

GAHC030003692022



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

Case No. : CRP/5/2022

Smt. T. Lalduhawmi
Bawngkawn South, Aizawl

VERSUS

Sh. Lalzawmliana @ T. Lalzawmliana
Bawngkawn South, Aizawl

Advocate for the Petitioner : Ms. Juliana Lalmangaihi

Advocate for the Respondent : Mr. T Lalnunsiana

BEFORE
HON'BLE MRS. JUSTICE MARLI YANKUNG
ORDER

22.03.2023
(Wednesday)

Heard Mr. C. Tlanthianghlina, learned counsel for the petitioner along with Mr. T. Lalnunsiana, learned counsel for the opposite party.

2. This is a Civil Revision Petition filed under Section 115 CPC r/w 151 C.P.C against the Order dated 01.08.2022 passed by the District Judge, Aizawl in CMA No. 161/2022 in RFA No. 6/2022 arising out of Heirship Certificate No. 21/2012.

3. Brief facts leading to the filing of this Civil Revision Petition is that the petitioner and the respondent are the children of the deceased T. Lalhmingthanga who died on 27.09.2007. Thereafter, the Petitioner had submitted an application for issuance of Heirship Certificate in respect of LSC No.AZL-186 of 1970 left behind by their deceased father in which she had enclosed Death Certificates of her parents, copy of LSC, Residential/Character Certificate issued by the Local Council Bawngkawn South, Aizawl and the alleged No- Objection Certificate executed by the instant Respondent and T.Lalzuithangi. The case was registered as Heirship Certificate No.21 of 2012 and it was allowed by the Order dt.17/1/2012 by issuing Heirship Certificate in favour of the Petitioner. The Petitioner then mutated the LSC No.AZL-186 of 1970 in her name and a fresh Residential LSC No.CAD-95 of 2020 was issued in her favour which superseded the previous LSC. The Petitioner then told the Respondent to leave the floor which was occupied by the respondent in the same building of the petitioner or to pay house rent to her and even gave him a Legal Notice dt.16/11/2021. The Respondent herein then had applied for documents through RTI to the SPIO, Land Revenue & Settlement Department, Aizawl with regard to mutation of his late father's property, i.e., LSC No.AZL-186 of 1970. Thereafter, vide Letter dt.15/11/2021 the Respondent came to know that the landed property left by his late father was already mutated in favour of the Petitioner.

4. Aggrieved, the Respondent then filed RFA No. 6/2022 arising out of Heirship

Certificate No. 21/2012 before the District Judge, Aizawl stating that he had no knowledge that the Petitioner had submitted an application before the Civil Judge-III, Aizawl Judicial District, Aizawl for issuance of Heirship Certificate. He alleged that he came to know his sister had mutated the LSC No.186 of 1970 in her name only when information regarding the mutation was provided to him through RTI on 21/11/2021 by the Revenue authorities and accordingly filed an application for condonation of delay in CMA No. 161/2022 with RFA No.6/2022

5. The Petitioner in her Affidavit-in-Opposition against the application for condonation of delay had denied that the Respondent had no knowledge about the application submitted by her for issuance of Heirship Certificate. She stated that she had enclosed a No-Objection Certificate dt.13/1/2012 signed by her sister Smt.T.Lalzuithangi and the Respondent himself. The Trial Court had also examined the Respondent as well as the Petitioner who had submitted their examination-in-chief on affidavit on 17.01.2012 and the Trial Court was of the opinion that the application for issued of Heirship Certificate was genuine. Subsequently, Heirship Certificate was issued in her favour by the Trial Court. The Petitioner in her Affidavit-in-Opposition had also annexed an Affidavit dt.20/5/2022 sworn by her sister Smt. T.Lalzuithangi to the effect that in the Heirship Application dt.13/1/2012 submitted by the Petitioner herein, she along with the present Respondent had submitted a No-Objection Certificate dt.13/1/2012 executed by them in the main family house at Bawngkawn South, Aizawl

in the presence of the Petitioner and her family without any undue influence, threat, fraud or coercion.

6. The Ld. District Judge, Aizawl Judicial District, Aizawl after hearing both the parties, disposed of the said CMA No.161/2022 vide impugned Order dt.1/8/2022 condoning the delay of 3687 days in filing the connected in RFA No.6/2022 A/o Heirship Certificate No.21 of 2012. With the disposal of the CMA No.161/2022, the connected appeal i.e., RFA No.6/2022 was listed again on 23/8/2022 for filing of written objection.

7. Being highly aggrieved and dissatisfied with the said impugned Order dt.1/8/2022, the Petitioner has filed the instant revision petition.

8. Mr. C. Tlanthianghlina, learned counsel for the petitioner submits that the learned District Judge, Aizawl had erred in law and in fact in passing the impugned Order dt.1/8/2022 condoning the delay of 3687 days in filing the connected RFA No.6/2022 A/o Heirship Certificate No.21 of 2012, where the Ld. Lower Court had failed to take into consideration that the respondent was well aware of the fact that the present Petitioner had applied for Heirship Certificate since he even signed a No-Objection Certificate dt.13/1/2012 along with his sister Smt.T.Lalzuithangi. Moreover, he had submitted his examination-in-chief on affidavit dt.17/1/2012 and was examined by the Trial Court, as can be seen from the Order dt.17/1/2012 passed by

the Civil Judge-III, Aizawl Judicial District, Aizawl in Heirship Certificate No.21 of 2012. Hence, the claim of the Respondent that he had no knowledge that the Petitioner had submitted an application for issuance of Heirship Certificate in respect of LSC No.AZL- 186 of 1970 holds no water and the conclusion of the Ld. Lower Court that the Respondent had gained knowledge of transfer and mutation of LSC No.AZL- 186 of 1970 in favour of the Petitioner only on receiving the RTI reply on 15/11/2021 cannot stand the test of law. And as such the impugned Order dt.1/8/2022 is liable to be set aside and quashed.

9. In support of his submission, the learned counsel has cited the decision of the Apex Court in the case of "**State of Maharashtra -Vrs- Ramdas Shrinivas Nayak & Anr'**" reported in (1982) 2 SCC 463.

10. Mr. T. Lalnunsiam, learned counsel for the respondent, on the other hand submits that the Respondent came to know that the Petitioner had already obtained the impugned Heirship Certificate No.21 of 2012, only on 15th November, 2021 through the SPIO, Land Revenue & Settlement, Aizawl, Mizoram, that the Petitioner had mutated and transferred of ownership of the LSC No. AZL. 186 of 1970 into her name and changed it into Residential Land Settlement Certificate No. CAD-95 of 972020. Thereafter, the Respondent consulted different Advocates for cancelation of the said impugned Heirship Certificate No.21 of 2012 and finally in the early month

of December, 2021 the respondent approached Mr Zochhuana, Advocate who passed away on 08.01.2022, thereafter, steps were taken to take out the documents which were submitted to Mr. Zochhuana (L) which could not be traced out for a very long time. The documents were received back only on 14.02.2022 after which his new counsel applied for copies of the application and its connected documents and order of Heirship Certificate No. 21 of 2012 along with its Annexures which was issued on 22.02.2022. Hence, on 15.03.2022 his counsel, Mr. R. Lalawmpuia, Advocate completed the memo of Appeal and an application for condonation of 3687 days' delay in filing the appeal was also submitted. The learned lower court condoned the delay of 3687 days delay rightly in CMA No.161/2022 in RFA No.6/2022 A/o Heirship Certificate No.21 of 2012.

11. The learned counsel for the respondent further submits the RFA No.6 of 2022 filed before the District Judge for setting aside of the Heirship Certificate No.21/2012 issued to the petitioner is mainly on the grounds that the respondent did not signed on the No Objection Certificate alleged to be signed by him and that he had not signed on the examination-in-chief alleged to be made by him. He further submits that he did not appeared before the learned Trial Court who had issued the Heirship Certificate and that the instant petitioner had obtained the Heirship Certificate No.21/2012 through deception and concealing facts before the court. That, if the condonation of delay is not granted he will be deprived of the chance to prove that

this alleged No Objection Certificate and alleged examination-in-chief filed by the petitioner before the Trial Court is fake and fabricated.

12. Having heard the submissions made by both the parties, this court finds that the learned District Judge in CMA No.161/2022 in RFA No.06/2022 had allowed the condonation of delay of 3687 days mainly for the reasons given by the respondent in CMA No.161/2022 that the delay was because he had no knowledge of the Heirship Certificate No.21/2012 issued to the petitioner. The contention of the respondent is that he did not sign on the alleged No Objection Certificate dated 13.01.2012 and that he had not submitted the examination-in-chief of affidavit dated 17.01.2012. It is seen that in the RFA No.6/2022, filed by the respondent that the No Objection Certificate and the affidavit of examination-in-chief was not done by him. Thus, this court finds that when the respondent has clearly denied signing the No Objection Certificate dated 13.01.2012 and the examination-in-chief of affidavit dated 17.01.2012, it appears that it would be in the interest of justice if an opportunity is given to the respondent of being heard on this issue.

13. For the above reasons, this Civil Revision is dismissed.

14. Accordingly, CRP No.5 of 2022 stands disposed.

JUDGE

Comparing Assistant