

GAHC030001312022



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

Case No. : RFA/13/2022

R. Liansangi and Anr.
Dawrpui Jail Veng, Aizawl

2: R. Ngurthanzam

VERSUS

Rozamliani
Kulikawn, Aizawl

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga
Advocate for the Respondent : Mr L H Lianhrima, Sr. Adv.

Linked Case : I.A.(Civil)/48/2022

R. Liansangi and Anr.
Dawrpui Jail Veng
Aizawl

2: R. Ngurthanzami
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VERSUS

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Advocate for the Petitioner : Mr. Jonathan Lalrintluanga
Advocate for the Respondent : Mr L H Lianhrima
Sr. Adv.

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER**

Date : 22-03-2023

Heard Mr. Jonathan Lalrintluanga, learned counsel for the appellants along with Mr. L.H. Lianhrima, learned Senior counsel assisted by Ms. Ruth Lalruatfeli for the respondent.

2. This is an appeal under Section 17 of the Mizoram Civil Courts Act, 2005 r/w Section 96 of the Civil Procedure Code, 1908 against the impugned Order dated 15.12.2020 passed by the District Judge, Aizawl Judicial District in Guardianship Certificate Application No. 109/2020.

3. The submission made by the learned counsel for the appellants is that the appellant is the grandmother of the minor children namely, Lalthanzama, Lalruatfela and Christy Malsawmkimi Khawlhing from their mother's side. The date of birth of the children are as follows:- 05.03.2009, 20.04.2012 and 07.06.2016 respectively, while the respondent is the grandmother of the minor children from their father's side. The respondent had filed an application for issuance of Guardianship Certificate in respect of the minor children, since the father of the minor children died on 09.12.2020. The application for Guardianship Certificate was filed on 11.12.2020. The date for pre-hearing of the application was fixed on 15.12.2020 and the learned District & Sessions Judge had issued the Guardianship Certificate on the same date, after adducing evidence of only the instant respondent without giving notice or an opportunity to the appellant of being heard. That the Trial Court had failed to consider that there were other persons who had interest in the custody and well being of the children. That the appellants are residing at Dawrpui Jail Veng, Aizawl and both are having good income with no other children to look after and therefore, are fully capable of looking after the said minor children. That if they were given an opportunity to be heard and the minor

children were heard concerning their choice is most probable that they would choose to stay with the appellants since the minor children had stayed with the appellants for some time, prior to the death of their father.

4. The learned counsel for the appellants has thus prayed that the Guardianship Certificate issued may be set aside and the matter may be remanded back to the Trial Court by giving an opportunity to the appellants to be heard.

5. Mr. L.H. Lianhrima, learned Senior counsel for the respondent, on the other hand submits that the appeal is not to be considered since it is clear from the action of the appellants themselves that they are not really interest for the welfare of the children. There is great delay in appealing against the Guardianship Certificate which was issued on 19.12.2020 and they have now approach this Court only on 21.04.2022. In the appeal application, there is no complaint with regards to the way the respondents are looking after the minor children since the respondents are looking after the minor children properly with all the love, care and attention that is needed. He further submits that the appellant No. 1 is the mother of the minor children, wherein the mother of the minor children has been convicted for the murder of their father and the appellant No. 2 is the sister of the convicted mother. The children were also witnesses to the heinous crime, where the minor children had seen their mother murder their father. Under such circumstances, it is not safe and proper for the children to stay with the grandmother and the sister of the convicted mother.

6. He further submits that as per Section 17 of the Mizo Marriage, Divorce & Inheritance of Property Act, 2014, the main issue to be looked into is the welfare of the minor children and in this case, the welfare of the minor children is being well taken care of by the respondents. In support of his submission, he has cited the decision of the Apex Court in *Swaminathan Kunchu Acharya Vs. State of Gujarat &*

Ors., reported in (2022) 8 SCC 804.

7. Having heard the submissions made by both the parties, this Court finds that the issue as to whether the appellants or the respondent were more fit to take care of the minor children is to be looked into by adducing evidence. It is seen that in the order made by the learned Lower Court, the application for Guardianship Certificate was made on 11.12.2020 and was issued the next date. It is clear that no opportunity was given to the appellants of being heard. Thus, in the interest of justice and to ensure that the Court had looked into all possible venues as to who would be the best person to look after the welfare of the children, this Court find it fit to allow the appeal and remand this matter back to the learned Lower Court by giving an opportunity to the appellants to be heard. The learned Lower Court thereafter, after adducing evidence may decide the matter, keeping in mind the best interest of the children involved.

8. RFA No. 13/2022 accordingly stands allowed and disposed.

JUDGE

Comparing Assistant