

GAHC030003022024



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

Case No. : RFA/18/2024

Smt. Vanlalruati and 3 Ors
D/o Thantluanga (L)

R/o Tuikual D
Aizawl

2: Smt. Zaithanchhungi
D/o Thantluanga (L)

R/o Tuikual 'D'
Aizawl

3: Sh. Lalmuanawma
D/o Thantluanga (L)

R/o Tuikual 'D'
Aizawl

4: Smt. Dr. Lalhlunpuii
D/o Thantluanga (L)

R/o Tuikual 'D'
Aizawl
VERSUS

Sh. Lalmangzuala
S/o Thantluanga (L)

R/o Tuikual North
Aizawl

Advocate for the Petitioner : Mr. L.H. Lianhrima

Sr.Adv.
Advocate for the Respondent : Mr C Lalfakzuala

ORDER

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

02.09.2024

Heard Mr. L H Lianhrima, learned Senior Counsel for the appellants assisted by Ms. Ruth Lalruatfeli. Also heard Mr. C Lalfakzuala, learned counsel for the respondent.

2. This is an application for setting aside the *exparte* order dated 29.06.2022 passed by the Court of the Senior Civil Judge-II, Aizawl, in Probate Application No. 10/2022, by which the Will dated 24.04.2018 executed by the late father of the applicants and the respondent was probated ex-parte.

3. The counsel for the applicants submits that as they were not given any notices or made aware of any notice being issued in respect of Probate Application No. 10/2022, the probate of the Will dated 24.04.2018 ex-parte has been allowed by the learned Trial Court.

4. The counsel for the applicants submits that the sole respondent had surreptitiously filed an application under Section 30(2) of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, for probate of Will dated 24.04.2018

allegedly left behind by their father Thantluanga (L). The respondent took steps for issuing notices to the applicants, which were not received by the applicants. Further, the applicants were also not aware of the fact that the notices had been issued through newspaper publication.

5. The counsel for the applicants submits that even though the applicant Nos. 1 & 2 were living in the same house as the respondent, the respondent did not inform the applicant Nos. 1 & 2 regarding the submission of the probate application. The learned Senior Counsel submits that as the applicant Nos. 3 & 4 are living separately from the applicant Nos. 1 & 2 and the respondent, they were also not aware of the proceedings of the probate case. He submits that the applicants became aware of the *ex parte* order passed in the Probate case only on 24.04.2024.

6. Mr. C Lalfakzuala, learned counsel for the respondent submits that as the respondent had issued notice through the newspaper publication and as per the normal procedure, the applicants would have been aware of the notices that were issued. He accordingly submits that the application should be dismissed.

7. I have heard the learned counsels for the parties.

8. The fact that the applicant Nos. 1 & 2 are living on the upper floor of the house in which the respondent is living is an admitted fact. As such, the conduct of

the respondent in issuing notice through the newspaper publication, despite knowing the whereabouts of the applicant Nos. 1 & 2, implies that he somehow tried to keep the applicants unaware of the pending Probate case. There was no requirement for issuing a newspaper publication, when notices could have been served by way of dasti service. The four applicants and the respondents are all siblings of Thantluanga (L) and as the issue pertains to inheritance of property of the Late Thantluanga, it was an incumbent on the part of the respondent to have informed the Court that the applicant Nos. 1 & 2 were living on the top floor of the same house where the respondent was residing.

9. This Court is accordingly is of the view that the appellants have made out a case for setting aside the impugned ex-parte Order dated 29.06.2022 passed in Probate Application No. 10/2022. Accordingly, the Order dated 29.06.2022 passed in Probate Application No. 10/2022 is hereby set aside.

10. As the impugned Order dated 29.06.2022 passed by the Learned Senior Civil Judge-I, Aizawl in Probate Case No. 10/2022 has been set aside. The consequential Heirship Certificate dated 15.02.2023 passed in Heirship Certificate No. 177/2023 is hereby set aside.

11. The case is remanded back to the learned Trial Court for disposal, wherein the parties shall appear before the said Court on 12.09.2024.

JUDGE

Comparing Assistant