

GAHC030000682021



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

Case No. : RFA/4/2021

D. K. Lalchhanhima and Anr
Aizawl

VERSUS

R. Chhiarkungi
Aizawl

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Mr. T Lalnunsiamia

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 04.05.2023

Heard Mr. B. Lalramenga, learned counsel for the appellants along with Mr. T. Lalnunsiamia, learned counsel for the respondent.

2. This is an appeal under Section 17(2)(b) of the Mizoram Civil Courts Act, 2005 against the impugned Order dated 17.12.2020 passed by the learned Senior Civil Judge, Champhai, Aizawl Judicial District in Probate Application No.

1/2016, by which the application for probate of the Will dated 23.02.2015 said to be testated by Mr. R. Lalthianghlma (L) was rejected.

3. Facts of the case in brief is that the deceased Mr. R. Lalthianghlma (L), who passed away on 25.06.2015, had a plot of land with a building standing thereon covered by LSC No. 3091/09/01/01 of 2014 which was located at Champhai, Vengthlang, Mizoram having an area of 99.00 sq.m. The said land which belonged to the deceased Mr. R. Lalthianghlma originally belonged to his grandfather, Mr. R.C. Thangliaua, who died on 18.07.1992 leaving behind the land and building which was previously covered by House Pass No. 104 of 1981. On the death of Mr. R.C. Thangliaua, the said land and building devolved to Mr. Lalnunzira, S/o Mr. R.C. Thangliaua. Thereafter, on the death of Mr. Lalnunzira in the year 1997, his son Mr. R. Lalthianghlma was declared as a legal heir in respect of the said land and building now covered under LSC Certificate No. 3091/09/01/01 of 2014 vide Heriship Certificate No. 56/2012 dated 06.08.2012.

4. The learned Civil Judge, Champhai while issuing Heirship Certificate No. 56/2021 to Mr. R. Lalthianghlma, wherein the House Pass No. 104/1991 was still in the name of Mr. R.C. Thangliaua, had stipulated following conditions that:- "*The petitioner may apply for a permanent retention/mutation/sale of the concerned House Pass by him on being certified by two responsible persons*

that he has been reformed/rehabilitated and no longer abuse drugs/No. 4 and also subject to notice being given to the respondents."

5. The learned Lower Court had passed the said order due to the fact that the deceased Mr. R. Lalthianghlma was said to be a drug abuser. Thereafter, on the death of Mr. R. Lalthianghlma, the instant appellants had approached the Court of the Senior Civil Judge, Champhai in Probate Application No. 1/2016 for the probate of the alleged Will testated by the deceased Mr. R. Lalthianghlma dated 23.02.2015. The learned Senior Civil Judge in Probate Case No. 1/2016, however, rejected the probate of the Will on the grounds that the Will was made under suspicious circumstances and that the alleged Will is not free from undue influence, coercion etc and it cannot be said that the testator executed the Will in his clear mind. Aggrieved by this Order dated 17.12.2020 in Probate Case No. 1/2016, the appellants have now approach this Court by filing the instant Regular First Appeal.

6. Mr. B. Lalramenga, learned counsel for the appellants submits that the said Will executed by the deceased Mr. R. Lalthianghlma on 23.02.2015 was a genuine Will, wherein the deceased Mr. R. Lalthianghlma had executed the Will in favour of the appellants with respect to his landed property which was originally covered under House Pass No. 104/1981 and later mutated as LSC No.

3091/09/01/01 of 2014 by the deceased Mr. R. Lalthianghlma. He submits that the appellants had looked after the deceased Mr. R. Lalthianghlma, who was a drug addict. Though they have no blood relation, the deceased Mr. R. Lalthianghlma considered them as his brothers. He submits that from the evidence, it is clear that the mother of the appellants had looked after the deceased from 2012 and he stayed with their mother even though he had his relatives.

7. The learned counsel further submits that though it is seen from the evidence that the propounder of the Will was present at the time of the execution of the Will, however this does not necessary vitiate the Will since no undue influence was exercised on the deceased Mr. R. Lalthianghlma while he executed his Will. The deceased, Mr. R. Lalthianghlma was the rightful owner of the land and building covered under LSC No. 3091/09/01/01 of 2014 since the learned Civil Judge, Champhai had issued the Heirship Certificate No. 56/2012 in his favour vide the Order dated 6th August, 2012. The Will is executed as per the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, wherein, the witnesses to the Will have been examined and the witnesses have proved that the Will was executed by the deceased, Mr. R. Lalthianghlma. That the learned Lower Court had erred in rejecting the probate of the Will, on the grounds that

it was executed under suspicious circumstance which is just a presumption as there is no prove that the deceased Mr. R. Lalthianghlina was influenced by the mother of the appellants. The testator of the will, Mr. R. Lalthianghlina was not married and had no wife or children and therefore, there is no reason why he should not executed a Will in favour of the appellants, who had looked after him till his death. The reason why the will was executed in favour of the appellants have been explained and mere presence of the propounder or the mother of the legatees/appellants at the time of the execution of the Will cannot be said to be suspicious circumstances. The contents of the Will is as per the desire of the testator. The learned counsel for the appellants has relied on the Judgments of the Apex Court in the case of (i) ***Leela Rajagopal & Ors Vs. Kamala Menon Cocharan & Ors.***, reported in ***(2014) 15 SCC 570***, (ii) ***Ved Mitra Verma Vs. Dharam Deo Verma***, reported in ***(2014) 15 SCC 578*** and (iii) ***Pentakota Satyanarayana & Ors. Vs. Pentakota Seetharatnam & Ors.***, reported in ***(2005)8 SCC 67***.

8. Mr. T. Lalnunsiam, learned counsel for the respondents, on the other hand submits that the instant respondents are the children of Mr. R.C. Thangliaua and the House Pass No. 104/1981 originally belonged to Mr. R.C. Thangliaua. That the circumstances under which the Will was said to be executed by Mr. R. Lalthianghlina is under suspicious circumstances because the deceased Mr. R.

Lalthianghlima was a drug addict and because of his addiction, the Civil Judge , Champhai, had granted him the Heirship certificate in respect of the landed property on the death of his father Lalnunzira with a condition that he, Mr. R. Lalthianghlima may apply for permanent retention/mutation of the concerned house pass on being certified by two responsible persons that he has been reformed/rehabilitated and subject to notice being given to the respondent. However, no notice was given to the respondents in terms of the order of the learned Civil Judge dated 6th August, 2012. Because of the addiction of the deceased/R. Lalthianghlima, it can be seen from the evidence given by the witness that he was influenced by the mother of the appellants who played an active role in the execution of the Will. The appellants had intended to influence the deceased Mr. R. Lalthianghlima acquire the LSC Certificate No. 3091/09/01/01 of 2014 which was keep by their mother, Mrs. Vanlalmuchhuaki. The contents of the alleged Will also makes it clear that the deceased Mr. R. Lalthianghlima had not made the Will without any influence, wherein the last part of the Will mentions that he will not dispose of the LSC No. 3091/09/01/01 of 2014, without informing and without the permission of the appellants. It is also seen from the evidence adduced by the witnesses to the Will that they do not know who had typed the Will which was a typed on a non-judicial paper. There is no evidence to show that the contents of the Will was

typed by the testator and from the evidence of PWs, it is seen that the propounder of the Will Mrs. Vanlalhmuchhuaki was also present when the will was executed and it is the propounder, who is to get the substantial benefit on the execution of the said Will. The learned counsel for the respondents has relied on the Judgments of the Apex Court in the case of (i) ***K.S. Palanisami (D) Vs. Hindu Community in General and Citizens of Gobichettipalayam & Ors.***, reported in **(2017) 13 SCC 15** (ii) ***Indu Bala Bose & Ors. Vs. Mahindra Chandra Bose & Anr.***, reported in **(1982) 1 SCC 20** and (iii) ***Surendra Pal & Ors. Vs. Dr. (Mrs.) Saraswati Arora & Anr.***, reported in **(1974) 2 SCC 600**.

9. Having heard the submissions made by both the parties, the issue to be looked into by this Court are *whether the findings of the Will alleged to be executed by the deceased Mr. R. Lalthianghlina on 23.02.2015 was attested under suspicious circumstances and therefore, cannot be probated and whether the learned trial court had erred in declaring the Will executed by the testator Mr. R. Lalthianghlina as invalid.*

10. The Apex Court in **Indu Bala Bose v. Manindra Chandra Bose, (supra)** held:-

“7. This Court has held that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a

Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations.“

11. In the instant case it is seen from the evidence adduced by the witnesses of both the parties that the deceased Mr. R. Lalthianghlina was addicted to

taking drugs such as heroin and had not left the bad habit even during the time he was supposed to have prepared the Will. The appellants/legatees in the evidence adduced by them before the trial court have also mentioned that the deceased Mr. R. Lalthianghlina would do anything to get money due to his addiction. It is also seen that the appellants were the tenants of the deceased Mr. R. Lalthianghlina and he had stayed with the appellants from 2012 till his death on 23.02.2015, mainly due to his addiction since the mother of the appellants Mrs. Vanlalmuchhuaki was involved in looking after drug addicts. Mrs. Vanlalmuchhuaki has deposed that the deceased Mr. R. Lalthianghlina had told her that he wanted to make a Will, making her sons the beneficiaries instead of his relatives. She also admitted that she had kept the LSC belonging to the deceased Mr. R. Lalthianghlina and she had refused to give it to the relatives of the deceased Mr. R. Lalthianghlina. In her cross examination she has also stated that the deceased Mr. R. Lalthianghlina died due to HIV/Hepatitis and how she looked after him and also gave him money as rent since they were his tenants. She has also stated in her cross examination that she was with the deceased Mr. R. Lalthianghlina while he prepared the will and he was not sober and not of sound mind. The attestator on the Will Mr. Lalchhuanawma has also admitted in his cross examination that he was not sure if Mr. R. Lalthianghlina was of sound mind when the will was drafted. From the

above facts it can clearly be adduced that the deceased Mr. R. Lalthianghlma was not free of his addiction to drugs till he died and thus cannot be said to be in his full senses at the time when the will was prepared. This court also finds it strange that none of the witness knew who had typed the draft Will on a non judicial stamp paper. This court also finds that the contents of the Will have a reason to cause suspicion as to whether the testator had made the Will on his own free will or under some undue influence since the testator while making the Will infavour of the legatees by bequeathing the LSC No.3091/09/01/01 of 2014, further mentions that he will not alter/modify his Will without the knowledge and consent of the legatees. It is thus found that there are suspicious circumstances where the testator makes such a condition and deprive himself, the right to alter his will freely if he so desired.

12. In view of the observations of the Apex court and the above findings. I find no ground to interfere with the Order dated 17.12.2020 passed by the learned Senior Civil Judge, Champhai, Aizawl Judicial District in Probate Application No. 1/2016, in declaring the Will executed by the testator Mr. R. Lalthianghlma as invalid.

13. Accordingly, RFA No.4 of 2021 stands dismissed and disposed

JUDGE

Comparing Assistant