

GAHC030000842024



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

**Case No. : CRP/3/2024**

Saichhingpuii  
W/o Hmingthanchama (L), Electric Veng, Aizawl, Mizoram

VERSUS

Zonunsangi  
D/o Lungthanga (L), Electric Veng, Aizawl

**Advocate for the Petitioner** : Mr. C Tlanthianghlina

**Advocate for the Respondent** : Mr. T Lalnunsiana

**BEFORE**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**  
**JUDGMENT**

**Date : 19-07-2024**

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

**2.** The instant petition is filed under Section 115 CPC r/w 151 CPC for setting aside the impugned Order dated 29.01.2024 passed by the learned Civil Judge (Senior Division-II), Aizawl District, Aizawl in CMA No. 831/2023 in Civil Suit No. 61/2023.

**3.** Mr. C. Tlanthianghlina, learned counsel for the petitioner submits that the present respondent, plaintiff in Civil Suit No. 61/2023 had filed the suit against the present petitioner for passing a decree declaring that she has ownership and

possession of Basement-2 (below ground floor) of the existing building covered by LSC No. 728 of 1974 located at Electric Veng, Aizawl. The present petitioner/respondent in Civil Suit No. 61/2023, then filed an application under Order 7 Rule 11(a)(d) CPC for rejection of the plaint in Civil Suit No. 61/2023, which was registered as CMA No. 831/2023. The learned Trial Court vide the impugned Order dated 29.01.2024, had dismissed the said application and hence, the instant civil revision petition.

**4.** The learned counsel for the petitioner submits that the impugned Order dated 29.01.2024 is liable to be set aside for the reasons that the learned Trial Court had acted illegally by dismissing the CMA No. 831/2023, without giving any proper or valid reason for dismissing the said application. The learned counsel submits that the learned Trial Court had failed to take note of the fact that the agreement relied upon by the instant petitioner, which is been 'annexed' in the plaint is not signed or dated. He further submits that the present respondent is relying on an alleged Will executed by the deceased Mr. Lungthanga, which was opened on 27.04.2002 and therefore, referring to the Will at this late stage is barred by the law of limitation. He also submits that the learned Trial Court ought to have rejected the plaint, since there is no cause of action and the said cause of action relied upon by the petitioner is without any basis, since the mentioned agreement has not been signed by neither of the parties nor by any witness. The learned counsel submits that the said agreement is just concoction and an excuse for filing the instant case/plaint by the present respondent. He further submits that the present respondent has also not challenged the Heirship Certificate issued to the late husband of the present petitioner, Mr. Hmingthanchama and that the present respondent had signed his willingness for the issuance of the Heirship Certificate to the late Mr. Hmingthanchama. The present petitioner was then issued an Heirship Certificate No. 971/2022 being the wife of the deceased Mr. Hmingthanchama. The learned counsel further submits that this Heirship Certificate issued to the present petitioner was also not challenged by the present respondent.

5. The learned counsel for the petitioner thus submits that for the said reasons, the present respondent has no cause of action and the case is also barred by the law of limitation in approaching this Court at a belated stage, by relying on an unprobated Will executed by the deceased Mr. Lungthanga which was opened in 2002. The learned counsel has relied on the judgment of the Apex Court in ***Datla Padmavathi Devi Vs. Datla Ravindra Rayapuraju Verma***, reported in ***(2002) 10 SCC 501*** and ***Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors.***, reported in ***(2023) 5 SCR 589***, wherein the Apex Court has held that a plaint should be rejected if they are found to be vexatious, illusory or barred by limitation.

6. Mr. T. Lalnunsima, learned counsel for the respondent, on the other hand, submits that the instant petition filed under Section 115 CPC is liable to be set aside. The learned counsel submits that Section 115 CPC for revision may be invoked if the subordinate Court appears-

*(a) to have exercised a jurisdiction not vested in it by law, or*

*(b) to have failed to exercise a jurisdiction so vested, or*

*(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.*

The learned counsel submits that in the present case, the learned Trial Court has not acted beyond its jurisdiction nor is there any illegality or material irregularity in the Order dated 29.01.2024. The learned counsel further submits that the learned Trial Court in passing its Order dated 29.01.2024 had dismissed the application under Order 7 Rule 11 of the CPC on considering of the plaint, where it is clear that the cause of action arose when the present respondent had approached the petitioner to sign the agreement 'annexed' which was refused by the present respondent. He further submits that the case is not regarding the probate of the Will executed by the deceased Mr. Lungthanga, since it is an admitted fact that there are some technical defects in the Will. However, there is an implied agreement as per the contents of the Will, that the present respondent who has been occupying the present floor

(Basement-2) below the ground floor, since 1995, should be given ownership of the Basement-2 of the building.

7. The learned counsel submits that there is no failure on the part of the plaintiff to disclose the cause of action and further, since the instant plaintiff is not with regard to the probate of Will, there are no reasons to reject the plaintiff under Order 7 Rule 11 CPC. He further submits that the plaintiff i.e. Civil Suit No. 61/2023 is not with regard to the challenged of the Heirship Certificate issued to the present respondent, but it is with regard to the occupation of the Basement-2 of the building which has been under her occupation since 1995 as per the desire of their deceased father Mr. Lungthanga. Further, the plaintiff in Civil Suit No. 61/2023 clearly mentions that she has been paying the electricity bill and the water bill since her occupation and that the electricity connection was also made in her name. The learned counsel submits that the deceased Mr. Lungthanga, father of the present respondent had gifted the said Basement-2 where she is staying till date since she is not married.

8. The learned counsel in support of his submissions has relied on the judgment of the Apex Court in ***Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat***, reported in ***(1969) 2 SCC 74*** (para 5), ***Rajasthan High Court Advocates' Association Vs. Union of India & Ors.***, reported in ***(2001) 2 SCC 294*** (para 17) and ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives & Ors.***, reported in ***(2020) 7 SCC 366*** (para 23, 23.1, 23.2, 23.3, 23.5, 23.6 & 23.8). The judgment of the Apex Court in ***G. Nagaraj & Anr. Vs. B.P. Mruthunjayanna & Ors.***, reported in ***(2023) LiveLaw (SC) 311***, ***Kamala & Ors. Vs. K.T. Eshwara Sa & Ors.***, reported in ***(2008) 12 SCC 661 (para 21)***.

9. I have heard and considered the submissions made by the learned counsels for both the parties and have also perused the documents on record.

10. It is seen that the present petitioner has filed the civil revision petition under Section 115 CPC r/w Section 151 CPC. A reading of Section 115 CPC clearly mentions

that the provisions of Section 115 CPC is to be invoked when it is found that:-

*(a) to have exercised a jurisdiction not vested in it by law, or*

*(b) to have failed to exercise a jurisdiction so vested, or*

*(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.*

**11.** The instant Civil Revision Petition is thus examined to see whether the learned Trial Court had acted beyond its jurisdiction or acted illegally or with material irregularity. It is seen that the petitioner had filed the application in CMA No. 831/2023 in Civil Suit No. 61/2023 under Order 7 Rule 11 (a)(d) of the CPC for rejection of the plaint filed by the present respondent in Civil Suit No. 61/2023, on the ground that the cause of action is not disclosed and that the plaint is barred by the period of limitation. The learned counsel had submitted that the plaint was barred by the law of limitation since the plaint is with regard to the probate of a Will, which was opened in 2002. This Court on perusal of the plaint filed by the plaintiff (present respondent) in Civil Suit No. 61/2023, finds that the plaint is not for the probate of the Will said to be executed by the deceased Mr. Lungthanga but is for a decree declaring that the plaintiff (present respondent) is entitled to Basement-2 (below ground floor) of the existing building covered by LSC No. 728 of 1974, located at Electric Veng where she has been residing since 1995 till date and thus, this Court finds that it cannot be said to be barred by the law of limitation.

**12.** This Court on perusal of the plaint also finds that the plaint has clearly mentioned that the cause of action arose in January, 2023 when the present petitioner (defendant in Civil Suit No. 61/2023) was reluctant to execute a written agreement to ensure the plaintiff's right (present respondent) on the Basement-2 (below ground floor) of the existing building covered by LSC No. 728 of 1974. For this reason, it cannot be said that the cause of action was not disclosed by the plaintiff in the plaint.

It is seen that the Apex court in **G. Nagaraj & Anr vs. B.P Mruthunjayanna**

**(Supra)** held that: *"We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter."*

In the present case too, this court finds that a cause of action has been disclosed in the plaint as rightly observed by the learned trial court, and finds that whether or not the plaintiff in Civil Suit 61 of 2023 will succeed is a different matter which is to be decided after both the parties have adduced their evidence.

**13.** Thus, this Court considering the above findings, finds that there are no grounds for setting aside the impugned Order dated 29.01.2024, since the learned Trial Court had not acted beyond its jurisdiction nor had acted illegally or with material irregularity.

**14.** In view of the above, the instant Civil Revision Petition No. 3 of 2024 stands dismissed and disposed of.

**JUDGE**

**Comparing Assistant**