

GAHC030002022023



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

Case No. : RFA/11/2023

Sh. F. Lalbiakmuana
S/o F. Sapa (L)
R/o Chanmari

VERSUS

Smt. P.C. Lalhmingchungnungi
W/o Sapa (L)
(de facto wife)
R/o Chanmari, Lunglei, Mizoram

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

Advocate for the Respondent : Mr Samuel Vanlalhriata Chhangte

Linked Case : I.A.(Civil)/43/2023

Sh. F. Lalbiakmuana
S/o F. Sapa (L)
R/o Chanmari
Aizawl
Mizoram

VERSUS

Smt. P.C. Lalhmingchungnungi
W/o F. Sapa (L)
(de facto wife)
R/o Chanmari

Lunglei
Mizoram

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei
Advocate for the Respondent : Mr Samuel Vanlalhriata Chhangte

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

13.10.2023

(Friday)

Heard Mr. Joseph Lalchhanhima Renthlei, learned counsel for the appellant along with Mr. Samuel Vanlalhriata Chhangte, learned counsel for the sole respondent.

2. This is an appeal under Section 98 of the Code of Civil Procedure, 1908, read with Order 41 of the Code of Civil Procedure as well as under Section 17 of the Mizoram Civil Courts Act, 2005, against the impugned Order dated 24.02.2021 and the impugned Heirship Certificate No.49/2021 (H/C) issued by the Court of Senior civil Judge, Lunglei District, Lunglei.

3. Mr. Joseph L. Renthlei, learned counsel for the appellant, submits that the impugned Heirship Certificate No. 49/2021 was issued to the respondent without any notice being issued to the appellant, he submits that on perusal of the Order dated 24.02.2021, it is cleared that no notice was issued and the examination-in-chief was made by only the respondent, the documents also show that there is no objection

certificate filed by the children of the deceased F. Sapa. The learned counsel submits that the present appellant is the son of the deceased through his first marriage, while the respondent is the second wife of the deceased F. Sapa.

4. The learned counsel also submits that there is a Probate case pending in the Court of Senior Civil Judge, Aizawl registered as Probate Case No.34/2022, wherein the landed property for which the Heirship Certificate has been issued to the respondent is also included in the said Probate case.

5. The learned counsel for the petitioner has therefore prayed that the impugned Heirship Certificate No. 49/2021 be quashed and the matter may be remanded back to the learned trial court for denovo trial by giving adequate opportunity to the instant appellant to challenge the said Heirship Certificate application filed by the respondent.

6. Mr. Samuel Vanlalhriata Chhangte, learned counsel for respondent in all fairness admits that notice was not issued by the learned Trial Court and has not objected to the matter being remanded back to the learned Trial Court, he also mentions that the respondent is also duly represented in the mentioned Probate Case No.34/2022 and submits that the present appellant is not legitimate son of the deceased F. Sapa and therefore, has cannot claim the properties of the deceased F. Sapa.

7. Having heard the submissions made by the learned counsel for both the parties,

this court considering the fact that the learned lower court while issuing the impugned Heirship Certificate No. 49/2021 had not issued notice, but had issued to the Heirship Certificate vide its Order dated 24.02.2021, on the grounds that the petitioner is the wife of the deceased F. Sapa which is supported by examination-in-chief in affidavit of the family members. It is however seen that the examination-in-chief affidavit was executed only by the respondent.

8. In view of the above, the Heirship Certificate No.49/2021 is liable to be quashed and set aside and the matter is to be remanded back to the learned trial court for denovo trial by giving the appellant/opposite party chance of being heard.

9. The parties or through their counsel are to be appeared before learned trial court on 24.11.2023 for further necessary steps as deem fit by the learned trial court.

10. Accordingly, RFA No. 11/2023 stands disposed of as above.

JUDGE

Comparing Assistant