

GAHC030000722022



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

Case No. : RFA/7/2022

Melody Lalrinawmi
Tuikual South

VERSUS

R Lalhriatpuia
Tuikual South, Aizawl

Advocate for the Petitioner : Ms Dinari T Azyu

Advocate for the Respondent : Mr Ashok Kumar Rokhum

Linked Case : I.A.(Civil)/26/2022

Melody Lalrinawmi
Tuikual South
Aizawl

VERSUS

R. Lalhriatpuia
R/o House No. A-105
Tuikual South
Aizawl

Advocate for the Petitioner : Ms Dinari T Azyu
Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT

Date : 17-05-2023

Heard Mrs. Dinari T. Azyu, learned counsel for the appellant along with Mr. A.K. Rokhum, learned counsel for the respondent.

2. This is an appeal filed under Section 17(2)(b) of the Mizoram Civil Court's act, 2005 read with Order 41 Rule 1 and Section 151 of the Code of Civil Procedure, 1908 against the order dated 11.03.2019 passed by the learned Senior Civil Judge, Aizawl District in Probate Case No.2/2019.

3. The facts of the case in a nutshell is that the suit property initially belonged to Brig. Sapliana which had apportioned of the landed property *i.e.* LSC 390/1975 in favour of his son-in-law namely V.L. Zauva thereafter, Mr. V.L. Zauva had gifted a portion of the land in favour of his daughter namely H. Lalsangzuali and accordingly LSC No.1301/1994 was registered in the name of Mrs. H. Lalsangzuali later, the LSC No.1301/1994 was mutated in the name of her husband Mr. R. Chawngkhuma and Mrs. H. Lalsangzuali had also avail loan, being a government servant, wherein Mr. R. Chawngkhuma and Mrs. H. Lalsangzuali managed to a construct a 6 (six) storeys building.

4. On the demise of Mrs. H. Lalsangzuali, Mr. R. Chawngkhuma had executed the impugned Will dated 30.04.2018 which was duly probated by the learned Senior Civil Judge, Aizawl on 11.03.2019. The respondent being the grandson of the deceased Mr. R. Chawngkhuma had approached the trial Court for probate of the will, which was probated on 11.03.2019 and consequently Heirship Certificate No.514 of 2019 was issued to the instant respondent.

5. Aggrieved by this the appellant has approached this Court in the instant RFA.

6. Mrs. Dinari T. Azyu, learned counsel for the appellant submits that the impugned Order dated 11.03.2019 and the consequent Heirship Certificate No.514 of 2019 are liable to be set aside on the ground that no notice was issued to the appellant at the time when the said Will dtd. 11.03.2019 was said to be probated by the learned Lower Court. She submits that the appellant is also staying in one of the floors of the 6 (six) storied building built by the deceased Mr. R. Chawngkhuma and Mrs. H. Lalsangzuali. She being the daughter of Mrs. H. Lalsangzuali should have been informed and given notice with regards to the Will alleged to be executed by Mr. R. Chawngkhuma.

7. The learned counsel for the appellant submits that the property mentioned

in the Will *i.e.* LSC No.1301/1994 is an ancestral property which had belonged to the great grandparents of the appellant and the original owners of the Will had specifically mentioned that this ancestral property should not be owned by any outsider. That the instant respondent had no blood relationship with the original owners of the property.

8. The learned counsel further submits that the genuineness of the alleged Will is doubtful since the late Mr. R. Chawngkhuma was suffering from Alzheimer at the time when they said to have executed the Will and besides that he was a literate person and therefore could have signed his name, instead of giving his thumb impression on the said Will. She further submitted that even though the said LSC No.1301/1994 was in the name of late R. Chawngkhuma simply having title with regards to the land does not grant or give him ownership on mutation of land. A person's name is in a Revenue record is only in order to pay the Land Revenue in question. In support of her submissions she has cited in the case of **Sawarni (Smt) vs. Inder Kaur (Smt) & Ors.** reported in **(1996) 6 SCC 223 and** in the case of **Suraj Bhan & Ors. Vs. Financial Commissioner & Ors.** reported in **(2007) 6 SCC 186.**

9. The learned counsel for the appellant thus prayed that she may be allowed to contest the probate of the Will since she is an interested party and has

legitimate right over the property which had originally belonged to her mother Mrs. H. Lalsangzuali. She has prayed that this matter may be remanded back to the trial court so that she may be granted an opportunity to be heard in the matter. On this point she has cited the decision of the co-ordinate bench of this Court in RFA 21/2018 dated 21.05.2019 and RSA No.5/2013 dated 16.03.2017.

10. Mr. A.K. Rokhum, learned counsel for the respondent on the other hand submits that there is no infirmity in the learned Trial Court Probating the Will which was duly executed by the late Mr. R. Chawngkhuma. The learned counsel submits that the property in question *i.e.* LSC No. 1301/1994 was transferred to his name by the late H. Lalsangzuali and on transfer of the said land, he is the rightful ownership and being the legal and rightful ownership of the said LSC, he has the full authority to execute the Will.

11. The learned counsel mentions that the transferred of ownership of the LSC No. 1301 of 1994 was done legally and the late Mrs. H. Lalsangzuali had also executed a Gift Deed, wherein, her husband Mr. R. Chawngkhuma was made the rightful and legal owner of the property. The learned counsel submits that the Gift Deed was executed on 8.3.2013 and the said LSC was rightfully and legally transferred in Mr. R.Chawngkhuma's name in 2013, therefore the appellant has no right to agitate regarding the transfer of the LSC in the name

of Mr. R. Chawngkhuma in this belated stage. She is in fact the barred from raising any objection, when she could have based such objection regarding the Gift Deed or the transfer of the LSC in Mr. R. Chawngkhuma's name way back in 2013.

12. He further submits that there was no need to issue any notice with regards to the Will made by the rightful owner Mr. R. Chawngkhuma, since in the Will there was only one beneficiary, there are no other beneficiaries and therefore there was no reason to issue notice to anyone else. He further submits that if at all this matter is to be remanded back to the Trial Court, the Revenue Department needs to be impleaded since they have legally and rightfully transferred the LSC No.1301 of 1994 in the name of the deceased Mr. R. Chawngkhuma. The issue of violating the principles of natural justice and hearing the other parties does not occurred in the instant case, since they can be no other interested party with regards to the issue of the Will, wherein the deceased Mr. R. Chawngkhuma had made a will being the rightful and legal owner of the said LSC and has prayed that the present RFA may be dismissed with cost.

13. Having heard the submissions made by both the parties, this Court finds that the Will said to be executed by the deceased Mr. R.Chawngkhuma was

probated by the learned lower Court, however, it is seen that no notice was issued even in the form of Newspaper publication. It appears that the appellant is residing in one floor of the same building which is built within the LSC No.1301/1994 and therefore she is adversely affected. The appellant states that the building was built by her deceased mother Mrs. H. Lalsangzuali and that the LSC No.1301/1994 is an ancestral property.

14. This Court finds that it need not go into the merits of the case at this stage but justice would be met if the appellant is given an opportunity of being heard with an opportunity to contest the said Will alleged to have been executed by Mr. R. Chawngkhuma. It is an established principle of law that when an opportunity is not given to the parties to be heard, the principles of natural justice stands violated.

15. For the above reasons, the appeal is allowed and the case is transferred back to the learned Trial Court, wherein the appellant may file an application is to be impleaded in the probate case.

16. Both the parties to appear before the learned Lower Court on 12th June, 2023 for the learned Lower Court to take necessary steps.

17. Accordingly, RFA No.7/2022 stands allowed and disposed.

JUDGE

Comparing Assistant