

GAHC030002302024



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

Case No. : RSA/2/2024

Sh. Dominic Lalfakawma
S/o Mr. Chawngchuaailova (L) and Mrs. Lalnunhlui,
R/o Zemabawk, Aizawl

VERSUS

Sh. K. Lalduhzuala and 4 Ors.
S/o Mr. Lalremthanga Khiangte (L) and Mrs. Lalmawizuali,
R/o Ramhlun Sports Complex/Kulikawn, Tlangnuam, Aizawl 2:Smt.
Lalmawizuali

3:Smt. K. Lalnunthari

4:Smt. K. Vanlalruati

5:Sh. K. Vanlalchhuang

Advocate for the Petitioner : Mr. Joseph Mangsuanhau

Advocate for the Respondent : Mr. T Lalnunsiana for R1-R5

Linked Case : I.A.(Civil)/93/2024

Sh. Dominic Lalfakawma
S/o Mr. Chawngchuaailova (L) and Mrs. Lalnunhlui

R/o Zemabawk
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R/o Ramhlun Sports Complex
Aizawl

2:Smt. Lalmawizuali
W/o Mr. Lalremthanga Khiangte (L)

R/o Ramhlun Sports Complex
Aizawl

3:Smt. K. Lalnunthari
D/o Mr. Lalremthanga Khiangte (L) and Mrs. Lalmawizuali

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4:Smt. K. Vanlalruati
D/o Mr. Lalremthanga Khiangte (L) and Mrs. Lalmawizuali

R/o Ramhlun Sports Complex
Aizawl

5:Mr. K. Vanlalchhuanga
S/o Mr. Lalremthanga Khiangte (L) and Mrs. Lalmawizuali

R/o Ramhlun Sports Complex
Aizawl

Advocate for the Petitioner : Mr. Joseph Mangsuanhau
Advocate for the Respondent : Mr. T Lalnunsiamia for R1-R5

BEFORE

HON'BLE MRS. JUSTICE MARLI YANKUNG

Date of hearing **:09.08.2024**

Date of judgment **:20.09.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. Joseph Mangsuanhau, learned counsel for the appellant along with Mr. T. Lalnunsiam, learned counsel for the respondents.

[2] This is a Regular Second Appeal filed against the Judgment & Order of the Court of Additional District Judge-I, District Court, Aizawl in RFA No.24 of 2022 dated 31.07.2023, wherein, the learned appellate court dismissed the regular first appeal against the issuance of the Heirship Certificate No.857 of 2021 dated 20.09.2021 to the present respondent No.1, by the learned Sr. Civil Judge-II, Aizawl District.

[3] The case of the appellant in a nutshell, is that the deceased Vanlaltanpuui and the appellant had executed a Gift Deed (Ram in pekna) dated 04.03.2021, wherein the deceased Smt. Vanlaltanpuui had given him the portion of the landed property covered under the LSC No.470 of 1992 for the Rs. 1,00,000/-, which he had given to the deceased Vanlaltanpuui to look after herself and for purchase of her medicines. However the Gift deed was not registered due to the Covid-19 Pandemic and the weak health condition of the deceased Vanlaltanpuui. That on the death of the deceased Smt. Vanlaltanpuui on 27.08.2022, the appellant was aware that the impugned Heirship certificate No.857 of 2021 was issued to respondent No.1 in respect of the LSC No.470 of 1992, but he did not raise any objection immediately, because he was given the impression that his portion of land, as per the Gift deed, would be mutated in his

name. The appellant had even assisted the respondent no.2 to mutate the LSC No.470 of 1992 in the name of respondent No.1, who was the grandson of the deceased Smt. Vanlaltanpuui. Instead, the respondents had filed an FIR against him, on the allegation that he had forged the signature of the deceased Smt. Vanlaltanpuui on the said Sale/Gift Deed "Ram in pekna". As a result, the appellant challenged the Heirship Certificate No.857 of 2021, issued to Respondent No.1, before the Learned Addl. District Court Aizawl by filing a regular first appeal under Section 17 (2)(a) of the Mizoram Civil Court (Amendment) Act, 2007 read with Section 96 and Order 41 of CPC in RFA No.24 of 2022. The main grounds of appeal was that, public notice was not issued before the issuance of the impugned Heirship Certificate No.857 of 2021, inspite of the fact that the respondent no.1 and had knowledge of the Sale/gift deed, executed between the deceased Smt. Vanlaltanpuui and the appellant and thus the impugned Heirship certificate was obtained through fraud. That the learned Senior Civil Judge was hastened to issue the impugned Heirship Certificate in favour of Respondent No.1, based on the no objection certificate executed by the wife of the late son of the deceased Smt. Vanlaltanpuui and the other surviving grandchildren of the deceased, respondents No.3, No.4 and No. 5 respectively, respectively. The appellant contended that he was an interested party in the issuance of the Heirship certificate since he was also a related to the deceased Smt. Vanlaltanpuui being her grandson/'tupa'. He had shown how he could be termed a grandson/'tupa' by giving the details of their family - tree.

[4] The contention of the respondents was that the appellant was not a close relative of the deceased Vanlaltanpuii, while the respondent no.1 was her grandson. That the deceased had lived at Ramhlun Sports Complex with the respondents, who are the wife and children of her son (late) and the deceased Vanlaltanpuii, sometimes stayed at Zemabawk where she had lived with her husband (late). That the respondents looked after the deceased Vanlaltanpuii and paid all her hospital bills. That they met the appellant for the first time, only after the death of Pi Vanlaltanpuii. That under the relevant laws in Mizoram, the appellant has no *locus standi* to inherit the properties of the deceased Vanlaltanpuii and that the signature of the deceased Vanlaltanpuii on the alleged sale/gift deed was very doubtful which led them to file the FIR against the appellant for forgery and cheating.

[5] The learned First Appellate Court after hearing both the parties had dismissed the appeal by observing that,

“The deceased Vanlaltanpui died interstate, and the alleged Deed in favour of the appellant is admittedly unregistered.

From the above findings, it could be clearly seen that both parties have started dealing with their issues between themselves not long after the death of Mrs.Vanlaltanpui on 27.08.2021, and that the appellant was well aware of the issuance of the impugned Heirship Certificate No.857 of 2021 and never disputed the same until his demand for partition of his claimed portion of property was denied by the respondents followed by filing of FIR against him. What is seen from the scenario

is that the appellant would never have preferred the instant appeal had his claimed portion be partitioned was excepted. It is true that rights of every citizen is protected by law, however, none should take advantage of the protection given by the- law and abuse it for harassing others in any way to gain unfair benefits for themselves or to seek vengeance against another, and it should be taken note that the court of law is not to be set in motion at the whims of one as it would jeopardize the sanctity of the court. The appellant is also well aware of the fact that the deceased Vanlaltanpui died intestate and his alleged Deed is unregistered and it has no legal sanctity in the eye of law as section 17 of the Registration Act requires compulsory registration of a Gift Deed in respect of immoveable property(s) and apart from which he has no other tool for disputing or claiming the landed property of the deceased Vanlaltanpui, and that he stand no chance in a court of law no matter how his witnesses testified in his favour even if the case is tried de novo, hence , the appellant is in no way be characterized as prejudiced by the impugned Heirship Certificate . Therefore, despite the fact that the trial court committed procedural error in issuing the impugned Heirship Certificate, it is the considered opinion of the court that the appellant has no locus standi to file the instant appeal against the impugned Heirship Certificate No. 857 of 2021 in respect of a landed property coveted by LSC No. 470 of 1992 left behind by Mrs.Vanlaltanpuiii issued to her grandson respondent No.1 by the court of learned Senior Civil Judge-II, Aizawl District, Aizawl. Hence , the instant appeal is not allowed and it is dismissed accordingly.”

Aggrieved, the appellant had filed the present Regular Second Appeal.

[6] After hearing both the parties, the following substantial questions of law were framed :

i) Whether the trial court had erred in fact and in law by issuing the impugned Heirship Certificate to the respondent No.1 the very same day without calling for claims from any interested parties and whether the learned Appellate Court had erred in not setting aside the said Heirship Certificate issued by the learned trial court.

ii) Whether the learned Appellate Court in passing the impugned Judgment & Order dated 31.07.2023 had acted beyond its jurisdiction under Section 151 CPC, in coming to its finding without giving an opportunity to the parties to adduce evidence in the court.

[7] Mr. Joseph Mangsuanhau, learned counsel for the appellant, submits that the appellant had filed the Regular First Appeal before the Court of Additional District Judge, under Section 17 (2)(a) of the Mizoram Civil Court (Amendment) Act, 2007 read with Section 96 and Order 41 of CPC. The learned counsel submitted that appellant had not filed his appeal against the impugned Heirship Certificate immediately, because the appellant thought that public notice was issued by the court of Sr. Civil Judge before the issuance of the impugned Heirship Certificate No.857 of 2021 and therefore, he had even assisted the respondents during the mutation of the property in the name of respondent No.1. The learned counsel submitted that issuance of notice is mandatory as provided under Section 373 of The Indian

Succession Act, 1925 and therefore, since this mandatory provision was not followed, the Heirship Certificate is liable to be set aside.

[8] The learned counsel for the appellant further submitted that though the appeal before the learned First Appellate Court was made under section 151 CPC for the court to exercise its inherent power, so that the appellant would be given the chance to adduce evidence, this chance to adduce his evidence was not given by the learned First Appellate Court. The learned counsel submitted that the appellant and the deceased Vanlaltanpuui, had executed a Gift Deed (*Ram in pekna*) dated 04.03.2021, wherein the deceased had given him the portion of the landed property covered under the LSC No.470 of 1992 for the Rs. 1,00,000/- which he had given to deceased Vanlaltanpuui to look after herself and for purchase of her medicines. The learned counsel submits that this "Ram in pekna"/Gift Deed" was duly witnessed by 2 (two) witnesses and he/the counsel had drafted the said Gift Deed which was signed by the deceased with the help of the instant appellant. However the Gift Deed was not registered since Pi Vanlaltanpuui was a frail and weak and also because of the Lock Down imposed by the State Government due to Covid 19 Pandemic. However, the learned court had dismissed the appeal without considering any of the points raised by the appellant.

[9] The learned counsel thus submits that the instant appellant being the owner of a portion of the said LSC No.470 of 1992, should have been given the opportunity of being heard by the First Appellate Court. He submitted that the matter may be

remanded back before the Sr. Civil Judge-II, so that the appellant may be given an opportunity to adduce his evidence in the interest of justice and that, in not giving the opportunity to adduce evidence, the appellant would be highly prejudiced in the case.

The learned counsel for the appellant relied on the decision of the Apex Court in **Govindaraju Vs. Mariamman**, reported in **Appl (Civil) 2292 of 1999**.

[10] Mr. T. Lalnunsiana, learned counsel for the respondents on the other hand submits that the impugned Heirship Certificate was issued under the Mizo Marriage, Divorce and Inheritance of Property Act, 2014, where there is no mention that public notice should be issued before consideration of an Heirship certificate. He also submitted the Indian Succession Act would not be applicable in the present case and therefore issue of public notice is not mandatory.

[11] The learned counsel for the respondents further submitted that the Pi Vanlaltanpuui had died interstate, but was survived by her grand children and her daughter-in-law since her only son had passed away. He further submits that the appellant has no locus standi and has nothing to say in the matter since he is not a direct descendant of the deceased Pi Vanlaltanpuui but a distant relative. The learned counsel submitted that the appellant and the father of the respondent, must be 3rd cousins. He further submitted that the appellant cannot claim to be the legal heir of the deceased as per chapter VIII of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014.

[12] The learned counsel for the respondents further submitted that even though the appellant is claiming that there is a Gift deed/Sale Deed (Ram in pekna), however, this was not a registered deed and as rightly held by the learned First Appellate Court, it is compulsory for a Gift Deed to be registered to be legally valid. He further submitted that even if there was a Gift deed/Sale deed executed between the deceased and the appellant, the appellant should have approached the Civil Court claiming the portion of the landed property said to be given to him through the Give Deed/Sale Deed (Ram in pekna) from the legal heirs of the deceased or, if the appellant felt that he was not given a chance to adduce evidence to prove the existence of the give deed/sale deed, the appellant should have approached the learned First Appellate Court under Order 41 Rule 27 CPC, wherein he could have a chance to adduce evidence to prove his case. The learned counsel also submitted that the respondents had filed an FIR for forgery and cheating against the appellate, when they saw the alleged Gift Deed, wherein, it was obvious that the signature on the alleged Gift deed did not belong to the deceased Pi Vanlaltanpuui.

[13] The learned counsel thus submitted that there are no grounds to set aside the judgment of the learned First Appellate Court, who has rightly dismissed the Regular First Appeal, on the grounds that the appellant had no *locus standi* in the case and had rightly observed that the alleged gift deed was not a registered deed and therefore not legally valid.

The learned counsel has relied on the Judgment of the Apex Court in **State**

Bank of India & Ors.vs. S.N. Goyal reported in **(2008) 8 SCC 92 para 13.**

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

This court, after giving due consideration to the facts and circumstances of the case finds that the impugned the said Heirship Certificate No.857 of 2021 was issued by the learned trial court under section 30(3) of Act, the Mizo Marriage, Divorce and Inheritance of Property Act, 2014. On perusal of the Act, it is noted that there is no specific mention under the said Act, that public notice is to be issued when an application is made for issuance of Heirship Certificate, but it is a general practice to issue public notices, for the court to be satisfied that an opportunity is given to all those persons, who can claim to be the legal heirs of the deceased, as mentioned at Chapter–VIII of the Mizo Marriage, Divorce and Inheritance of Property 2014.

[15] In the present case, it is an undisputed fact that the impugned Hership Certificate was issued by the learned Sr. Civil Judge without the issuance of public notice, wherein, that the learned first appellate court had observed that the appellant belatedly raised objection after the relationship between the parties had gone sour when appellant demanded the partition of his claimed portion by virtue of his give Deed (Ram In pekna), and also due to the filing of the FIR against the appellant by the respondent No.1. It is seen that though the appellant is related to the deceased Pi Vanlaltanpuui, however it is also an admitted fact that the appellant is a distant relative. The manner as to how the appellant is related to the deceased Vanlaltanpuui

is seen in the '*Family Tree*' which was produced in the court. From the perusal of the '*Family Tree*', this court finds that the appellant cannot be termed a legal heir of the deceased under Chapter –VIII of the Mizo Marriage, Divorce and Inheritance of Property 2014. It is also noted that the application for issuance of Heirship certificate, in respect of the property of the deceased Vanlaltanpuui, who died interstate, was made by the her grandson, since her only son had passed away, and the application was accompanied by a no objection certificate, executed in favour of respondent no.1, by the daughter-in-law of the deceased and the other grandchildren of the deceased, who are arrayed as respondents No.2, No.3, No.4 and No.5 respectively. Thus, considering the facts and circumstances of the present case, this court finds that the learned court of Sr. Civil Judge, Aizawl had not erred in issuing the Heirship Certificate in favour of Respondent No.1, without notice. Accordingly, the first substantial question of law is decided in favour of the respondents, on finding no grounds to set aside or quash the Heirship Certificate No.857 of 2021, since it is clear that the appellant cannot be considered a legal heir of the deceased Vanlaltanpuui, in terms of Chapter VIII of the Mizo Marriage, Divorce and Inheritance of Property Act,2014.

[16] It is however seen that the learned First Appellate court, on finding that the alleged Deed was unregistered, held that the Gift Deed had no sanctity in the eye of law, as section 17 of the Registration Act requires compulsory registration of a gift deed in respect of immoveable properties. The learned First Appellate Court found that '*apart from the alleged gift deed, he has no tool for claiming the landed property*

of the deceased and thus will have no chance in the court of law, no matter how the witnesses testify in his favour even if the case were to be remanded for de novo trial.'

Having given my anxious consideration to the above findings, this court is of the view that though it is an admitted fact that the alleged Gift Deed was not registered, however, the appellant had offered some explanation for the none registration of the alleged Gift Deed. This court is therefore of the considered opinion that the appellant deserves to be given a chance, of being heard, on the said issue in the court of law. The principle of *Audi Alteram Partem* should be followed in all cases, no matter how weak the case appear, prima facie.

Thus, this court finds that while upholding the findings of the learned Court of Additional District Judge-I, District Court, Aizawl in RFA No.24 of 2022 dated 31.07.2023, that the appellant has no *locus standi* to file the appeal against the Heirship Certificate No/857 of 2021, however, since section 151 provides that inherent power can be exercised to secure the ends of justice, under the given facts and circumstances of the case, it would be in the interest of justice to hold that the appellant is not barred from approaching the appropriate authority under the appropriate sections of law, and be given an opportunity of being heard, on the validity of the alleged Gift Deed and claim relief, **if any**, from the legal heir of the deceased Pi Vanlaltanpuui, if so advised.

[17] In view of the aforesaid reasoning, the instant Regular Second Appeal stands dismissed and disposed of.

JUDGE

Comparing Assistant