

GAHC030002642023



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

Case No. : I.A.(Civil)/60/2023

Ropari and 2 Ors.
Saikhamakawn, Aizawl, Mizoram 2: Smt Rozami

3: Hmangaihte

VERSUS

Smt Romawii
Melthum, Aizawl Dist., Mizoram

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent : Mr F Lalenglina

Linked Case : RFA/18/2023

Ropari and 2 Ors.
W/o Biakzuala
Saikhamakawn
Aizawl
Mizoram

2: Rozami
W/o Lalzuithanga
Saikhamakawn
Aizawl
Mizoram

3: Hmangaihte
D/o Niliana
Saikhamakawn
Aizawl

Mizoram
VERSUS

Smt Romawii
D/o Suakkunga (L)
Melthum
Aizawl Dist.
Mizoram

Advocate for the Petitioner : Mr Lalfakawma
Advocate for the Respondent : Mr F Lalenglina

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 22-09-2023

Heard Mr. Lalfakawma, learned counsel for the applicant along with Mr. F. Lalenglina, learned counsel for the opposite party/respondent.

2. This is an application filed for the condonation of delay of 6792 days in filing the Regular First Appeal against the Heirship Certificate issued by the Sub-District Council Court, Aizawl dated 31.07.2002.

3. The learned counsel for the applicant submits that he has approach this Court for the condonation of the delay which has amounted to 6792 days in view of this Court's Judgment dated 03.05.2023 passed in RFA No. 5/2022, wherein this court while disposing of the RFA No.5/2022 had observed that the

respondents are not bared from approaching the appropriate forum and seek legal remedy, if any, against the Heirship Certificate issued vide Memo No. SDCC/HC/389/2002/4713-5 dated 31st July, 2002. The learned counsel submits that the delay was not due to any laches or negligence on the part of the applicant but was due to the fact that the applicants Nos. 1 & 2 had signed their consent on the application for Heirship Certificate made by the respondent before the Sub-District Council Court on 24th July, 2002 being given the impression that the respondent would thereafter take necessary steps in terms of the agreement dated 14.07.2002. Wherein the parties had all agreed to distribute the properties left behind by their deceased parents as per the terms of said agreement. That the issue of the Heirship Certificate, in favour of the respondent was supposed to be for the further execution of the agreement dated 14.07.2002 made between the parties, who are sisters.

4. The learned counsel further submits that after the issuance of the Heirship Certificate, the disputed property/LSC No.104502/01/33 of 2005 was in the possession of applicant No. 1 and therefore, the applicant No. 1 had found no reason to challenge the Heirship Certificate since she was in peaceful possession of LSC No.104502/01/33 of 2005 and was under the impression that as agreed by the parties in the Agreement dated 14.07.2002, even though Heirship

Certificate was issued to the respondent, the said property would belong to her. The appellant had even built a RCC building within the said LSC. For this reason, the applicants had taken no steps between the period 2002 to 2009. However, in 2009 the respondent had approached the Sub District Council Court in Civil Suit No. 54/2009, demanding the LSC No.104502/01/33 of 2005 to be returned to her. Thereafter, the applicants had filed their written statement in the Civil Suit No. 54/2009, however, the civil suit was later withdrawn by the respondent with a permission to file afresh vide the court's order dated 16.01.2014. Thereafter, the respondent had filed a fresh suit registered as Civil Suit No. 20/2014, wherein the applicants had also contested and filed their counter-claim. For the above reasons, the applicants were not being negligent with regards to challenging the Heirship Certificate but were prosecuting the Civil Suit No. 20/2014. The Civil Suit was decreed in favour of the applicants, aggrieved, the respondent had filed an appeal before this court in RFA No. 5/2022. The RFA No.5/2022 was disposed of in favour of the instant respondent but with an observation as mentioned aforesaid. The applicants have now approached this court in view of the observation of this court that the respondents are not barred from approaching the appropriate forum and seek legal remedy, if any, against the Heirship Certificate issued with due diligence and in good faith and thus, the delay may be condoned in view of Section 14 of

the Limitation Act.

5. The learned counsel for the applicants also submits that the respondent had in fact committed fraud while applying for the Heirship Certificate before the Sub-District Council Court by not mentioning that the Heirship Certificate was applied for in view of the agreement made by all the parties. Because of the Agreement dated 14.07.2002, no objection was signed by the respondents on the application being under the impression that the respondent would also honour the terms of the agreement made between all the parties. The learned counsel submits that the existence of the agreement is not denied by the respondent in the evidence adduced by the parties before the learned Trial Court in Civil Suit No. 20/2014.

6. In support of his submission that under Section 14 of the Limitation Act, the period spent in prosecuting civil proceedings bona fide and with due diligence is liable to be excluded in computing the period of limitation for the suit or the, the learned counsel has cited in the case of *Arm Group Enterprises Ltd. Vs. Waldorf Restaurant & Ors.*, reported in (2003) 6 SCC 423 (para 27), *Commandant, 11th Battalion, A.P. Special Police (IR), Cuddapah, Cuddapah District Vs. B. Shankar Naik*, reported in (2003) 5 SCC 580 (para 13) and

Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs & Ors in Civil Appeal No. 4440/2008 A/o SLP(C) No. 6111/2006 .

7. Mr. F. Lalengliana, learned counsel for the respondent, on the other hand submits that since the applicants had signed their no objection on the application made by the respondent on , for issue of Heirship Certificate before the Sub-District Council Court, they were well aware that the Heirship Certificate was issued to the respondent way back on 31st July, 2002. He further submits that even after the Civil Suit No. 54/2009 was filed in 2009, the learned Lower Court in its Order dated 03.12.2010 in the presence of both the parties had held *that either of the parties should file a review petition with regards to Heirship Certificate No. 389/2002, as the instant suit is connected with the Heirship Certificate and kept the instant suit at abeyance.* However, the applicants had not taken any steps to file the review petition even though they were in full knowledge of the Heirship Certificate which was issued. The applicants were in full knowledge of the contents of the Heirship Certificate at this stage but did not bother to take steps. The respondent had later withdrawn the Civil Suit No. 54/2009 and filed afresh the Civil Suit No. 20/2014, meanwhile no steps were taken by the appellant to file a review petition in terms of the Order dated 03.12.2010 in Civil Suit No. 54/2009. The applicants/ appellants were not

bothered or interested to file a review or appeal against the Heirship Certificate.

8. The learned counsel for the respondent also submits that the agreement mentioned by the applicants was prior to the application for Heirship Certificate and in fact, the agreement cannot be acted upon, since it is not a registered agreement nor was it signed by the parties. That the respondent had applied for the Heirship Certificate with the knowledge and consent of the applicants because she was not happy with the said agreement dated 14.07.2002 where she was to get very little of the properties left by their parents.

9. The learned counsel submits that the applicant had knowledge of the Heirship certificate in the year it was issued and the period of limitation should be counted from when he had the knowledge in support of his submission has cited in the case of *Gauhati University Vs. Niharlal Bhattacharjee*, reported in (1995) 6 SCC 731, *A. Ashang Kom & Ors. Vs. Najimuddin Shah (MD.) & Ors.*, reported in 2023 (2) GLT 207 (para 17), and the Order dated 09.02.2022 passed in WP(C) No. 95/2022 by the Division Bench of this court

10. I have heard the submissions of both the rival parties and perused the documents on record.

11. It is seen that the respondent had filed an application for the issue of

Heirship certificate wherein both the applicants had signed their acknowledgement and accordingly the impugned Heirship Certificate No. 389/2002 dated 31st July, 2002 was issued to the respondent. The contention of the applicants is that they were initially not aggrieved by the issue of the Heirship Certificate being under the impression that the respondent would take steps as per an agreement made between the parties dated 14.07.2002. However no steps in terms of the mentioned agreement was taken by the respondent and in fact she had mutated the disputed property /LSC No.104502/01/33 of 2005 in her name by virtue of the Heirship Certificate on 17.17.2007. The explanation of the applicants is that no steps were taken by them to challenge the Heirship Certificate since the disputed property /LSC No.104502/01/33 of 2005 was in the peaceful possession of the applicant No.1. However it is seen that the respondent was compelled to file the Civil Suit no. No. 54/2009 since the LSC No.104502/01/33 of 2005 which was in her name was not returned/ given to her by the applicant no.1. Thus this court finds that the act of the respondent to approach the court for the return of the disputed LSC is contradictory to the statement that the applicant No.1 was in peaceful possession of the LSC No.104502/01/33 of 2005 from 2002 to 2009, especially when the disputed LSC No.104502/01/33 of 2005 had been mutated in the name of the respondent on 17.07.2007.

12. The applicant's second explanation for the delay is due to the appellants contesting the civil proceedings in Civil Suit No. 54/2009 filed by the respondent which was withdrawn filed afresh suit in Civil Suit No. 20/2014 and also contested the RFA No. 5/2022. That since the proceedings relates to the agreement dated 14.07.2002 and the disputed LSC No.104502/01/33 of 2005 they did not challenge the Heirship Certificate No. 389/2002 dated 31st July,2002. However, this court finds that in an order dated 03.12.2010 in Civil Suit No. 54/2009 passed by the learned lower court, in the presence of both the parties, the parties were advised to file a review petition with regards to Heirship Certificate No. 389/2002, as the instant suit was connected with the Heirship Certificate and had kept the instant suit at abeyance. It is seen that in spite of such an order being passed the applicants failed to take any such steps. The respondent had then withdrawn the Civil Suit No. 54/2009 and later filed the Civil Suit No. 20/2014, even during this period, no steps were taken by the applicant to file a review petition in terms of the Order dated 03.12.2010 in Civil Suit No. 54/2009.

13. For the above reasons this court is unable to accept the contention of the learned counsel for the applicant that the provisions of section 14 of the Limitation Act would apply in this case and that the applicants have been

contesting with due diligence the civil proceeding, from when the respondent had instituted then Suit No. 54/2009 till the disposal of the Civil Suit No. 20/2014, and till the disposal of the subsequent RFA 5/2022.

14. The court finds that there has been negligence on the part of the applicants in not challenging the Heirship Certificate by filing a review application when it became clear to the applicants that the respondent was not taking steps as were the agreement dated 14.07.2002. The applicants have shown themselves to be passive and negligent to take any initiative to challenge the Heirship Certificate No. 389/2002 in spite of being aware of its issuance in favour of the respondent, who had even gone to the extent of mutating the LSC No.104502/01/33 of 2005 in her name on the issuance of the Heirship Certificate No. 389/2002. The claim of the applicants is that the Heirship Certificate was obtained through fraudulent means as such, the applicants should have been prudent enough to take immediate steps to challenge or even file for the review of the Hiership Certificate.

15. For the above reasons this court finds that no sufficient reason or explanation has not been made out by the applicant for the delay of 6792 days in filing Regular First Appeal against the Heirship Certificate issued by the

Subordinate District Council Court, Aizawl vide Memo No. SDCC/HC-389/2002/4713-5 dt. 31.07.2002.

16. I.A (C) No. 60/2023 accordingly stands dismissed and disposed of along with RFA no 18 of 2023.

JUDGE

Comparing Assistant