

GAHC030004272021



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

Case No. : RFA/37/2021

Lalthanpari
Dinthar-I
Aizawl, Mizoram

VERSUS

Lalsangpuii
Dinthar-I
Aizawl, Mizoram

Advocate for the Petitioner : Mr J C Lalnunsanga

Advocate for the Respondent : Mr K Laldinliana

ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

05.04.2024

Heard Mr. J C Lalnunsanga, learned counsel for the appellant and Mr. K Laldinliana, learned counsel for the sole respondent.

[1.] By filing this appeal under Section 17 of the Mizoram Civil Courts Act, 2005 read with Section 96 and Order 41 CPC, the appellant has challenged the Order dated 01.09.2017 passed by the Court of Senior Civil Judge-I,

Aizawl in Heirship Certificate Application No. 1369/2017 by which, the respondent herein has been issued the Heirship Certificate in respect of the property left behind by the late father of the parties i.e., LSC No. Azl. 395/1973 which is located at Dinthar-I, Aizawl.

[2.] Mr. J C Lalnunsanga, learned counsel submits that the impugned Order dated 01.09.2017 and the consequential Heirship Certificate issued by the learned Trial Court cannot be sustained in law in view of the fact that a joint Heirship Certificate in the name of the rival parties had already been issued by the Court of Senior

Civil Judge-I, Aizawl on 31.03.2014 vide Heirship Certificate Application No. 447/2014. The learned counsel submits that the impugned order and the impugned Heirship Certificate has been issued by the learned Court below without issuing any notice to the appellant or other interested persons and also on the basis of a No-Objection Certificate given by one of their siblings. He, therefore, submits that the impugned order as well as the impugned Heirship Certificate should be set aside.

[3.] Mr. K Laldinliana, learned counsel for the respondent, on the other hand, submits that apart from the appellant and the respondent, there are two other sisters. In other words, there are four siblings born to their late father Mr. Pengluaia and their mother. He submits that the other two sisters have already got their own property and it was not just one of them who had submitted their No-Objection Certificate to both of them. It was on that basis that the Heirship Certificate was issued. The learned counsel also submits that the respondent was not aware that a Heirship Certificate was already issued in the year 2014 i.e., Heirship Certificate No. 447/2014 and therefore, the respondent had made the application in the year 2017 for issuance of the

Heirship Certificate. Mr. K Laldinliana, learned counsel submits that the respondent will have no objection if the impugned Order and the consequential Heirship Certificate are set aside and the Heirship Certificate issued earlier i.e., Heirship Certificate No. 447 of 2014 upheld since the same is a Heirship Certificate given jointly to the rival parties.

[4.] Although the learned counsel for the respondent submits that the respondent was not aware about the issuance of Heirship Certificate No. 447/2014 on 31.03.2014 but from a perusal of the said Heirship Certificate, it is seen that a copy of the Heirship Certificate is marked both to the appellant as well as the respondent. The contents of the Heirship Certificate may also be abstracted below:-

“Whereas Pengluaia died on 11.02.2014, his daughters Lalthanpari and Lalsangpuii of Dinthar-I, Aizawl, Mizoram are hereby declared as joint legal heiress of the deceased Pengluaia in respect of LSC No. Azl-395/1973 located at Dinthar only”.

[5.] Now coming to the impugned Heirship Certificate No. 1369/2017 dated 01.09.2017, it may be seen that Heirship Certificate is granted to the respondent in respect of the same property. The contents of the Heirship Certificate may be abstracted below:-

“ To,

Lalsangpuii D/o Pengluaia (L)

R/o Dinthar-1, Aizawl, Mizoram.

Whereas on the death of your father Pengluaia, died on 11.02.2014, you applied for a heirship Certificate under The Mizo Marriage, Divorce and Inheritance of Property Act, 2014 in respect

of the following properties namely:-

<i>Sl. No</i>	<i>Description of Property</i>
<i>1</i>	<i>LSC No. AZL-395 of 1973 Location: Dinthar, Aizawl</i>

This certificate is accordingly granted to you Lalsangpuii D/o Pengluaia (L) r/o Dinthar-1, Aizawl and declare you as the legal heiress of the deceased Pengluaia in respect of the above mentioned property."

[6.] From the above abstracts, it may be noticed that both the Heirship Certificates are in respect of the same property covered by LSC No. Azl-395/1973 located at Dinthar, Aizawl. The first Heirship Certificate was given to the appellant and the respondent jointly on 31.03.2014 after the death of their father Sh. Pengluaia on 11.02.2014. The second Heirship Certificate was issued to the respondent alone on 01.09.2017 and on account of the death of Sh. Pengluaia, her father, on 11.02.2014. When a joint Heirship Certificate has already been issued to the parties on the death of their father on 31.03.2014, a second Heirship Certificate for the same property could not have been issued to the exclusion of the appellant and that too, without cancelling the earlier Heirship Certificate and also without a notice to the appellant. Therefore, the impugned Order dated 01.09.2017 passed in the Heirship Certificate Application No. 1369/2017 and the consequential Heirship Certificates issued are found to be not sustainable in law and the same are set aside. If the Heirship Certificate No. 447/2014 is found to be not acceptable by either of the parties, they are at liberty to take any such recourse as may be available to them in law.

[7.] With the above observation and direction, the appeal stands disposed of.

JUDGE

Comparing Assistant