

GAHC030005312022



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

Case No. : CRP/9/2022

Smt. Chhawntluangi and 3 Ors.
Chaltlang Lily Veng, Aizawl, Mizoram

2: Sh. Sh. Dulal Chandra Sarma

3: Sh. Lalduhzuala

4: Smt. Zonunthar

VERSUS

Smt. J. Lalhlimpuii and 2 Ors.
Chaltlang Lily Veng, Aizawl, Mizoram

2: Sh. Lalawmpuia (Minor)

3: Sh. Andrew Vanlalpek

Advocate for the Petitioner : Mr. T Lalnunsiamia

Advocate for the Respondent : Mr. L.H. Lianhrima, Sr. Adv. for R1 to R3

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 18-09-2023

Heard Mr. T. Lalnunsiamia, learned counsel for the petitioners along with Mr. L.H.

Lianhrima, learned Senior counsel for the respondent Nos. 1 to 3.

2. This is a petition filed under Article 227 of the Constitution for setting aside the impugned Order dated 22.04.2022 granting Heirship Certificate to the respondents in respect of LSC No. 103102/01/782 of 2005 and the subsequent Order dated 28.10.2022 in CMA No. 557/2022 along with the subsequent Heirship Certificate No. 808/2022.

3. The learned counsel for the petitioner submits that the respondents had applied for the Heirship Certificate in respect of LSC No. 103102/01/782 of 2005, where the Court had ordered for notice to be issued into two local newspapers. However, it was found that notice was issued in only one local newspaper for a period of only 5 (five) days. Therefore, the petitioner was not aware of the application for Heirship Certificate and they had filed a fresh application for Heirship Certificate in respect of the properties in the name of the deceased Sh. Zochhuana in LSC No. 103102/01/782 of 2003. Meanwhile, it was discovered that the respondents had approached the learned Trial Court for the correction with regards to the date of the LSC No. 103102/01/782 of 2003 from 2005 to 2003. The learned Lower Court thereafter vide its Order dated 28.10.2002 in CMA No. 557/2022, passed the order correcting the mistake in the date from 2005 to 2003 under Sections 151, 152 and 153 CPC.

4. The learned counsel for the petitioner submits that the learned Lower Court had acted beyond its power and by making the impugned correction under Sections 151 & 152 CPC and submits that the learned Trial Court had also acted beyond its jurisdiction by making correction on the pleadings made by the petitioner by correcting the date from 2005 to 2003. It is not in the power of the Trial Court to make the corrections on the pleadings. He further submitted that the learned Trial Court had acted beyond its jurisdiction since the corrections made was after the fresh application for Heirship Certificate was filed by the instant petitioner before the

learned Trial Court. In support of his submissions, he has cited the following cases:-

(i) *Chief Executive Officer Vs. Surendra Kumar Vakil & Ors.*, reported in (1999) 3 SCC 555 (para 6)

(ii) *Budhia Swain & Ors. Vs. Gopinath Deb & Ors.*, reported in (1999) 4 SCC 396 (para 8)

(iii) *State of Uttar Pradesh & Ors. Vs. Roshan Singh (Dead) by LRS & Ors.*, reported in (2008) 2 SCC 488 (para 8)

(iv) *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta & Anr.*, reported in (1975) 1 SCC 858 (para 7)

5. Mr. L.H. Lianhrima, learned Senior counsel for the respondents on the other hand submits that the present petition is liable to be dismissed since the petition has been filed under Article 227 of the Constitution. He submits that Article 227 of the Constitution can be invoked only when there is a question of jurisdiction by the Lower Court. He further submits that the learned Lower Court had rightly invoked Section 152 CPC in making the correction in the dates from 2005 to 2003. He also submits that as per Section 31 of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, the first surviving wife and the child of the deceased Sh. Zochhuana are the rightful persons to inherit his property and there was no error committed by the learned Trial Court in issuing the Heirship Certificate to the wife and the child of the deceased Sh. Zochhuana. The learned counsel in support of his submissions has cited in the case of *Deb Ratan Biswas & Ors. Vs. Most. Anand Moyi Devi & Ors.*, reported in *AIR 2011 SC 1653 (para 10)*, where it mentions that Article 227 is to be invoked only when there are errors in the jurisdiction. He has also cited *Sadhana Lodh Vs. National Insurance Co. Ltd. & Anr.*, reported in (2003) 3 SCC 524 (para 6), where the learned Apex Court mentions that the appropriate section for revision is Section 115 CPC and

unless the State Government has passed any notification/order, where Section 115 CPC cannot be invoked when a person approach the Apex Court under Section 227 of the Constitution of India. That for the reasons mentioned, the instant petition is liable to be dismissed for Trial.

6. Having heard the submissions made by the learned counsels for both the parties, I find that the facts of the case in the instant petition is peculiar and therefore, find it fit to entertain the instant petition under Section 227 of the Constitution. This Court finds that the respondents had applied for the Heirship Certificate in respect of LSC No. 103102/01/782 of 2005, wherein a notice was issued for only a period of 5 (five) days in one local newspaper and Heirship Certificate No. 808/2022 was issued as prayed for. Meanwhile, the petitioner had applied for an application for Heirship Certificate in respect of LSC No. LSC No. 103102/01/782 of 2003, but the land within the mentioned LSC No. 103102/01/782 of 2005 and LSC No. 103102/01/782 of 2003 are the same landed property. Thereafter, the respondents in spite of the application pending for issue of Heirship Certificate in respect of LSC No. 103102/01/782 of 2003 had approached the learned Lower Court for making corrections where ever the LSC No. 103102/01/782 was mentioned as "of 2005" to "of 2003". The learned Lower Court vide its Order dated 28.10.2002 in CMA No. 557/2022 had thus passed an order for correcting the mistake in the date from 2005 to 2003 under Sections 151, 152 & 153 CPC in the Heirship Certificate issued to the respondent in the Order dated 22.04.2022. The learned Lower Court has however also allowed the dates in the pleadings of the applicant/respondent to be corrected which is highly unusual and beyond its jurisdiction since the Heirship Certificate No. 808/2022 was already issued based on the pleadings made by the applicant.

7. It is also found that no adequate opportunity was given to the petitioner to file any objection since notice was issued for only 5 (five) days in one local newspaper.

Thus, since no proper notice is deemed to have been issued, the Order dated 22.04.2022 is liable to be set aside along with the subsequent Order dated 28.10.2022 in CMA No. 557/2022 and the subsequent Heirship Certificate No. 808/2022. With regards to the submission whether the respondents are the rightful persons to inherit the property of the deceased Sh. Zochhuana under the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, this issue is to be looked into in the Trial Court by the parties adducing necessary evidence.

8. Considering the fact that there is a pending application for issue of Heirship Certificate on the death of Sh. Zochhuana, the respondents have the liberty to contest the pending application for Heirship Certificate.

9. Accordingly, CRP No. 9/2022 stands allowed and disposed.

JUDGE

Comparing Assistant