

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

R.F.A No.24/2014 A/O H.C No.54/1994

Lalfakawmi	Plaintiff
	Versus	
Lalzarliana	Respondent

BEFORE
Shri.Vanlalmawia
Addl.District Judge-I
Aizawl Judicial District, Aizawl

PRESENT

Appellant	:	L.H.Lianhrima
Respondent	:	W.Sam Joseph
Date of Order	:	29.5.2015.

ORDER

This appeal is preferred by appellant Lalfakawmi D/o Vanlalchhuangi of Tlangnuam against the Heirship Certificate No 54 of 1994 issued vide memo no SDCC/HC-54/94/308-11 dt.14.2.1994, in favour of Mr Lalzarliana S/o Lalramliana R/o Venghlui, Aizawl. Appellant duly executed vakalatnama in favour of L.H Lianhrima, Sr. Advocate assisted by Lalhriatpuia, Advocate. The respondent Lalzarliana also executed vakalatnama in favour of W.Sam Joseph, Bhanu Kumar Advocate. The appeal was filed u/s 17 of Mizoram Civil Court Act 2005 R/W section 96 and Order 41 CPC and endorsed to me by the Id District Judge for my disposal.

The Id counsel for appellant submitted that the Magistrate, Sub-District Council Court, Aizawl had issued Heirship Certificate No 54 of 1994 vide Memo No. SDCC/HC-54/94/308-11 dated 14th February, 1994 without issuing public notice in favour of the respondent, Lalzarliana. As per the said Heirship Certificate, the Respondent has been declared as legal heir of the deceased Vanlalchhuangi, Sub-Inspector of Police in respect of immovable properties covered by LSC No.562 of 1977 located at Tlangnuam, Aizawl. Further, the said Heirship Certificate had been issued without giving reasonable opportunity of being heard to the appellant.

The appellant is the daughter of Vanlalchhuangi (L) while the respondent is also the son of deceased Vanlalchhuangi.

The deceased mother, Vanlalchhuangi died instate on 18th July, 1992 and she had two immovable properties covered by LSC No 562 of 1977 and LSC No, Azl-1049 of 1987. In fact, the respondent has clandestinely obtained heirship certificate no 54 of 1994 in respect of LSC No.562 of 1977 located at Tlangnuam which has been presently occupied by the appellant before he attained majority with the help of his sister, Lalringngheti while LSC No 54 of 1994 has been in occupation of the respondent.

That as the appellant was not issued notice prior to the issuance of the said impugned Heirship Certificate, she came to know about the impugned Heirship Certificate No 54 of 1994. Since the appellant was not aware of the illegal issuance of the said Heirship Certificate No 54 of 1994, she could not contest the same in time as she came to know about the issuance of impugned Heirship Certificate sometime in the month of July, 2014 when the respondent informed her that he is intending to dispose of the suit land and building. As a result, the appellant had immediately approached the Revenue Authorities for a copy of the impugned Heirship certificate, etc through RTI. Accordingly, the State Assistant Public Information Officer & Deputy Director of Survey, LR & S, furnished a copy of heirship certificate no 54 of 1994 along with other relevant documents. Thereafter, the appellant approached a few leading advocates to take up her case but none of them could not adjust with their fees as the appellant could not actually afford even their nominal fees. As a result, the appellant took almost three weeks to file the instant appeal. And that the appellant has no any other option left but to approached the Hon'ble Court for filing an appeal against the impugned Heirship Certificate. As can be seen from the impugned Heirship Certificate, no notice has been served upon the appellant before issuing the same.

The respondent has deliberately concealed material evidence and facts from the court below in obtaining the impugned Heirship Certificate No 54 of 1994.

Since the disputed immovable properties solely belonged to the mother, even the Mizo Customary Law is silent on who is to inherit the properties of the mother. Hence, the Hon'ble Court is to decide the legal heir of the mother.

Being aggrieved by the said impugned Heirship Certificate duly issued in favour of the Respondent, your appellant begs to move your honour to set aside and quash the impugned Heirship Certificate on the following grounds inter alia.

IN THE PREMISES AFOREMENTIONED.

It is earnestly prayed that this Hon'ble Court may be graciously pleased to admit this appeal, call for the records of the Lower Court and issue notice calling upon the respondent

to show cause as to why the impugned Heirship Certificate dated 14.2.1994 shall not be set aside and quashed and why the appeal shall not be allowed as prayed for and after hearing both parties to allow the appeal and to pass any other order as your honour may deem fit and proper.

And

In the interim : To suspend the operation of the impugned Heirship Certificate No 54 of 1994 dated 14.2.1994 till final disposal of this appeal.

On the other hand, respondent Lalarliana argued the submission of appellant through his counsel W.Sam Joseph that :

1. The appellant has no *locus standii* to file the present appeal.
2. The appeal is barred by limitation and the appellant should have filed an application under specific provisions of law for condonation of the delay.
3. The appeal is barred by doctrine of Estoppel by acquiescence.
4. The Appellant and the Respondent are sister and brother born to Smt.Vanlalchhuangi(L) and Shri Lalarliana. In this connection the respondent states that the Smt. Vanlalchhuangi died on 18.7.1992. At that time of the death of the mother of the appellant and the respondent the appellant had already completed 16 years of age and the appellant attained the age of majority as per the provisions of section 3 of Indian Majority Act on 18.6.1994. If at all the appellant had any right to claim the properties left by the deceased Vanlalchhuangi, she should have approached the court soon after she attained the age of majority. As per the provisions of Article 137 of the Indian Limitation Act, the appellant should have applied for heirship certificate within three years from the date of the death of Smt.Vanlalchhuangi. The fact that the appellant had not applied for HC within the time of limitation she has no right to agitate now. Moreover, the plaintiff was a party to the decision taken when the Heirship Certificate was applied in the year 1994 by the appellant's elder sister on behalf of the respondent.

5. That the contents of paragraphs 1 to 4 of the appeal are denied. First of all the respondent would like to state that Vanlalchhuangi(L), d/o. V.L.Keuva(L) of Venghlui and Shri H.Lalarliana got married in the year 1974 and during the subsistence of the marriage five children were born and the names of the children and their date of birth are given below:

1. Lalrinngheti born on 24.5.1975

2. Lalfakawmi born on 18.6.1976
3. Lalnuntluangi born on 21.10.1979
4. Lalrindika(L) born on 12.4.1981
5. Lalarliana born on 24.10.1984

6. That land covered under LSC no.562 of 1977 was registered in the name of Smt. Thangkungi (L) who was the aunt of the deceased Vanlalchhuangi. She was spinster and did not have anyone to take care of her. The parents of the appellant and the respondent took care of Smt.Thangkungi(L) till her death and the immovable property covered under LSC no.562 of 1977 was mutated in the name of the respondent's mother. Unfortunately, the respondent's mother Vanlachhuangi died on 18.7.1992. Before the death of the respondent's mother, the respondent's father and mother were divorced. Hence, the property was not put in the name of the father of the appellant and respondent.

7. That when the mother of the appellant and respondent died, none of their siblings attained the age of majority, hence they waited for the eldest sister Lalrinngheti to attain majority. After she attained majority, as per the decision of all the siblings including the appellant and their father as well as the paternal uncle, and the respondent being the youngest son of the deceased Vanlalchhuangi, they jointly decided to obtain heirship certificate in the name of the respondent. The appellant was one of the parties who took the decision to obtain the heirship certificate in the name of the respondent in respect of the properties covered under LSC no.562 of 1977 and as he was a minor at that time, their eldest sister Lalrinngheti was appointed as Legal guardian of the respondent. When the Heirship Certificate was applied, the appellant, respondent and all other siblings with their father were living under the same roof at Venghlui. Thereafter, the father of the appellant and respondent married Zoremsangi and left the house in which the respondent is living till date. However, the appellant was living with the respondent till she got married. After marriage, the appellant left the house at Venghlui to be with her husband. As the appellant and her family were living in a rented house, the appellant requested the respondent to accommodate her in one of the portions of the building located within the LSC no.562 of 1977. As the respondent took pity on her and allowed her to stay in the house in the month of October 2013 without paying any rent and the appellant has been living in the said portion of the building till date. Due to the instigation of her husband and others the appellant has illegally put the claim to the property inherited by the respondent way back in the year 1994. In this connection the respondent would like to state that when the HC was applied for he was less than 10years of age and he was told by his eldest sister and his

uncle Shri M.S.Dawngliana that before the Heirship was applied for, the appellant was also included in the discussion as to in whose name the heirship certificate is to be obtained and he further stated that before issuing the Heirship Certificate, notice was published in the leading newspaper and after expiry of 45 days, the heirship certificate cum guardianship certificate was issued. Hence the appellant cannot say that she was not aware of the issuance of the Heirship certificate in the name of the respondent. It is a blatant lie. Now due to greed the appellant had filed the present appeal. The present appeal has no merit and liable to be dismissed.

8. That the contents of para 5 are categorically denied. The question of respondent concealing the material evidence does not arise as he was just 10 years of age. In fact the appellant along with other siblings and their father and uncle had decided to obtain the heirship certificate in favour of the respondent. Even if the averment made by the appellant is to be believed, what prevented her from applying for heirship certificate before the expiry of the period of limitation. The fact that she waited for 22 years after the death of her mother to come to court with the present appeal proves clearly that she has no right to prefer the present appeal.

9. That the contents of para 6 are also not admitted. The respondent being the youngest son of the deceased Vanlachhuangi, he is entitled to inherit the properties left by her intestate as per Mizo Custom and practice. Once again the respondent would like to reiterate that the appellant and other siblings had jointly decided to obtain the said heirship certificate no.54 of 1994 in the name of the respondent.

10. That in order to substantiate the truth that the appellant was also party to the discussion before the she and other siblings and their father and father's brother decided to obtain the heirship certificate in favour of the respondent, the statements on affidavit of Shri H.Lalramliana, father of the appellant and the respondent, Smt. Lalrinngheti, sister of the appellant and the respondent and Shri M.S.Dawngliana, uncle of the appellant and the respondent are annexed herewith as Annexures – 'A', 'B' & 'C'.

11. That the contents of para (i) to (viii) under the heading grounds are also categorically denied. The learned lower court has not committed any illegality or error in issuing the said HC. The appellant has no right to make any objection to the issuance of the said HC. There grounds stated in the appeal petition are baseless and no interference is required.

12. That the contents of para 7 of the appeal are categorically denied. The case law referred in that paragraph is not relevant to the present appeal. If the appellant felt that she was entitled to inherit the properties of the deceased Vanlalchhuangi, she should have approached the court within the limitation period. As he has not approached the court earlier, he has no right to pray for setting aside the said HC. The appellant has filed the appeal malafide in order to grab the properties legally inherited by the respondent.

In the circumstances, it is prayed that your honour may be graciously pleased to dismiss the appeal with cost. Or pass such other order/orders deem fit and proper.

Both the Id counsels and the parties are heard at length, the petitioner and respondent are brother and sister, they are

1. Lalrinngheti born on 24.5.1975
2. Lalfakawmi born on 18.6.1976
3. Lalnuntluangi born on 21.10.1979
4. Lalzarliana born on 24.10.1984.

The eldest one Lalrinngheti stated that the two L.S.C located at Tlangnuam and Venghlui, in the name of their mother, was contested by the relative of her mother after the death of her mother. Her father and his relative from paternal side had decided to keep the LSC in the name of Lalzarliana, and all her brother and sisters including Lalfakawmi are also available in the meeting, and took Heirship Certificate accordingly and the said Heirship Certificate was hide, without the knowledge of Respondent Lalzarliana, as respondent Lalzarliana is inhabit of intoxication and drug addicted for fear of sale etc. Petitioner Lalfakawmi is now staying at the top floor of Tlangnuam Assam type building and the rest ground and first floor are rented out. Lalzarliana and the youngest sister Lalnuntluangi are staying together, and she Lalrinngheti is employed on his mother compassionate ground as S.I(M) in the Police Department.

Lalramliana, father of parties in the instance suit stated that the L.S.C was contested by his wife's relative at Venghlui Village council court and inpersuance of his brother advice namely Dawngliana, Lalhmachhuana and Lalthangmawia, Heirship Certificate was applied in favour of the only son Lalzarliana as his children were so young to get advice from them, they were 18 yrs, 17yrs, and Lalzarliana is only 12yrs, but he informed Lalrinngheti and Lalfakawmi.

On the other hand, petitioner Lalfakawmi argued that she was not informed about the matter and she was absent at the time of discussion with her father, and her sister

about the Heirship Certificate, they made written document containing that the properties left by her mother shall not be disposed by only one, without the consent of other sister and brother, and we signed it by all member on the written document. If Heirship certificate is available, the said written document shall not be needed to make Lalrinngheti and Lalzarliana accepted the said document but the said document was simply made only to take care of the LSC, and now torn it and throw in to the dustbin, Lalzarliana concluded the hearing stating that he is mature enough to keep the LSC in his name as he attained the age of 31 yrs old.

Both the Id. counsel submitted written argument, council for appellant L.H.Lianhrima, assisted by Lalhriatpuia, Advocates submitted that.

The story of the appellant's case in brief is that her mother died intestate of her landed property covered by LSC No.1049 of 1987 on 18.7.1992. Since the appellant and the other siblings of the deceased Vanlalchhuangi verbally and in writing agreed not to sell or dispose or alter the said landed property in dispute, the appellant put her trust to her elder sister who kept the said document in her custody. However, to the utter shock and surprise, the appellant came to know that the said landed property had already been mutated in the name of her brother namely Lalzarliana without her knowledge and consent way back in the year 1994. In fact the appellant came to know the matter only when her brother/respondent stated that he is intending to dispose of the suit land and building. Then the appellant immediately collected the document from the competent authority through RTI, it was found that the said LSC/document had already been transferred in the name of the respondent Shri Lalzarliana. Having left no other choice the appellant has filed the instant appeal. The appeal, in fact, was filed after 20 years had elapsed from the date of issuance(illegally) of the Heirship Certificate No 54 of 1994 in favour of Shri Lalzarliana due to the fact that the appellant came to know only the illegal issuance of heirship certificate in favour of the respondent Shri Lalzarliana without giving notice to the appellant nor reasonable opportunity to contest the same.

From the written objection of the respondent, it can be seen that the disputed properties covered by LSC No. 562 of 1977 was in the name of the petitioner's mother namely Vanlalchhuangi. In fact, the said property in dispute is not the property of the respondent nor the father of the respondent. When the petitioner's mother Vanlalchhuangi died on 18.7.1992, she left no Will nor any documents which give her children to be the legal heir of the said disputed land. In the year 201, after the death of the deceased Vanlalchhuangi, her five children made an agreement in writing to the effect that the said disputed property shall not be disposed of or alter whatsoever unless agreed by the parties (i.e five children of deceased Vanlalchhuangi). However, to the utter shock and surprise of

the petitioner, the said disputed properties was already transferred in the name the respondent without prior permission and consent of the appellant/petitioner. The appellant/petitioner came to know the said transfer of the disputed properties only in the month of July 2014 when the respondent stated that he is intending to dispose of the suit and building. Hence, the instant petition is into barred by any law of limitation as the apex court held in the case of **Gauhati University – Vrs – Niharlal Bhattacharjee** which was reported in (1995)6SCC 731 that the limitation began to run only when the appellant had knowledge of the Ex parte decree. In fact, **Article 123 of the Limitation Act, 1963**, limitation runs from the date of knowledge of the impugned decree order. Accordingly, the instant appeal is within the permissible period of time and can be entertained and disposed of by this court.

In fact, the allegation made by the respondent in para 11 of written objection submitted to this court that the appellant was one of the patties who took the decision to obtain the heirship certificate in the name of the respondent in respect of the properties covered under LSC No.562 of 1977 was made with the knowledge and consent of the appellant/petitioner. Therefore, the respondent and his supporters clandestinely obtained the said illegal heirship certificate in respect of properties covered by LSC No.562 of 1977 without prior consent and approval of the appellant, who is the daughter of the deceased Vanlalchhuangi and the same is illegal and void and is liable to be cancelled.

It is reiterated that as per their agreement executed in the year 2010 between the children of the deceased Vanlalchhuangi(which was already destroyed by the elder sister Lalrinngheti as informed to this Hon'ble Court by herself in the presence of the parties), the properties left by the deceased Vanlalchhuangi cannot be disposed of, sale, mortgage whatsoever without taking prior permission and approval of the parties. Since the deceased Vanlalchhuangi left five children who are entitled to inherit her left properties, all children have their right and liability in respect of their deceased mother's properties and as such the appellant is entitled to claim over the properties left by her deceased mother Vanlalchhuangi and the heirship certificate No 54 of 1994 which was issued solely in favour the respondent is void and liable to be cancelled outright.

In view of the above, it is prayed accordingly.

Mr. W.Sam Joseph, Ld council for respondent submitted that :

13. The appellant's case in brief is that appellant filed the appeal against the Heirship Certificate No.54 of 1994 issued on 14th February 1994 on 9.9.2014 as she came to know about the issuance of the said Heriship Certificate only in the month of July 2014. The appellant prayed the court to set aside and quash the Heirship Certificate No.54 of 1994. In this connection the appellant relied on the Apex

court's judgment in the Case of Gauhati University Vs. Niharlal Bhattacharjee 1995 (6) SCC 731.

14. The respondent clearly rebutted the averments and grounds made in the appeal and submitted affidavits from the sister of the appellant and the respondent and also from the father of the appellant and the respondent and also from the uncle of the appellant and the respondent proving that the appellant was aware of the decision to apply for the heirship certificate in favour of the respondent and she was aware of the issuance of the HC as soon as it was issued. That the appellant has no *locus standi* to file the present appeal.
15. The respondent was only 10 years of age when the HC was applied by the sister of the appellant and the respondent after having discussion with the appellant and other persons who are interested in the property left by the deceased Vanlalchhuangi.
16. It is an admitted fact that the mother of the appellant and the respondent died on 18.7.1992.
17. It is also an admitted fact that the appellant attained majority on 18.6.1994 and it is also admitted fact that the appellant is married and staying with her husband.
18. The main question is as to whether the present appeal can be entertained. As per the provisions of the Indian Limitation Act 1963 the appellant should have preferred the appeal within 30 days from the date of the order issuing the HC no.54 of 1994.
19. The mother of the appellant and the respondent died on 18.7.1992. If at all the appellant felt that she had any right over the properties of the deceased Vanlalchhuangi, she should have filed an application for heirship certificate within 3 years from the date of the death of her mother or within three years from the date on which she attained majority. Article 137 of the Limitation Act clearly shows that she should have approached the court within 3 years from the time the right to sue accrued. I would like to reproduce the relevant portion of the Limitation Act.

Article 137 of the Limitation Act reads as follows:

"137. Description of application: Any other application for which no period of limitation is provided elsewhere in the Division.

Period of Limitation: Three Years Time from which period begins to run:

When the right to apply accrues."

20. The delay in coming to court for establishing right could not be explained. In fact she has no right to claim the properties left by the deceased Vanlalchhuangi.

21. First of I do not admit that the appellant has any right over the properties left by the deceased. Even if she has any right, by her action of silence for the past 20 years proves that she has no right and she cannot make any claim to the properties left by the deceased Vanlalchhuangi. In this connection I would like to point out the case of Sailala Vs. Ngurtaiveli reported in 1980 AIR (Gauhati) at page 70 and it runs thus ***"10. In our view, on the basis of the facts found by the Court below, which we accept, we have no hesitation in coming to the conclusion that the conduct of late Thangphunga was such that he acquiesced in the ownership of late R. D. Leta in the suit premises. Though various notorious acts were done in the suit premises between the plaintiff and the near relatives of late R. D. Leta, as discussed above, while Thangphunga was -alive, Thangphunga remained stood by. In such a case, the doctrine of estoppel by acquiescence comes into play. The proper sense of the word 'acquiescence' is that if a party having a right stands by and sees- another dealing with the property in a manner inconsistent with that right and takes no objection while the act is in progress, he cannot afterwards complain."***

22. If this kind of appeal is allowed there is all the possibility of never ending disputes. There is no merit in the appeal.

23. If your honour requires any clarification on the arguments put forth above, I shall be happy to clarify as and when directed to do so.

I pray the court to dismiss the appeal with cost.

Upon hearing of all Parties appellant Lalfakawmi claims that she was not present at the time of discussion of agreement to obtain Heirship Certificate in favour of the younger

son Lalarliana, instead they have made written document to the effect that the said property shall not be disposed of who so ever unless agreed by the parties, and all the parties put their signature on the said document and she came to know that the Heirship was issued in favour of respondent Lalarliana only in the month of July, 2014. Appellant Lalfakawmi who claims to be born on 18.6.1976 might have attained about 16 or 17 years old at the time of issuance of heirship certificate in 1994. It can be presumed that a teenage girl of about 17 yrs old might not care about the properties even she was present at the time of discussion of obtaining of heirship certificate in favour of respondent Lalarliana. Besides that will there be any harm to obtain heirship certificate in favour of Lalarlianawho is only male member, and who is the youngest, amongst the parties.

Lalfakawmi also claim that there was 'WRITING' among the parties to the effect that the property shall not be disposed without the prior permission of all parties, but the letter was not exhibited in the court during the hearing, and Lalrinngheti also accepted, but already torned and throw away as there was heirship certificate in favour of Lalarliana, as the said 'WRITING' has no more importance, without informing the appellant, and hence this appeal.

It is learnt from the hearing that the eldest one Lalrinngheti got employment on her mother compassionate ground as S.I(M) under Police Department, and also got married and the youngest one Lalarliana get LSC No.562 of 1977 which was left by his mother by obtaining heirship certificate vide memo No SDCC/HC-54/94-208-11 dt.14.2.94 and got married.

Lalfakawmi and Lalnuntluangi has no share in the property left by their mother. Lalfakawmi got married, and Lalnuntluangi is still unmarried and stayed together with the respondent Lalarliana, appellant Lalfakawmi also stayed on the house left by her mother at Tlangnuam veng, free of cost.

According to Mizo customary Law and normal practice amongst the Mizo community, the youngest male member are away enjoy lion share, in the disposed of property left by their parent.

But appellant and the youngest daughter also cannot be left with empty hand, if another property is available to be shared. So, appellant Lalfakawmi shall stay in the said floor where she is staying as long as she desire with her family, and one floor which is rented out, may be share by the youngest sister Lalnuntluangi. This means that rent shall go in the name of Lalnuntluangi, and raising of house rent and changing of tenant also shall be under the disposal of Lalnuntluangi and the rest one floor shall remain unchain appellant may apply Heirship for the floor in the competent court if so desire.

The building of Tlangnuam shall not be disposed unless agreed Lalfakawmi and Lalnuntluangi.

With these observation, the Heirship Certificate issued by the Id. SDCC, Aizawl is upheld and the other parties Lalfakawmi and Lalnuntluangi may approach competent court for obtaining Heirship Certificate if so desire.

The appeal is dispose.

Give copy of this order to all concerned.

Announce in open court on this 29th day of May 2015.

Sd/-VANLALMAWIA,
Addl.District Judge-I,
Aizawl Judicial District, Aziawl.

Memo No _____ /AD & SJ-I/2015 : Dated Aizawl the,29th May 2015.

Copy to :

1. District Judge, Aizawl Judicial District, Aizawl.
2. Lalfakawmi C/o L.H.Lianhrima Advocate.
3. Lalzarliana C/o W.Sam Joseph Advocate.
4. Judicial Section.
5. Case record .
6. Guard file.

PESHKAR