage with Krishna Das and ultimately he died on 20.07.2006 without returning to Islam. His dissolution of marriage with Parbin Rahman Hazarika, therefore, was final and not revoked. Consequently, Parbin Rahman Hazarika cannot be widow of Saydur Rahman Hazarika alias Samir Ranjan Choudhury and so she cannot be his legal heir under law. The first point for determination is accordingly answered in the negative and in favour of the appellant.

(ii) Whether off-springs born out of a Mohameddan marriage would inherit property of their father on death if he became a Hindu before death?

30. So far as inheritance of the properties of a Muslim dying intestate is clear. It has been held in the Holy Book, Al Quran itself as follows:

“Allah commands you regarding your children. For the male a share equivalent to that of two females.” (Al Quran 4:11)

This *ayat* shows that the command is to a believer. What will happen if the believer turns to be nonbeliever, is the question in the present case. An apostate from Islam and an original non-Muslim are equally viewed from the stand point of Islam so that if a deceased Muslim leaves behind him 3 heirs, one of whom is a non-Muslim, the second an apostate and the third a Muslim, in that event, according to Mohameddan Law, the first two would be excluded from succession and the inheritance would entirely go to the Muslim heir even if he is

the remotest in terms of the degree of proximity of the deceased. This shows that an apostate is excluded from inheritance of properties from his Muslim ancestors. Coming to the question of the converse case, Jurist Ameer Ali quoted from *Fatwa-e-Alamgiri* (Vol. VI, P. 631) and commented that under Sunni Law, a Muslim does not inherit from a non-Muslim nor does a non-Muslim inherit from a Muslim. Similarly, Dr. Abid Hasan observed in his 'Islamic Laws of Inheritance' by quoting from *Sahih Al-Bukheri* that according to Prophet (SAWS), a Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim. According to him, generally speaking, this is also the majority view that a Muslim cannot inherit from a non-Muslim.

31. Then what would happen to the properties of an apostate if his Muslim heirs cannot inherit? It is pointed out that in a Dar-ul-Islam (that is the country which is governed by law of Islam), such properties would vest in Bait-ul-Mal and it would lapse accordingly. But in a country like India which is not a Dar-ul-Islam escheat or lapse cannot take place upon apostasy. This is because the law of escheat, lapse or Bona vacantia can take place in India only by operation of Article 296 of the Constitution. The pre conditions of Article 296, obviously do not include apostasy. Thus, it is clear that from the stand point of Mohamedan law, a Muslim cannot be heir of a non-believer.

32. Looking the incident from a different perspective it would appear that when the apostate dies after embracing Hinduism he was being governed by the tenets of Hindu Law at the time of his death. In the case in hand, learned trial court also followed the same principle to hold that as a Hindu, Samir Ranjan Choudhury could not have contracted a second marriage with Krishna Das when

he had a spouse living. Obviously, the learned court examined the incident from the light of section 5(1) of the Hindu Marriage Act, 1955 thus applying the doctrines of Hindu Law. Had he applied Hindu Succession Act, 1956 for the purpose of deciding inheritance of the properties left behind by the deceased, in that event the question would have arisen as to whether a non Hindu would be entitled to inherit property of a Hindu. This can be tested by examining a hypothetical case where son of a Hindu renounces Hinduism and becomes a Muslim and thereafter his Hindu father dies. Obviously, in such case the son who embraced Islam renouncing Hinduism, perhaps would not have been held a legal heir of the deceased Hindu and his properties would have been shared only by his Hindu legal heirs. Inheritance under the Dayabhaga School of Hindu Law is governed by the principle of giving oblation. Obviously, once converted to other religion, a son cannot give oblation following Hindu rituals and so even on such historical view point a converted son of a Hindu loses his right to inherit properties of his father. Same is the case in case of renunciation.

33. Section 26 of the Hindu Succession Act, 1956 casts some light in matter involving conversion from Hinduism to another religion. It provides that children born to a Hindu converted to any other religion after his conversion shall be disqualified from inheriting properties of any Hindu relative unless such children or descendants are Hindus at the time succession opens. The indication is clear that to inherit properties of a Hindu, one must be a Hindu when succession opens. The example of a Hindu son embracing Islam during life time of his father is only taken to test as to whether a Muslim son of a Hindu on apostasy from Islam can inherit share from his deceased Hindu father.

34. While Hadith like *Sahih Al-Bukheri* as well as *Fatwa-e-Alamgiri* prescribes that a Muslim cannot be heir of a disbeliever or non Muslim, even the Hindu Law does not permit inheritance to a son who renounces Hinduism during life time of his father. The sum total is that both from the stand point of Mohameddan Law as well as the Hindu Law of succession, inheritance does not take place beyond the periphery of religion. A Muslim inherits properties of his Muslim ancestor and a Hindu can inherit properties of his Hindu ancestor. In the case in hand, the two off-springs of Saydur Rahman Hazarika alias Samir Ranjan Choudhury from his Muslim wife, Musstt. Parbin Rahman Hazarika admittedly continue pursuing Islamic faith after their father renounced Islam. So, whether doctrine of representation would apply to make them entitled to inherit properties of their grand-father does not arise in the present case but what is clear is that the properties apparently acquired by their father after his conversion to Hinduism would remain beyond their reach to them as they cannot be heir of a disbeliever (*Fatwa-e-Alamgiri*, Vol VI, P. 631 and *Sahih Al-Bukheri*). The second point for determination accordingly stands answered holding that the respondents No. 2 and 3 being not legal heirs of Late Samir Ranjan Choudhury shall not be entitled to succession certificate as prayed for.

30. Both the points for determination having been answered as above, the impugned judgment and order is hereby set aside allowing the appeal. The appellants herein alone shall be the legal heirs of late Samir Ranjan Choudhury and they shall be entitled to succession certificate with respect to the subject debts and securities. The learned trial court shall pass appropriate order for issuing succession certificate in their favour in accordance with law.

31. The appeal stands allowed. No costs.
32. Send down the records.

Biswas

JUDGE