

IN THE COURT OF SHRI VANLALMAWIA, ADDL. DISTRICT JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL.

F.A.O 3/2015
A/o GC No.1032/2015

Romalsawmi : Applicant

Vrs

L.Zalawta : Respondent

BEFORE

Vanlalmawia,
ADJ-I

PRESENT

For the applicant	:	Lalbiaknunga, Advocate
For the Respondent	:	W.Sam Joseph.
Date of Hearing	:	7.12.2015
Date of order	:	7.12.2015

ORDER

Parties are present through counsel.

Today is fixed for hearing. Heard both sides at length.

The counsel for the appellant submitted the following:-

- 1) That the instant FAO was filed challenging the ex-parte. Judgement and order in Guardianship Certificate No. 1032 of 2015.
- 2) The appellant Romalsawmi is be birth mother of the minor L. Lalrinnunpuia and the wife of deceased L. Zakungliana.

- 3) That the respondent filed an application for Heirship Certificate and the same was registered as Heirship Certificate. Application No. 871 of 2015 and the same is rejected and dismissed vide order dated 24.04.2015 passed by Shri. Thomas Lalrammawia Civil Judge.

Then again the respondent filed an application for Guardianship on 05.05.2015 and the same is registered as G.C No. 1032 of 2015.

The Ld. Trial Court was pleased to pass the instant impugned order on 08.05.2015, after a period of three days without issuing any notice to the interest party i.e the appellant herein.

- 4) The respondent in his application for Guardianship submitted false and fabricated no objection letter which was duly witnessed by J.N Bualteng and C. Vanlalhruaia, Advocate. Now in this regard it is further submitted that there is no Advocate bearing the name of C. Vanlalhruaia on the roll maintained by the Mizoram Bar Association, this fact alone proved that the impugned Guardianship Certificate issued by the Ld. Trial Court upon relying on fabricated and fake no objection letter.
- 5) The instant appellant further submitted that the contention of the respondent para No.6 of their written objection that she could be treated as Divorced by Sumchhuah according to Pawi-Lakher Hnam Dan could not be held a valid ground. Since, the instant appellant does not live with her husband at any point of time. It may be further submitted that with regard to Para No. 7 of written objection, the submissions of the respondent are nothing but made up lies.
- 6) It may be further submitted that the respondent witness No. 12 H. Laldingngheti of Lawngtlai III made a retraction statement with regard to her statement annexed to the written objection submitted by the respondent and the same is submitted to this court.

In view of the facts mention above, the Ld. Counsel for the appellant prays this Court to set aside and quashed the impugned Guardianship No. 1032 of 2015 for the interest of Justice.

On the other hand, the Ld. Counsel for the respondent W. Sam Joseph submitted that deceased L. Zakungliana is governed by Pawi (Lai) Custom and practice. During the lifetime of the deceased L. Zakungliana, the appellant left the husband and never came back during his lifetime in this connection it is submitted that as per Para 38 of 'Pawi-Lakher Hnam Dan' if the wife leaves the husband's house and does not came back during this lifetime it should be treated as 'Sumchhuah'.

The appellant returned to the house of the respondent only after the death of her husband L. Zakungliana on 19.01.2015 when she came back she requested the respondent's wife to allow her to stay in the house of the respondent to which the respondents family mentioned that she could stay as the mother of their grandson and not as wife of L. Zakungliana to which she agreed and stay back in the house of the respondent.

While she was in the house of the respondent she even wrote no objection on 13.02.2015 for obtaining Heirship Certificate etc. The appellant stay in the house of the respondent since 21st January, 2015 till 10th, August, 2015 not as wife of L. Zakungliana but as the mother of L. Lalrinnunpuia.

He further submitted that the Court below had issued Guardianship Certificate after it was satisfied to the materials on record and for the welfare of the child Guardianship was issued in favour of the respondent further he submitted the Guardians and Wards Act, 1890, relied by the appellant in his application is barred by notification No. 920 P dated 01.04.1898, under the Assam. Frontier Tracts Regulation, 1880. Later also not extended under the Scheduled Districts Act, 1935 or under

any other law for the time being in force. The learned lower Court has followed all the provisions of law applicable to the State of Mizoram. In this connection the respondent states that the Civil Procedure Code, 1908 also is only applicable in spirit and not in letter. The lower court has not committed any illegality in issuing the said certificate. In this connection the respondent states that if the said order is set aside, there is all the possibility that the child's welfare will be at stake. From the time the child was taken away from the custody of the respondent, the child is being ill treated and not looked after properly. There are many persons who have seen the child being not treated well and they would be in a position to depose before this Court if permitted to do so. The paramount consideration in giving the custody of the child is the welfare of the child. The welfare of the child cannot be compromised. Though the mother is the natural guardian, if she is unable to take care of the child properly, the court has no other option but to give the custody of the child to the person who can look after the child better. In this connection the respondent and his wife had been looking after the child dearly and they took good care of the child when the child was with them till 10th, August, 2015.

In this connection, the counsel for the point a doubt a case decided by the Apex Court i.e Laxmi Kant Pandey Vs Union of India 1985 (Supp) S.CC 701. In this case the Apex Court directed that 'the welfare of the child take priority above all else, including the rights of the parents'. The appellant has no source of income and from the annexure submitted along with them written objection to the appear it is clear that the appellant was never included in their details of family as well as any nomination made by the deceased L. Zakungliana. If the child is in the custody of the respondent the child would be look after well and he could become responsible citizen of this country. If the child continues to stay with the mother at Lawngtlai he will face lots of hardship and the

appellant being a woman there is all the possibility of her being subjected to marriage by others.

As mentioned above the paramount consideration in giving the custody of the child is the welfare of the child. In this, the child custody with the respondent would be good for the child's welfare. Therefore, he prayed the Court to dismiss the appeal and uphold the decisions of the Ld. Civil Judge, Aizawl District, in Guardianship Certificate No. 1032 of 2015.

On perusal of the case record of trial court, and upon hearing of both parties, I find the judgement of trial court is found just and proper for the welfare of minor children. Hence I find no ground to involve in the Judgement of Lower Court and therefore do hereby uphold the judgement of Lower Court.

The appeal is dismissed. Case record of Lower Court be sent back.

Give copy of this order to all concerned.

Sd/-VANLALMAWIA

Addl.District Judge-I
Aizawl Judicial District,Aizawl.

Memo No 629/ADJ-I(A)/2015 : Dated Aizawl the,7th December 2015.

Copy to :

1. District Judge, Aizawl
2. Romalsawmi C/o Lalbiaknunga Hnamte Advocate.
3. L.Zalawta C/o W.Sam Joseph, Advocate.
4. Thomas Lalrammawia Civil Judge with case record of GC No.1032/2015.
5. Judicial Section
6. Case record.
7. Guard file.

PESHKAR