

GAHC030002162023



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

Case No. : RFA/13/2023

Smt. C. Lalbiakengi
D/o C. Lalthianga (L)
R/o Chaltlang Lily Veng, Aizawl

VERSUS

Sh. K. Lalruata
S/o K. Thanchhunga (L)
R/o Chaltlang Lily Veng, Aizawl

Advocate for the Petitioner : Mr F Lalenglina

Advocate for the Respondent : Mr R Lalawmpuia

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAIO

08.08.2023

Heard Mr. F. Lalenglina, learned counsel for the appellant and Mr. Ram Murmu, learned counsel for the sole respondent.

[2.] By filing the instant appeal under Section 17(2)(b) of the Mizoram Civil Courts Act, 2005 read with Section 96 of the Code of Civil Procedure, 1908, the appellant

has sought for setting aside the order dated 04.04.2019 passed by the learned Senior Civil Judge-IV, Aizawl in Heirship Certificate Application No. 562/2019. According to the appellant, one Sh. K. Thanchhunga, who is her maternal Grandfather expired on 03.03.2009 leaving behind a landed property covered by LSC No. AZL-793/1985 along with three (3) storied building standing thereon. Sh. K. Thanchhunga left behind a Will in favour of the appellant and therefore, the appellant applied for probate of the Will by filing Probate Case No. 14/2022. However, before the Will could be probated, the appellant came to learn that the present respondent who is the son of late K. Thanchhunga applied for Heirship Certificate for the property in question on 04.04.2019 before the Court of Senior Civil Judge, Aizawl and the learned Court below without issuing any notice and on the same day granted the Heirship Certificate. As such, the appellant upon coming to learn about the same has filed the instant appeal.

[3.] Mr. F. Lalengliana, learned counsel for the appellant submits that since the deceased person had left behind a Will in favour of the appellant, the Heirship Certificate which was granted without any notice to the appellant cannot be sustained and should be set aside. He submits that the Probate case is pending as on date for disposal.

[4.] Mr. Ram Murmu, learned counsel for the respondent on the other hand submits that the alleged Will said to have been left behind by late Sh. K.

Thanchhunga is in respect of LSC No. AZL-798/1985 and not 793/1985. According to the respondent, Sh. K. Thanchhunga does not have any landed property under the registration of AZL-798/1985 and therefore, the appellant cannot have any claim over the property in question over which the Heirship Certificate was granted to the respondent.

[5.] I have heard the learned counsels for the rival parties and I have perused the materials available on record.

[6.] According to the appellant, Heirship Certificate Application No. 562/2019 was applied for by the respondent on 04.04.2019 and it was on the same day that the learned Trial Court granted the application by issuing the Heirship Certificate. There is no dispute to the fact that the same was issued to the respondent without any notice to any party who may be interested including the instant appellant, who not only claims to be the maternal grand-daughter of late K. Thanchhunga but also being left with a Will by the said person in respect of the property in question. Although some discrepancy in the registration number of the LSC has been raised but in the considered view of this Court, the same very well can be considered and examined by the learned Court below at the appropriate time. Since the appellant has not been heard prior to issuance to Heirship Certificate, I am of the considered view that ends of justice would be made if the matter is remanded back to the learned Court of Senior Civil Judge, Aizawl for reconsideration of the Heirship

Certificate application by giving due opportunity to the parties concerned to project their respective claim and then to dispose of the same in accordance with law. It is ordered accordingly.

[7.] Since the parties are represented before the Court today, the parties are directed to appear before the Court of Senior Civil Judge concerned on 21.08.2023 where after, the learned Trial Court shall proceed with the matter in accordance with law and make an endeavour to dispose of the application as expeditiously as possible. It is needless to say that the impugned order dated 04.04.2019 passed in Heirship Certificate Application No. 562/2019 along with the Heirship Certificate granted to the respondent are hereby set aside.

[8.] Accordingly, Appeal stands disposed of.

JUDGE

Comparing Assistant