

GAHC030002382021



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

Case No. : RSA/1/2021

C. Thantluanga
Govt. Complex
Aizawl, Mizoram

VERSUS

C. Kapthangi
Luangmual, Aizawl
Mizoram

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Mr. Joseph Lalchhanhima Renthlei

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 10.05.2023

Heard Mr. B. Lalramenga, learned counsel for the appellant along with Mr. Joseph L. Renthlei, learned counsel for the respondent.

[2.] This Second Appeal is filed under section 100 Civil Procedure Code, 1908, against the impugned Judgment and order dated 08/04/2021 passed by

the First appellate court in RFA No.9 of 2019.

[3.] A brief background of the case is that, the appellant states that he is the owner of the House Pass No. 343/2015, which he had obtained in the year 2015. However, in spite of being the owner of this House Pass, the Civil Judge-I had issued the Heirship Certificate No. 788/2018 to the respondent without his knowledge and he was not aware of the newspaper publication done by the respondent. Thereafter, the respondent had filed a Civil Suit No. 125/2018, for cancellation of the House Pass No. 343/2015 which was issued to the present appellant. The Civil Suit which is still kept pending till date. During the pendency of this civil suit, the appellant had approached the 1st Appellate Court, Additional District & Sessions Judge, Aizawl against the Heirship Certificate which was issued to the respondent without his knowledge. The learned Appellate Court in its Order dated 08.04.2021 in RFA No. 9/2019 passed the impugned order in favour of the respondent.

[4.] Aggrieved by this, the present appellant has approached this Court by filing the Regular Second Appeal. The substantial question of law framed by this Court in its Order dated 09.08.2021 are ;

i. whether the learned Trial Court could have come to a finding on question of fact without any evidence being adduced

ii. Whether a claim/ suit could have been decided when there is non- joinder of a necessary party

iii. whether the question Heirship could have been decided, when the claimed of the respondent on the suit land was based upon the sale made by the original owner of the land to the respondent and not due to any filial/blood/family relationship.

[5.] Mr. B. Lalramenga, learned counsel for the appellant submits that with regard to the first point of the substantial question of law, it is seen that no evidence was recorded by the Court of the learned Civil Judge when the court granted the Heirship Certificate on 25.06.2018. The learned trial court had observed that although notice was published in the local newspaper no objection was received as to issuance of Heirship Certificate to the applicant/respondent in respect of the Village Council pass 9.8.197 and accordingly Heirship Certificate was issued. The learned counsel for the appellant submits that though the 1st Appellate Court had observed that there was a newspaper publication, he submits that the Coordinate Bench of this Court in RFA No. 24/2021, Order dated 17.09.2021 had observed that even if a notice was issued through a newspaper publication, there is a possibility that the newspaper publication may not have been read and being necessary party in the matter. He further submits that though the learned Appellate Court mentions in paragraph No. 6 of the impugned judgment and order dated

08/04/2021, that he had heard the appellant on 24.03.2021 and the respondent on the next date, *i.e.* 25.03.2021, the deposition of the appellant and the respondent are not recorded. He submits that the appellant had not made an admission as recorded by the 1st Appellate Court and that the learned 1st Appellate Court had erred in coming to a decision without any evidence being recorded and the evidence before the learned Appellate court was not considered in its proper perspective. In support of his point the learned counsel has cited the decision of the Apex Court in ***Kochukakkada Aboobacker (Dead) by Lrs. & Ors. Vs. Attah Kasim & Ors., reported in (1996) 7 SCC 389.***

[6.] The learned counsel for the appellant also submits that the matter cannot be decided without the appellant being made a necessary party since he is the owner of the House Pass No. 343/2015 and the Heirship Certificate No. 788/2018 is issued in respect of the landed property is over the same plot of land wherein the appellant is the owner. That the respondent was aware that he was a necessary party by submitting an application before the Mizoram State Legal Services Authority and both the parties had appeared before Lok Adalat, but could not come to any settlement. That the learned counsel for the respondent has read only Order 12 Rule 6 CPC should be read as a whole and

that no evidence was recorded as per Order 12 Rule 3 (a), where it is ascertain schedule form and that no affidavit was signed as per Order 12 Rule 7. The NOC given by the son of the deceased Ngurchhawna is not correct since the appellant had already owned the land. That the learned Appellate Court had erred in passing the impugned judgment and order since the House Pass is within the V/C and the Heirship Certificate covers the whole V/C.

[7.] Regarding the third substantial question of law the learned counsel for the appellant submits that the Heirship Certificate No. 788/2018 is liable to be set aside since the respondent is not a blood relative of the deceased Ngurchhawna. As per Section 31 of the Mizo Marriage, Divorce & Inheritance Act, 2014, there is no provision for a non-blood relative to inherit the properties. He further submits that the appropriate steps should have been for the respondent to file a declaratory suit, if he finds that the Village Council Pass overlapped the House Pass and if he wanted to be declared the owner of the instant disputed land. The learned counsel has relied on and cited the decision of the Apex court in ***Lachman Singh Vs. Kirpa Singh & Ors.***, reported in ***(1987) 2 SCC 547*** and a decision of the Bombay High Court in ***Mr. Noel Dominic Pereira Vs. Mrs. Pamela Ethel Kuhn & Ors.***, reported in ***AIR 2011 Bombay 27.***

[8.] Mr. Joseph L. Renthlei, learned counsel for the respondent on the other hand submits that notice was duly issued by the learned Trial Court through Newspaper publication in 2 (two) local Newspapers for the period of 45 days and that there was no attempt to suppress any facts before the Trial Court. He further submits that the appellant had appeared before the First Appellant Court admitted before the court on 24.03.2021 that he purchased only a small portion of the land for construction of his residence at Rs.80,000/- (*Rupees eighty thousand*) and the respondent had stated before the Court, the next date that she did not claimed the portion of land which the appellant had already constructed which has been duly mentioned by the learned First Appellate Court in the Order dated 08.04.2021 in RFA No. 9 of 2019. The learned counsel submits that matters as such judicial records are un-questionable and are not open to doubt. He also mentions that evidence was recorded by the 1st Appellate Court and this evidence recorded by the 1st Appellate Court should be taken as it is in view of the judgment of the Apex Court in the case of ***Y. Sleebachen & Ors Vs. State of Tamil Nadu*** reported in ***(2015) 5 SCC Case No. 747.***

[9.] The learned counsel for the respondent also submits that the suit land was purchased from Mr. Ngurchhawna (L), however since the suit land remained

in the name of Mr. Ngurchhawna after his death she had taken steps for conversion of the suit land which is V/C pass in to her name. She was told to get Heirship Certificate she should obtained Heirship Certificate by getting NOC from the legal heir of Mr. Ngurchhawna as it was required for changing of the name of the V/C pass to her name. Accordingly, she got NOC from Zozamlina S/o Ngurchhawna stating that he did not have any objection against issuance of Heirship Certificate in her favour since his deceased father had already sold the land to the respondent. He submits that since NOC was obtained from the legal heir of late Ngurchhawna, the appellant who is not in any way related Ngurchhawna has no right to raise any objection.

[10.] The learned counsel for the respondent further submits that the instant petitioner has no *locus standi* to object to the Heirship Certificate of the deceased Ngurchhawna and the right of the appellant is not affected in this case, that he has approached this Court only for prolongation of litigation and that the appeal ought to be dismissed outright.

[11.] The learned counsel for the respondent also submits that there was no substantial question of law framed as provided under Section 100 (5) CPC. That there cannot be a substantial question of law in the present case because admission was clearly made by the appellant before the First Appellate

court and led this Court to Order 12 Rule 6 CPC and Order 41 Rule 33 CPC, where once admission is made the Court can pass a decree at any stage,

In support of his submission, he has cited the case of ***Nazir Mohamed Vs. J. Kamala & Ors.***, reported in ***(2020) 19 SCC 57***,

[12.] Having heard the submissions made by both the parties, and on careful perusal of the documents on record, this Court has noticed that the Certified True copy obtained on 14.04.2021 which is, the Judgment & Order in RFA No.9 of 2021, A/o Heirship Certificate No. 788 of 2018 is dated 06.04.2021 and the impugned Judgment & Order is dated 08.04.2021 in RFA No.9/2019 arising out of Heirship Certificate No.788 of 2018 which has been annexed as Annexure- 6 in the appeal petition. It is seen that there are significant discrepancies in the Certified True copy of the Judgment & Order of the First Appellate Court dated 06.04.2021 from the impugned Judgment & Order is dated 08.04.2021 in RFA No.9/2019 arising out of Heirship Certificate No.788 of 2018 annexed as Annexure-6 in the appeal petition.

[13.] This Court finds this very unusual and strange that neither of the parties, during hearing of the matter have pressed upon the fact that the impugned order dated 08/04/2021 passed by the First appellate court in RFA No.9 of 2019 A/o Heirship Certificate No. 788 of 2018 is not a certified true

copy. The instant appeal is against the judgment & order in RFA No.9/2019 dated 08.04.2021, which however is not a certified true copy. This Court is thus constrained to refrain itself from considering the submissions made by the parties on the Judgment and order in RFA No.9/2019 dated 08.04.2021 which has not been certified to be the true copy by the competent authority, especially when the competent authority has issued the certified true copy of Judgement and order dated 06.04.2021 in RFA No.9/2019 A/o Heirship Certificate No. 788 of 2018, wherein significant discrepancies are found with the impugned Judgment and order dated 08.04.2021 in RFA No. 9/2019 A/o Heirship Certificate No. 788 of 2018 and wherein the instant appeal is not against the Judgement and order dated 06.04.2021 in RFA No.9/2019 A/o Heirship Certificate No. 788 of 2018.

[14.] In view of the above observations, this second appeal stands dismissed and is accordingly disposed of.

JUDGE

Comparing Assistant