

GAHC030001972023



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

Case No. : RFA/10/2023

Sh. R. Lalchhanhima
S/o R. Challiana (L)
R/o Bungkawn Venglai, Aizawl

VERSUS

Smt. Lalparmawii
W/o R. Challiana (L),
R/o Bungkawn Veng, Aizawl

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 21-07-2023

Heard Ms. Mercy Lalhriattluangi, learned counsel for the appellant. None appeared for the respondent though it was noted that notice was duly served upon the sole respondent and the matter was adjourned in the previous Court date giving chance to the respondent No. 1 to be duly represented. Since the sole respondent in spite of having received notice, has failed to appear or be duly represented in the Court, this Court find it fit to proceed with the matter considering the fact that the issue involved in the case is a simple matter.

Ms. Mercy Lalhriattluangi, learned counsel for the appellant submits that the respondent was issued the Heirship Certificate No. 52/2023 vide the impugned Order dated 27.01.2023 passed by the learned Senior Civil Judge-II in Heirship Certificate Case No. 52/2023, without issuing any notice. The instant appellant is the youngest son of the deceased, R. Challiana (L) and he was not informed of the Heirship Certificate issued, wherein the learned Trial Court had issued the Heirship Certificate on the ground that no objection was executed by R. Lalhlupuii and Dr. R. Lalchhuanawma, who are his elder sister and brother. That he being the youngest son of the deceased had not moved out from the main house located within LSC No. 104902/01/608 of 2012 and had been supporting and living with the respondent till date. For the above reason, the Heirship Certificate issued without any notice being served to him should be set aside and dismissed.

Having heard the submission made by the learned counsel for the appellant and on perusal of the impugned Order dated 27.01.2023 passed by the learned Senior Civil Judge-II in Heirship Certificate Case No. 52/2023, this Court finds that the learned Trial Court in the order had opined that he did not find it necessary to issue notice since no objection was executed by the children of the deceased Sh. R. Challiana (L), however, it is seen that no objection was not executed by the instant appellant, who is the youngest son of the deceased Sh. R. Challiana (L). For this reason, this Court finds the submission made by the learned counsel for the appellant sustainable.

It is also noticed that in the impugned Order dated 27.01.2023, the deceased has been named as Sh. Lalbiakmawia, while it should be Sh. R. Challiana since nowhere in the application made by the instant respondent nor in the Heirship Certificate No. 52/2023 duly issued has the name of Sh. Lalbiakmawia been mentioned.

For the above reasons, this Court find it fit to set aside the Order dated 27.01.2023 passed by the learned Senior Civil Judge-II, Aizawl and the Heirship Certificate Application No. 52/2023. The matter is remanded back to the learned Trial Court for denovo trial by giving the instant appellant a chance of being heard and evidence be adduced by both the parties.

It is also observed by this Court that the parties in dispute are mother and son and under the circumstances in view of Section 89 of the Civil Procedure Code, 1908, an attempt should be made for the parties to come to an amicable settlement. Thus, if agreed by the parties, the learned Trial Court may refer the matter to Lok Adalat/mediation for amicable settlement.

Accordingly, RFA No. 10/2023 is allowed and disposed.

JUDGE

Comparing Assistant