

GAHC030003842022



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

Case No. : RFA/32/2022

Smt. C. Ramdingliani and Anr.
R/o Dawrpui Vengthar, Aizawl 2: Smt. Betsy Laltlankimi
R/o Bawngkawn Biak In Mual
Aizawl

VERSUS

Smt. C. Lalthlamuani
R/o Chaltlang Lily Veng, Aizawl

Advocate for the Petitioner : Mr Samuel Vanlalhriata Chhangte

Advocate for the Respondent : Mr R Lalawmpuia

Linked Case : I.A.(Civil)/139/2022

Smt. C. Ramdingliani and Anr.
R/o Dawrpui Vengthar
Aizawl

2: Smt. Betsy Laltlankimi
R/o Bawngkawn Biak In Mual
Aizawl
VERSUS

Smt. C. Lalthlamuani
R/o Chaltlang Lily Veng
Aizawl

Advocate for the Petitioner : Mr Samuel Vanlalhriata Chhangte
Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

01.05.2023

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

2. By filing this appeal under Order 41(1) of the Code of Civil Procedure read with Section 17(2) of the Mizoram Courts Act, 2005, the appellant has challenged the Order dated 10.02.2020 passed by the Court of Senior Civil Judge-III, Aizawl in Heirship Certificate Case No. 167/2020 and the Heirship Certificate issued on the same day by the Court of the respondents in respect of LSC No. AZL 17 of 1981, which is a landed property located at Chaltlang Lily Veng, Aizawl, Mizoram.

3. It is the case of the appellants that the aforesaid property belonged to their late father. After he expired, the same was inherited by their mother. The appellants and the respondent are sisters born out of the same parent. However, after their mother expired on 19.03.2015, the respondent applied for heirship certificate in the aforesaid property and the learned Court without issuing notice and without hearing the appellants, issued the Heirship Certificate to the respondent. As such, the appellants being aggrieved are before this Court in appeal.

4. It is the specific case of the appellants that notice was not issued on the application of Heirship Certificate by the respondent and that they had no opportunity to raise any objection to the application.

5. Mr. Zoramchhana, learned counsel submits that this Court in the case of similar nature in RFA No. 20/2021, vide Order dated 17.08.2021 remanded the matter back to the learned Trial Court for fresh consideration after setting aside the Heirship Certificate which was issued without issuing notice. He therefore submits that a similar order may be passed in the present case as well.

6. Upon hearing the learned counsels for the rival parties and on perusal of the materials available on record, it only appears that the learned Trial Court had not issued notice on the Heirship Certificate application and as a result of which, no opportunity was afforded to parties interested to contest the Heirship Application including the appellants. In that view of the matter, the Heirship Certificate granted to the respondent is not found to be sustainable and the same is set aside alongwith the impugned Order dated 10.02.2020. The matter is now remanded back to the learned Trial Court for fresh consideration by giving due opportunity to all the parties interested in the property concerned.

7. The parties are directed to appear before the learned Trial Court on 10.05.2023 alongwith a certified copy of this order whereafter, the learned Trial Court shall proceed with the matter in accordance with law by giving due opportunity to the parties to present their case.

8. In coming to its conclusion, the learned Trial Court shall come to its decision on the basis of the merit of the case and unaffected by any observation that may be made herein above. Till such conclusion is made by the learned Trial Court, status quo on the property in question should be maintained by the parties.

9. With the above observation and direction, the appeal accordingly stands disposed of.

JUDGE

Comparing Assistant