

GAHC030000532022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/5/2022

Smt. Romawii
Melthum, Aizawl

VERSUS

Smt Ropari and 2 Ors.
Aizawl2:Smt Rozami
Aizawl

3:Smt Hmangaihte
Aizawl

Advocate for the Petitioner : Mr F Lalenglina

Advocate for the Respondent : Mr Lalfakawma for R1-R3

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 03.05.2023

Heard Mr. F. Lalenglina, learned counsel for the appellant along with Mr. Lalfakawma, learned counsel for the opposite party.

2. This is an appeal under Section 97 of the Code of Civil Procedure r/w

Section 17 of the Mizoram Civil Courts Act, 2005 against the impugned Judgment & Order dated 17.01.2022 passed by the Senior Civil Judge-IV, Aizawl District in Civil Suit No. 20/2014.

3. Brief facts of the case is that the appellant and the respondents are the daughters of Mr. Suakkunga (L) who died on 04.11.1996 and their mother Mrs. Hmingliani died on 08.06.2002. After the death of their parents, an agreement was made between the parties dated 14.07.2002, for distribution of the immovable properties of their parents as follows:-

<i>Romawii :</i>	<i>Thingzam leilet leh Burchep Leilet</i>
<i>Ropari :</i>	<i>Kawngkam ft 12 bial leh Inpui zawng leh Kawmthlang leh Ngaizel In hmun, Thlanmual.</i>
<i>Rozami :</i>	<i>Kawngkam Pari chan bak zawng, Burchep leilet siam sa, Dam huan thenkhat.</i>
<i>Hmagaihte:</i>	<i>Dam huan thenkhat leh Ngaihsaka Kawmchhak.</i>
<i>A roreltute:</i>	<i>1. Romawii, 2. Ropari, 3. Rozami."</i>

Romawii is the instant appellant and Ropari is the instant respondent No. 1 and Rozami instant respondent No. 2.

4. Thereafter the appellant submitted a Heirship Certificate application before the Sub District Council Court which was acknowledged and not objected by the respondents. The appellant's claim was that, the respondents already had the lion's share in the properties of their parents and that she being

unemployed should be issued the Heirship certificate. Accordingly, the Lower Court had issued the Heirship Certificate to the appellant vide Heirship Certificate No. 389/2002 in respect of the following properties:

- i. House pass No. TVK 8 of 1976, located at Ngaizel Phei- Haite Mual now LSC No. 104502/01/33 of 2005,
- ii. Garden pass periodic Patta No. 252 of 1981 located at Melthum-Thingzam Luikam tawn zawl.
- iii. Garden Pass periodic Patta No. 166 of 1977 located at Bilkhawthlir Hmar Burchep Luidung.
- iv. Shop Pass No. 29 of 1953 located at Saikhamakawn.

On obtaining the Heirship Certificate, the House Pass No.TVK-8 of 1976 was transferred and mutated into Land Settlement Certificate No. 104502/01/33 of 2005 in the name of the appellant. Later, the respondent No. 1 requested the appellant to give the original copy of the said LSC No. 104502/01/33 of 2005, since she required the same for getting electric connection. However, the respondent No. 1 did not return the above mentioned LSC but instead had started construction of RCC building within the said LSC. The appellant had then approached the learned Trial Court for the recovery of the LSC No. 104502/01/33 of 2005 which was initially registered as Civil Suit

No.54/2009 in the Sub-District Council Court. The matter was also previously referred to Lok Adalat, however the parties failed to come to any amicable settlement and the case was returned from Lok Adalat to the Trial Court, which was later withdrawn with a permission to file afresh and thereafter the Civil Suit No.20/2014 was filed before the Senior Civil Judge-IV, Aizawl District.

5. The respondents, filed their written statement and counter claim in the Trial Court, claiming that the appellant had approached the respondents, stating that she would take steps to obtain the Heirship Certificate No. 389/2002 in her name in respect of all their parents' properties solely for the purpose of giving effect to the agreement dated 17.07.2002 and that the appellant would facilitate the necessary mutations as per the settlement, if an Heirship Certificate was granted by the Court. The respondent No. 1 claimed that she was the owner of the land covered under LSC No. 104502/02/33 of 2005 as per the agreement entered into by the parties and that the Heirship Certificate issued by the Subordinate District Council Court vide No. SDC/HC-389/2002/4713-5 dated 31.07.2002 was not binding on the respondents since they were not parties for the issuance of the Heirship certificate and therefore, the mutation of the Land Settlement Certificate based on the Heirship certificate also has no legal effect.

6. From the pleadings of both the parties, the learned Trial Court had framed

the following issues:-

- “1. Whether the suit is maintainable in its present form and style or not?*
- 2. Whether the plaintiff is entitled to the relief claimed or not? If so, who is liable and to what extent?*
- 3. Whether the plaintiff is the rightful owner of a plot of land covered by LSC No. 104502/01/33 of 2005?”.*

7. After both the parties adduced their evidence, the learned Trial passed the impugned Judgment & Order dated 19.01.2022 and decided the issue in favour of the respondents, holding that the parties had made an agreement on 14.07.2022 and the appellant had also mentioned that she had divided the landed properties between herself and her sisters, that the settlement was fully agreed and accepted by herself and the respondents. The learned Trial Court also held that though the appellant had mutated the LSC No. 104502/01/33 of 2005 in her name, this does not cancel the fact that the respondent No. 1 had inherited the suit land. That it is a settled law that mere mutation to a person in the land records cannot confer title. The learned Lower Court thus declared that the respondent No. 1/Ropari, the absolute owner of the land covered under LSC No. 104502/01/33 of 2005. Aggrieved by this Judgment & Order dated 19th January, 2022 passed by the learned Senior Civil Judge-IV in Civil Suit

No.20/2014, the appellant has approached this Court.

8. Mr. F. Lalengliana, learned counsel for the appellant submits that even though there was a family settlement dated 14.07.2022, the said settlement was not registered nor was it signed by the parties. Therefore, the said family settlement does not have any meaning in the eye of law. He further submits that the Heirship Certificate No. 389/2002 was issued in favour of the appellant on 31.07.2022 with the knowledge and consent of both the respondents, who had signed on the application for Heirship certificate. The Heirship Certificate No. 389/2002 is not cancelled and till date no review petition is filed against the Heirship Certificate No. 389/2002, even though the learned Lower Court in its Order dated 03.12.2010 has stated that either of the parties should file the review petition with regards to the Heirship Certificate No. 389/2002 issued to the appellant as the Civil filed suit was connected with the said Heirship Certificate and had kept the matter at abeyance.

9. The learned counsel for the appellant further mentions that, the learned Lower Court had erred in passing its impugned Judgment & Order dated 17.01.2022, by mentioning that the respondent No. 1 had "inherited the suit land" merely on the basis of the agreement dated 14.07.2022. The agreement does not mean that the respondent No. 1 had automatically inherited the said

land. That the Heirship Certificate No. 389/2002 issued in favour of the appellant was never challenged at any stage till date and thus the appellant is the only original owner of the disputed LSC No. 104502/01/33 of 2005.

10. The learned counsel further submits that in the cross examination of the respondent No. 2, both the respondents admit that they had signed on the Heirship Certificate application and that the Heirship Certificate No. 389/2002 was obtained by the appellant with their knowledge and consent and therefore the respondents cannot dispute over this fact at this belated stage. Wherein the appellant deposed that she being the eldest daughter among the surviving of offspring of her parents and since their parents did not leave any will in respect of the landed properties, her sisters/respondents had approached her for making a settlement/partition of the landed properties amongst themselves. However, unhappy with the settlement where her share was less than the respondents, she had then obtained the Heirship Certificate vide Memo No. SDCC/HC/389/2002/4713-5 dated 31st July, 2002 and in pursuance of the Heirship Certificate she inherited the House Pass No. TVK-8 of 1976, which was mutated in her name on 7th July, 2007 and a new LSC No. 104502/01/33 of 2005 was issued in her favour. The respondent No. 1 then came and took the said LSC original copy which she wanted to use for a short period. However, the

respondent No. 1 has refused to return the LSC.

11. The learned counsel has relied on the judgments of this Court in the case of ***Sailala Vs. Smt. Ngurtaiveli***, reported in ***1980 AIR Gau 70, C. Albert Morris Vs. K. Chandrasekaran & Ors.***, reported in ***(2006) 1 SCC 228*** and ***Spandam Das & Ors. Vs. State of Assam, Rep. by the Comm. & Secy. & Ors.***, reported in ***2022 SCC Online Gau 970***.

12. Mr. Lalfakawma, learned counsel for the respondents, on the other hand submits that even though the appellant had mutated the LSC No.104502/01/33 of 2005 in her name, this mutation does not automatically make the appellant the owner. He further submits that in the evidence given by the appellant as plaintiff witness before the Trial Court, she herself admitted that she had written the Agreement dated 14.07.2002 and categorically admitted the fact that the agreement was for the distribution for the immovable properties left behind by their parents. He further mentions that the Heirship Certificate was not challenged because there was already a family agreement, willingly made by the parties, wherein the immovable properties of their parents was distributed amongst themselves and therefore, the subsequent Heirship Certificate not in accordance with the agreement did not have any validity.

13. The learned counsel for the respondents further submits that the

respondents in their written statement and counter claim had challenged the Heirship Certificate No. 389/2002, however, due to some inadvertence did not pray for setting aside the Heirship Certificate No. 389/2002 before the Court. The learned counsel for the respondents submits that, the issue of procedural law needs to be over looked in the larger interest of the parties and the lapse, not pray for setting aside the Heirship Certificate No. 389/2002, did not invalidate the agreement dated 14.07.2002, which the appellant admitted to be true, she is now estoppel from denial of the agreement dated 14.07.2002 wherein she had agreed that the LSC No. 104502/01/33 of 2005 should be given to the respondent No. 1. In support of his submissions, the learned counsel has cited the decisions of the Apex Court in the case of ***B.L. Sreedhar & Ors. Vs. K.M. Munireddy (Dead) & Ors.***, reported in ***(2003) 2 SCC 355***, ***Bhagwan Swaroop & Ors. Vs. Mool Chand & Ors.***, reported in ***(1983) 2 SCC 132*** & ***Jitendra Singh Vs. State of Madhya Pradesh & Ors.***, reported in ***2021 SCC Online SC 802***.

14. Having heard the submissions made by both the parties, this Court is of the opinion that the main point for consideration is whether the respondent No.1 had inherited the disputed LSC No. 104502/01/33 of 2005 through the agreement dated 14.07.2002 executed between the parties, and whether the agreement dated 14.07.2002 will override the Heirship Certificate No. 389/2022,

which was issued to the appellant in respect of the mentioned LSC No. 104502/01/33 of 2005 along with the other immovable properties .

15. It is apparent from the evidence adduced by the parties, that the agreement dated 14.07.2002 does not bear the signature of neither of the parties, however, the appellant had admitted that, the agreement was made with her consent. Subsequent to this agreement, the Heirship Certificate No. 389/2002 was issued in favour of the appellant in respect of the immovable properties which included the House Pass No. TVK-8 of 1976 *i.e* the LSC No. 104502/01/33 of 2005 and thus, as per the Heirship Certificate, the appellant inherited the LSC No. 104502/01/33 of 2005 along with the other mentioned immovable properties of their deceased parents, vide the Heirship Certificate issued in her favour. By virtue of the Heirship Certificate the appellant was made the original owner of the House Pass No. TVK-8 of 1976 *i.e* the LSC No. 104502/01/33 of 2005. It is also noted that the LSC No. 104502/01/33 of 2005 has also been mutated in the name of the appellant on the issuance of Heirship Certificate 389/2002 on 31st July, 2002. This Heirship Certificate has not been challenged nor set aside and this court finds no basis as to how the learned trial court came to the conclusion that '*the agreement dated clearly shows that the respondent/defendant No.1 had inherited the suit land*' while the suit land was

still in the name of their deceased father and no Heirship Certificate was issued to respondent no.1/defendant no.1 to enable her to inherit the mentioned suit land.

16. This Court thus finds that the legality or validity of the Heirship Certificate has to be first challenged if aggrieved with its issuance and since there exist a Heirship Certificate in favour of the appellant, the appellant is the rightful owner of the disputed property unless the Heirship Certificate is set aside. It is seen that the respondents in their written statement and counter claim before the learned Trial Court have claimed that they had signed on the application made by the appellant for issue of the Heirship Certificate only because the appellant had stated that she would do the needful as per their agreement dated 14.07.2002, however, once the Heirship Certificate was issued to the appellant, they have not challenged nor prayed for setting aside or quashing of the Heirship Certificate issued vide Memo No. SDCC/HC/389/2002/4713-5 dated 31st July, 2002, to the appellant. Thus when there is no prayer for setting aside the Heirship Certificate issued to the appellant, this Court is constrained to declare the appellant the legal heir of the deceased parents in respect of the properties mentioned in the Heirship Certificate issued vide Memo No. SDCC/HC/389/2002/4713-5 dated 31st July, 2002 being the successor for

property claimed and the unsigned agreement dated 14.07.2002 cannot override such a legal document.

17. For the above reasons this court finds that the Judgment & Order dated 17.01.2022 in Civil Suit No.20/2014 passed by the learned Senior Civil Judge is liable to be set aside and quashed.

18. It may however be noted that the above finding will not bar the respondents from approaching the appropriate forum and seek legal remedy, if any, against the Heirship Certificate issued vide Memo No. SDCC/HC/389/2002/4713-5 dated 31st July, 2002.

19. RFA No. 5/2022 accordingly stands disposed as above.

JUDGE

Comparing Assistant