

GAHC030004402023



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

Case No. : RFA/31/2023

Sh. Lalfakawma Fanai
S/o Late Sh. Lalrivenga and Late Smt. B. Sairengpuii, Dam Veng, Aizawl, Mizoram

VERSUS

Smt. Lalrempuii Fanai
D/o Late Sh. Lalrivenga and Late Smt. B. Sairengpuii, Tanhril, MZU Road, Near 6
Miles Restaurant, Aizawl, Mizoram

Advocate for the Petitioner : Mr. Lalruatpuia Sailo

Advocate for the Respondent : Mr B Lalramenga

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

14.09.2023

Heard Mr. Lalruatpuia Sailo, learned counsel for the appellant as well as Mr. B. Lalramenga, learned counsel for the sole respondent.

2. In the appeal, the Order dated 16.05.2023 passed by the Court of the Senior Civil Judge-II, Aizawl in Succession Case No. 2068/2018, by which the appellant's

counter claim has been dismissed is put to challenge.

3. The appellant's counsel submits that the counter claim of the appellant had been dismissed on the ground that the same did not specify the purpose for which the appellant wanted a Succession Certificate and as such, the counter claim did not comply with the provisions of Order 7 Rule 7 CPC. The other ground for dismissing the counter claim of the appellant was that the counter claim had been filed 480 days after the Succession Certificate Case had been filed, which was in violation of Section 116 or Section 123 of the Indian Limitation Act, 1963.

4. The learned counsel for the appellant submits that in the counter claim/written statement, the appellant had specified that the appellant should be given 1/3rd of what the respondent had claimed in the Succession Certificate. As such, the claim of the appellant was specific. Even otherwise, the appellant could have amended his prayer portion, if given a chance.

5. The learned counsel for the respondent fairly submits that Section 116 or 123 of the Indian Limitation Act was not applicable to the filing of the counter claim. However, the appellant had violated Order 7 Rule 7 CPC, as the prayer in the counter claim was not specific.

6. On considering the fact that the appellant in his written statement/counter claim made a prayer for being given 1/3rd of the claim of the respondent/plaintiff in his plaint, this Court is of the view that the counter claim should not have been dismissed on this ground. Further, as stated by the counsel for the appellant, the counter claim could have been amended.

7. As can be seen from the impugned order, the other reason for dismissal of the counter claim was on the ground that the same had been filed in violation of Section 116 or Section 123 of the Limitation Act, 1963. Section 116 provides 30 days/90 days as the period of limitation for filing appeals and Section 123 also provides for 30 days as the period of limitation, to set aside an exparte decree or to

rehear the appeal decreed or heard exparte.

8. The above clearly shows that Section 116 or Section 123 of the Limitation Act, 1963 could not have been invoked for dismissal of the counter claim. Thus, in view of the reasons stated above, the impugned Order dated 16.05.2023 passed in Succession Case No. 2068/2018 is not sustainable. The same is accordingly set aside.

The appeal is accordingly disposed of.

JUDGE

Comparing Assistant