

GAHC030002182022



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

Case No. : RFA/18/2022

Lalrinsiami
Lawipu, Aizawl, Mizoram

VERSUS

Vanlalruati and Anr.
Lawipu, Aizawl, Mizoram 2:Lalbiaksang

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

Advocate for the Respondent : Mr. L.H. Lianhrima, Sr.Adv for R1 and R2. for R1 and R2

Linked Case : I.A.(Civil)/79/2022

Lalrinsiami
Lawipu
Aizawl
Mizoram

VERSUS

Vanlalruati and Anr.
Lawipui
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2:Lalbiaksangi
Lawipu
Aizawl

Mizoram

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga
Advocate for the Respondent : Mr. L.H. Lianhrima
Sr.Adv. for R1 and R2

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

22.03.2023
(Wednesday)

Heard Mr. Jonathan Lalrintluanga, learned counsel for the appellant along with Mr. L.H. Lianhrima, learned senior counsel for the respondents.

2. This is an appeal under Section 17 of the Mizoram Civil Courts Act, 2005 read with Section 96 of CPC, 1908 against the impugned Order dated 07.12.2021 passed by the senior Civil Judge, Aizawl Judicial District in Probate Case No. 21 of 2021.

3. Facts of the case is that the appellant was granted Heirship Certificate 737 of 2021 in respect of LSC No.363 of 1994 on the demise of her husband R. Kapsiama on 19.06.2021. The Heirship Certificate No. 737 of 2021 was issued in favour of the applicant on 25.08.2021. On coming to know of the Heirship Certificate issued, the respondent filed an appeal against the Heirship Certificate issue to the appellant before the Addl. District & Session Judge, Aizawl, which was registered as RFA No.10 of 2021 arising out of HC No. 737 of 2021. However, the said RFA No.10 of 2021 was withdrawn by the respondents since the value of the property was more than ten lakhs. The respondents then moved the Senior Civil Judge for probate of a alleged Will

dated 21.09.2016 executed by the deceased R. Kapsiama and Probate Case No. 21 of 2021 was duly registered on 21.10.2021. Thereafter, the Will was probated in favour of the respondents vide the impugned Order dated 7.12.2021 vide Memo No.415/Sr.CJ-II(A)/2021. Aggrieved by this order hence this appeal.

4. Mr. Jonathan Lalrintluanga, learned counsel for the appellant submits that the respondents had concealed material facts at the time of filing the Probate Case No.21/2021, since they were already aware that the Heirship Certificate had been issued in favour of the appellant that the probate of the Will was infructuous without setting aside the Heirship Certificate No.737 of 2021. That the property mentioned in the Will is also covered by the Heirship Certificate No.737 of 2021 and that the appellant had no knowledge with regard to the application for the probate of the alleged Will.

5. He further submits that even though there was a notice issued through newspaper publication, the appellant does not subscribed in newspaper and had no way of knowing about the application for Probate of the alleged Will dated 21.09.2016. That the genuiness of the alleged Will is highly questionable since the appellant is the wife of the deceased R. Kapsiama and there had been living together and husband and wife since 21.07.2001. The learned counsel further submits that when the appellant came to know of the impugned order dated 7.12.2021 probating the alleged Will of the deceased he had filed a Review application No.2 of 2022 along with CMA No.49 of 2022 before the concerned learned Sr. Civil Judge Aizawl which is

still pending till date.

6. Mr. L.H. Lianhrima, learned senior counsel for the respondents on the other hand submitted that since newspaper publication was made and there was no objection raised by the appellant within the notice period of 45 days, the appellant cannot now challenge the Probate of the Will. He further submits that the Review petition with regards to the Probate of the Will filed by the appellant is also still pending before the Court of the Senior Civil Judge.

7. I have heard and considered the submissions made by both the parties. It is admitted by both the parties that there is a Review application registered as Review application No.2 of 2022 along with CMA No.49 of 2022 which is pending before the Senior Civil Judge. The Review is with regards to the ex-parte probate of the Will said to be executed by the deceased R. Kapliana while an Heirship Certificate No. 737 of 2021 was also issued to the appellant in respect of the properties mentioned in the said Will dated 21.09.2016.

8. Considering the submissions made by the parties, this Court finds that the RFA filed is against the probate of Will said to be executed by the deceased R. Kapliana while an Heirship Certificate No.737 of 2021 was also issue to the appellant. This Court finds that the Review petition is with regards to the same issues raised by the parties in this Court, thus I am of the considered view that Review Petition No.2 of 2022 pending before the Court of Senior Civil Judge may be heard and disposed first and thereafter the aggrieved party may approach the appropriate forum. This Court

does not find it appropriate to consider the matter while the same is pending before the Court of Sr. Civil Judge, Aizawl.

9. Accordingly, RFA No.18 of 2022 stands dismissed.

JUDGE

Comparing Assistant