

GAHC030007032023



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

Case No. : FAO/5/2023

Rozara (L) r/b Sh Lalsangbera and Anr.
S/o K.Rozara (L), Zemabawk Kawn Veng-II, Aizawl, Mizoram

2: Lalsangbera
S/o K.Rozara (L)
Zemabawk Kawn Veng-II
Aizawl
Mizora

VERSUS

Smt Lalthachuailevi and 2 Ors.
D/o K.Rozara (L), Zemabawk Kawn Veng-II, Aizawl, Mizoram

2:Sh Lalzirliana
D/o Lalthachuailevi
Zemabawk Kawn Veng-II
Aizawl
Mizoram

3:Dr R.Tlangkunga
Dawrpui
Aizawl
Mizora

Advocate for the Petitioner : Mr C Lalramzauva, Sr. Adv.

Advocate for the Respondent : Mr. L.H. Lianhrima, Sr.Adv for R1 & R2

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

Date : 10.09.2024

Heard Mr. C Lalramzauva, learned Senior Counsel for the appellant assisted by Mr. Jonathan L Sailo. Also heard Mr. L H Lianhrima, learned Senior Counsel for the respondent Nos. 1 & 2 assisted by Ms. Ruth Lalruatfeli.

2. The appellant has put to challenge the Order dated 29.09.2023 passed by the Addl. District Judge-II, Aizawl in RFA No. 20/2016 arising out of Certificate Application No. 209/2009, wherein the First Appellate Court had set aside the Order dated 12.06.2009 passed by the learned Sub-ordinate District Council Court in Certificate Application No. 209/2009, as no notice had been issued to respondents. In Certificate Application No. 209/2009, Sh. K. Rozara, son of the Vanhnuaithangi (L) and father of respondent No. 1 had been granted Heirship Certificate as the legal heir of the deceased Smt. Vanhnuaithangi, in respect of the following three properties of the deceased Vanhnuaithangi:-

1. WRC No. 32 of 1986.
2. L.S.C. No. Azl. 942 of 1989.
3. L.S.C. No. Azl. 322 of 1986

3. The learned counsel for the appellant submits that the impugned order has to be set aside, in view of the fact that a grand-daughter's right to inherit property only flows from the rights of the parents and a grandchild cannot inherit the properties of the grandparents, during the lifetime of the parents. He submits that children have the right to inherit the properties of their parents and not the properties of the grandparents.

4. The learned counsel for the appellant submits that after the death of Smt. Vanhnuaithangi, her son Sh. Rozara, applied for Heirship Certificate in respect of the three properties of his deceased mother before the Sub-Ordinate District Council Court, vide Certificate application No. 209/2009. The Sub-Ordinate District Council Court granted Heirship Certificate to Sh. K. Rozara in respect of the three properties, being the legal heir of the deceased, without issuing any notice or recording any evidence. Sh. K. Rozara expired on 07.01.2015. Thereafter, the respondent Nos. 1 & 2, who were the daughter and grandson of Sh. K. Rozara respectively, put to challenge the grant of Heirship Certificate given to Sh. K. Rozara in respect of the three properties, vide RFA No. 20/2016, on the ground that no notice was issued to the respondent Nos. 1 & 2 before the Court of Addl. District Judge-II, Aizawl granted the Heirship Certificate. As the property of Sh. K. Rozara (L) was inherited by his son Sh. Lalsangbera, Sh. Lalsangbera was made the respondent in RFA No. 20/2016. Sh. Lalsangbera is the half brother of the respondent No. 1, as they share the same father, who is K. Rozara, but have different mothers.

5. The Addl. District Judge-II (First Appellate Court) set aside the Heirship Certificate granted to Sh. K. Rozara in respect of the three properties and remanded the case back to the Trial Court to decide the issue afresh vide Order dated 29.09.2023 passed in RFA No. 20/2016, on the ground that no opportunity of

hearing had been provided by the learned SDCC to the respondents.

6. The learned counsel for the appellants submits that the Order dated 29.09.2023 passed by the First Appellate Court in RFA No. 20/2016 has to be set aside, on the ground that the respondent Nos. 1 & 2 have no right to inherit the properties of their grandmother, the Late Vanhnuaithangi, during the lifetime of Sh. K. Rozara.

7. On the other hand, Mr. L H Lianhrima, learned Senior Counsel for the respondents Nos. 1 & 2 submits that in terms of Section 33 of the Mizo Marriage, Divorce & Inheritance of Property Act, 2014, hereinafter referred to as the "2014 Act", a grand-daughter has a right to inherit the property of her grandmother, if the grand-daughter was looking after her grandmother till her death, even it was being done during the lifetime of her father, Sh. K. Rozara, who is now substituted by the present appellant. He also submits that even as per the Mizo Customary Law, a person who looks after the grandparents is entitled to inherit their properties.

8. The learned counsel for the respondent Nos. 1 & 2 submits that as the respondent No. 1 looked after Smt. Vanhnuaithangi till her death, the respondent No. 1 is to inherit the properties of her grandmother, Smt. Vanhnuaithangi. He further submits that the son of Smt. Vanhnuaithangi and father of the respondent No. 1, i.e., K. Rozara, did not look after Smt. Vanhnuaithangi and lived in a separate house having a separate land pass. He also submits that the appellant

and respondent No. 1 share the same father, but not the same mother. The learned counsel for the appellant submits that after the death of K. Rozara, Lalsangbera inherited the properties of the deceased K. Rozara.

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

10. The present appellant is the grandson of the deceased K. Rozara, who is the son of Vanhnuaithangi, while the respondent No. 1 is the daughter of the K Rozara and grand-daughter of the deceased Vanhnuaithangi. The respondent No. 2 is the son of the respondent No. 1.

11. The case, as projected by the learned counsel for the respondents is that during the lifetime of Vanhnuaithangi, K. Rozara left the main ancestral home and lived in a separate house. On the other hand, the respondent No. 1, who was the grand-daughter of Vanhnuaithangi, looked after Vanhnuaithangi till her death i.e. till 10.11.2008. On the other hand, K. Rozara and Lalsangbera did not look after Vanhnuaithangi till her death, as they were "INDANG", maintaining a separate household in a different house.

12. The respondent Nos. 1 & 2 did not file any appeal against the Heirship Certificate during the lifetime of K. Rozara. The respondent Nos. 1 & 2 filed the appeal only in the year 2016, after the death of K. Rozara on 07.01.2015. In the FAO No. 5/2023 filed by the respondents against the Heirship Certificate, the main

grounds of challenge to issuance of the Heirship Certificate was that a Will dated 28.07.2006 had been executed by the deceased Vanhnuaithangi, wherein the properties i.e. 1. *WRC No. 32 of 1986*, 2. *L.S.C. No. Azl. 942 of 1989*, *L.S.C. No. Azl. 322 of 1986* were bequeathed to the respondent Nos. 1 & 2. However, the Will has not been probated till date and the respondents have instead challenged the Heirship Certificate on the ground that a person who looks after another till death, is entitled to inherit the property of the deceased.

13. The case of the respondent Nos. 1 & 2 is that no appeal had been filed against the Heirship Certificate prior to 2016, as the respondents were not aware of the issuance of the Heirship Certificate in favour of their K. Rozara earlier.

14. The respondents had filed an application for condoning the delay of 2709 days in preferring RFA No. 20/2016 vide CMA No. 567/2016. CMA No. 567/2016 was allowed by the First Appellate Court vide Order dated 06.04.2017.

15. Being aggrieved by the order condoning the delay of 2709 days by the First Appellate Court in CMA No. 567/2016, the appellant put the same to challenge vide Civil Revision Petition, i.e. CRP No. 8/2017. However, the same was withdrawn by the appellant vide Order dated 21.06.2021, which is as follows:-

*“Heard Mr. C. Lalramzauva, the learned senior counsel for the petitioners.
Also heard Mr. L.H. Lianhrima, the learned senior counsel for the respondents.*

After hearing the learned counsels for the parties at some length, Mr. C. Lalramzauva, the learned senior counsel for the petitioners submits that the petitioners will not be making any claim in respect of WRC No. 32 of 1986 and LSC No. Azl. 322 of 1986. He submits that the petitioners claim will be confined only to LSC No. Azl. 942 of 1989.

He prays that he may be allowed to withdraw the present revision petition to enable the respondents to contest the RFA No. 20/2016 on merit.

Mr. L.H. Lianhrima, the learned senior counsel for the respondents does not have any objection to the same.

In view of the above, the Revision Petition stands closed as withdrawn, with liberty as prayed for by the petitioner's counsel.

The Revision petition is accordingly disposed of."

16. It may be stated here that it is not disputed between the parties that WRC No. 32 of 1986 had already been sold by the deceased Vanhnuaithangi during her lifetime to Dr. R. Tlangkunga and that the land covered by LSC No. Azl. 322 of 1986 was physically occupied by the late Vanhnuaithangi and after her death by the respondent No. 1. Thus, the only issue pertains to land covered under LSC No. Azl. 942 of 1989, which is under the occupation of the BRTF.

17. In view of the First Appellate Court having remanded the case back to the learned Trial Court for deciding the issue of Heirship in respect of the land of the late Vanhnuaithangi afresh, as no notice had been issued to the respondents, this

Court does not find any ground to interfere with the said order.

18. Accordingly, the appeal stands dismissed.

JUDGE

Comparing Assistant