

GAHC030005592022



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

Case No. : RFA/43/2022

Smt. Lalchawimawii and Anr.
R/o Melthum, Aizawl 2: Smt. Lalhriatpuii
R/o Melthum
Aizawl

VERSUS

Sh. Zamlova
R/o Melthum, Aizawl

Advocate for the Petitioner : Ms C Ramdinmawii

Advocate for the Respondent : Mr B Lalramenga

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 24.05.2023

Heard Ms. C. Ramdinmawii, learned counsel for the appellants and Ms. Ruthi Vanlalhruaii, learned counsel for the sole respondent.

By filing this appeal under Section 96 of the Code of Civil Procedure read with Section 17 (2) (b) of the Mizoram Civil Courts Act, 2005, the appellants have challenged the Order dated 04.10.2021 passed by the Court of Senior Civil

Judge-III, Aizawl in HC No. 921/2021 and the consequential Heirship Certificate granted to the respondent in respect of the landed property covered by LSC No. CAD-579 of 2016 which is registered in the name of late Dingluaia.

The appellant No. 1 is the second wife of late Dingluaia while the appellant No. 2 is their daughter. The respondent is the son of late Dingluaia, born out of the first marriage.

It is the case of the appellants that the respondent without any intimation to the appellants, filed the Heirship Certificate before the Court concerned for grant of Heirship Certificate in his favor in respect of the landed property in question. The learned Court without issuing any notice and without giving any opportunity to the appellants granted Heirship Certificate to the respondent. It is the case of the appellants that the respondent and his family were given shelter by the appellants and taking advantage of the same, the respondent forcefully took away the original copy of the LSC from them and without their knowledge and consent, he applied for Heirship Certificate for the said property. As such, the learned counsel for the appellants submits that the impugned Order dated 04.10.2021 as well as the Heirship Certificate should be set aside.

Ms. Ruthi Vanlalhruii, learned counsel for the respondent submits that the appellants were well aware about the fact that the LSC was in the hand of the respondent. Being the son born out of the first wife of the deceased Zamlova, the respondent has every right over the said property. She further submits that the respondent was never separated from his father by way of 'Indang' and that the building constructed over the said property was constructed by the respondent from his personal savings. As such, the Heirship Certificate was

rightly granted to the respondent.

I have heard the submissions made by the learned counsels for the rival parties.

It is no doubt true that both the rival parties will have their own claim over the property in question on merits but what this Court has noticed is that the Heirship Certificate was granted to the respondent without any notice to the appellants and without giving them any opportunity to present their case. As such, the principles of natural justice being violated, Court is of the considered view that the matter should be reconsidered by the learned Court below by giving due opportunity to the parties concerned before coming to a conclusion.

Accordingly, the matter stands remanded back to the learned Senior Civil Judge-III, Aizawl District, Aizawl for fresh consideration without being influenced by any observation that may be made in this Order. The parties shall appear before the learned Trial Court on 06.06.2023 along with a copy of this Order whereafter, the learned Trial Court shall proceed with the matter in accordance with law and come to a logical conclusion after giving due opportunity to the parties concerned to present their respective case.

The appeal accordingly stands disposed of.

It is needless to state herein that the impugned Order dated 04.10.2021 as well as the Heirship Certificate are hereby set aside.

JUDGE

Comparing Assistant