

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

**Civil Misc. Application No.159/2015**

**A/o RFA No.3/2015**

Lalringliana. .... Applicant.

Versus

Rosailova.

Rosiamliana. .... Respondents.

BEFORE

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

PRESENT

For the Applicant	:	C. Lalrinchunga, Advocate.
For the Respondents	:	W. Sam Joseph, Advocate.
Date of Hearing	:	18.04.2016.
Date of Order	:	03.05.2016.

This Misc. Application No.159 of 2015 arising out of RFA No.3 of 2015 is filed by applicant Lalringliana s/o Thakawnga(L) Salem Veng, Aizawl u/s 5 of the Limitation Act 1963 for condonation of delay of 24 years for filling up of Review Petition through his Counsel Mr. C. Lalrinchunga, Advocate. The applicant stated that the Applicant-Appellant is the youngest male issues of the deceased Thakawnga who demised on 19<sup>th</sup> February 1990 and the deceased possessed some plot of land covering LSC No 117 of 1982 located at Thakthing Venghnuai, Aizawl whereas the respondents are son of Shri Piandanga(L) who was the son of the deceased Thakawnga. The said Piandanga was already passed away when his father, Thakawnga was alive. The respondents are the issues of the deceased Piandanga who is the sons the deceased Thakawnga.

1. That during the lifetime of the deceased Thakawnga, the Appellant left the family due to different opinion in the Church following one of the religious domination known as Enoka Pawl and was became hermit. After some years he was informed by his father to return to the family to look after them as his elder brother namely Piandanga was already passed away. When the Appellant was preparing to return to the family his father was in bad health but the same was not informed to the Appellant as it was concealed by the respondents and their mother who was living along with the deceased Thakawnga at the time of dead. After the dead of his father the Appellant and his family had no intention to return to the family of his father as he was not mentally prepared and also in their religious faith they are not fully prepared to join the respondents' family.
2. That being the youngest male issue of the deceased Thakawnga, the Appellant is entitled to inherit all the intestate properties of his father and also until he was alive the respondents are not entitled to inherit the said property according with the Mizo Customary Law. And also at the time of filing Heirship Certificate the Id SDCC failed to published the petition in the newspaper calling any object from an interested person and as such the Appellant has no time to file objection in the said petition and as such the said Heirship Certificate No 130/1990 was illegally issued without the knowledge of the Appellant.
3. That in the year 1997, the Appellant tried to return to the house of his deceased father by thinking that he was mentally and by religious faith full prepared to live along with other friends, and then he approached the respondents and that he was informed they had already obtained Heirship Certificate No 130 of 1990 in the name of the respondents in respect of all the property of the deceased Thakawnga. As soon as the Appellant came to know that the respondents obtained Heirship certificate, he tried to trace out the record in the Court but the same was not available as it was already burned damages and as such he obtained Photostat copy only from the Revenue Deptt. And after that the Appellant took various steps by trying to have amicable settlement with the respondents by seeking the help of other relatives and in the year 2013, as there is no hope of settlement outside Court, the Appellant filed a case before the Lok Adalat, Aizawl but as there was no hope for having settlement even before the Lok Adalat, some of the re-conciliators advised

him orally to approach proper forum and then the Appellant was trying to challenge the said Heirship Certificate No 130/90 and then sought for obtaining certified copy of the same from the Court and after many days he was informed orally that all the case records under the Subordinate District Council Court were already damaged and then the Appellant filed the instant suit without certified copy of the said Heirship Certificate No 130/1990.

4. That for filing the instant appeal there was a delay of 24 years but the said delay may be clarified as under;
  - a) 1990 to 2012 the Appellant did not know the respondents were obtaining heirship certificate No 130/90 of his deceased father Thakawnga(L) as he was living separately from his parental family due to religious beliefs.
  - b) 2012 to 2013 the Appellant was trying to have settlement with the help of their relatives.
  - c) 2013 to the month of December 2014 the Appellant was filing a complaint before the Lok Adalat for seeking amicable settlement.
  - d) October 2014 to January 2015 the Appellant was preparing to challenge the said heirship certificate and applied for legal assistance for Legal Services Authority and also trying to obtain certified copy of the said Heirship Certificate No 130/90 and also spent some days for drafting petition.
5. The said delay is not willful negligence of the applicant and it is the circumstances beyond the applicants control and as such the delay may be condoned.
6. Respondent Rosailova s/o Piandanga(L) Thakthing Venghnuai objected the petition through his Ld. Counsel Mr. W. Sam Joseph, Advocate stating that this court is not the proper court for preferring an appeal against order passed by the Magistrate of the 1<sup>st</sup> Class, Sub-District Council Court, Aizawl. S.17(2) of the Mizoram Civil Courts Act 2005 talks about the appeal against the orders passed by the Senior Civil Judge, hence the appeal is liable to be dismissed with cost.
7. That a combined reading of sub-rules (1) and (2) of R.3A of Order 41 of the Code of Civil Procedure makes it manifest that the purpose of requiring the filing of an application for condonation of delay under sub-rule (1) along with a time barred appeal, is mandatory, in the sense that the appellant cannot, without such

application being decided, insist upon the Court to hear his time barred appeal. It is clear from the Legislative history of insertion of R.3A to the Order 41 the very purpose sought to be achieved by insertion of sub-rules (1) and (2) of R.3A would be defeated if the present application is allowed. Once again the respondent reiterates that as the appellant has not filed any application under the said provisions of law, hence the application is to be rejected and the appeal dismissed. The petitioner has not explained the day to day delay in approaching this court with appeal.

8. That as per the provisions of S.5 of the Limitation Act 1963, the appellant should show sufficient cause for not preferring the appeal on time. The causes shown in the application are no sufficient cause for condoning the delay. The provisions of S.5 of the Limitation Act is reproduced here in below for ready reference and it runs thus: "5. Extension of prescribed period in certain cases. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."
9. That the contents of para 3 of the petition are categorically denied. The petitioner married the sister of Lalrempuia (Enoka cult) and left the Main house on 15<sup>th</sup> August 1988 by abandoning his father who was 93 years old and his mother Roluti who was 76 years. The petitioner never bothered to take care of the old parents. The respondents' father Piandanga was talking care of the deceased Thakawnga but unfortunately he died on 10<sup>th</sup> October 1989, thereafter, the respondents with their mother took care of the Shri Thakawnga and his wife Roluti till their death. Before his death Shri Thakawnga even left a 'Will' and on the basis of the said 'Will' the ops applied for the Heirship Certificate before the Magistrate 1<sup>st</sup> Class, Sub, District Council Court, Aizawl and after the court was satisfied. Heirship Certificate was issued jointly in the names of the respondents. On the basis of the HC, the Ops have transferred the said LSC in jointly in their names on 23.7.1990.
10. That the contents of para 4 & 5 are categorically denied. Just because the petitioner is the youngest son of the deceased. Thakawnga, he cannot inherit the properties of his father. He abandoned the old parents and he did not bother to take care of them, hence he has no right to inherit the properties. Moreover, the deceased Thakawnga had left a valid "Will" in favour of the respondents, hence the petitioner cannot have

any right to interfere with the right of the respondents. The court issued the HC no.130 of 1990 after being satisfied with the genuineness of the petition submitted by the respondents. From his own admission, it is clear that way back in the year 1997 the petitioner knew that the Heirship Certificate no. 130 of 1990 was issued in favour of the respondents, but he did not take any steps for the more than about 17 years to challenge the said HC in any competent court. The fact that the petitioner stood by when various acts were done within the land covered under LSC No.117 of 1982 and did not make any objection, he cannot now claim the said property. His action is hit by the doctrine of estoppels by acquiescence. The petition requires outright rejection.

11. The petitioner knew way back in the year 1997 that the HC No.130 of 1990 was issued in the names of the respondents. The averment that he did not know the existence of the HC till 2012 is complete lie. The cause shown for the delay are not sufficient cause for the court to interfere with the order passed by the Learned Magistrate 1<sup>st</sup> Class, Sub-District Council Court. Hence the petition is to be dismissed in the result the RFA also to be dismissed.
12. The delay is due to willful negligence. Moreover, the petitioner had abandoned the old parents when they required his help. Hence he has no right to claim the said property.
13. Mr. C. Lalrinchunga, Advocate, Ld. Counsel for the applicant submitted that applicant Lalringliana is the younger brother of Respondent's father called 'Patea'. Lalringliana has joined Enoka Pawl, and had spent more than 20 years for spiritual training. During his exile for spiritual training, his father Thakawnga was died and Respondent obtained Heirship Certificate to inherit the property of Thakawnga(L) though applicant Lalringliana is the youngest son of Thakawnga(L). The applicant Lalringliana try to settle the matter through Lok Adalat, but in vain. There was no any negligence, and prayed to condone 24 years.
14. Mr. Sam Joseph, Ld. Counsel for the Respondent submitted that Lalringliana did not like to look after his father Thakawnga, but left him for the cause of religious doctrine. They have to applied Heirship within 3(three) years, but applied only after 24 years, and have to give attention within the prescribed period. Thakawnga made a will, and it was taken probate Thakawnga was look after by Respondent Rosailova and his brother till his death.

There is no sufficient cause to condone the 24 years, and bare Section 113 and Article 58 of Limitation Act.

15. Mr. C. Lalrinchunga, Ld. Counsel for Applicant submitted his Written Argument stating that the appellant left his father and his family by joining Enoka Cult in the year 1987 and before he left the family the appellant was Primarily Investigator under Eco & Statistics Deptt. and he left a sum of Rs. 1, 00,000/- to his father for their maintenance. Within three years of leaving the family his father and mother were passed away and then the respondents obtained Heirship Certificate No.130/90 in respect of all the properties left by the deceased without publishing the same in the local newspaper. The respondents claimed that they had a WILL left by the deceased Thakawnga but the same was not probate as per Mizo District (Inheritance of Property) Act 1956.

16. That supposing not admitting the fact that he came to know issuance of the said Heirship Certificate obtained by the respondents in respect of landed property left by his deceased father, he was not in a position to contest/challenge the Heirship Certificate No.130 of 1990 as he was fully restrained by his religious faith to have any social intercourse with other persons and that he had no option to do anything outside his religious beliefs.

17. That the appellant knew any action taken by the respondents over the disputed land and he had no complaint as he thought that they are living in his parental home and that they have some duties to maintain the suit land and also they are entitled to inherit some of the property of his deceased father as they looked after his old aged parents but not the whole property and he thought that some portion of the disputed land will be in his property as he is the youngest issue of the deceased Thakawnga.

18. That after the Appellant came to know that the respondent had already obtained Heirship Certificate No.130/1990 of her deceased father Thakawnga in respect of landed property, he looked for amicable settlement as their dispute is family matters by asking some relatives to intervene between them but after that as there cannot be any settlement at the family level he filed petition before the Lok Adalat. However, since the respondents refused to settle the dispute the appellant intended to approach this Court and then he filed application for obtaining certified copy of Order but for the ill fated of the appellant the case record could not be trace out and then he filed the instant petition without certified copy but with Photostat copy of the said order.

19. That the appellant could not file petition before this Court on the following ground;
- a) For that he was restrained by his religious faith but he had no intention to leave his parents and family forever.
  - b) For that he sought settlement at the family level and also before the Lok Adalat.
  - c) For that certified copy of order could not be obtained as the Case record could not be traced out.
  - d) For that even though there is a delay of 24 years, as per the ruling of Hon'ble Supreme Court in the case of N. Balakrishnan vs M. Krishnamurthy "*Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory*".
  - e) For that in the case of Shakuntala Devi Jain V. Kuntal Kumari, AIR 1969 SC 575 *the Supreme Court has held that unless want of bonafides of such inaction or negligence as would deprived a party of the protection of Section 5 of the Limitation Act is proved, the application must not be thrown out or any delay cannot be refused to be condoned.*
  - f) For that if the delay is condoned there is sufficient chances to win the case as the said Heirship Certificate No.130/1990 was issued against the Law of Natural Justice as the appellant has no opportunity to contest the petition and that there is another space in the dispute land for construction of the Applicant's residence and as such the property may be distributed giving 1/3 to the appellant and that the respondents could not inherit the deceased's property as they support deceased till date (Chawmhlum rokhawm) as the deceased and his wife could support themselves with the money left by the appellant which amounting to Rs. 1,00,000/-.

- g) For that there is sufficient cause for the delay and the delay may be condoned as there is no wilful and gross negligence for belatedly filing the instant petition and the circumstances of the delay is beyond his control.

20. Mr. W. Sam Joseph, Counsel for Respondent also submitted his Written Argument stating that Respondents' case is that the petitioner married the sister of Lalrempuia (Enoka cult) and left the Main house on 15<sup>th</sup> August 1988 by abandoning his father who was 93 years old and his mother Roluti who was 76 years. The petitioner never bother to take care of the old parents. The respondents' father Piandanga was taking care of the deceased Thakawnga but unfortunately he died on 10<sup>th</sup> October 1989, thereafter, the respondents with their mother took care of the Shri Thakawnga and his wife Roluti till their death. Before his death Shri Thakawnga even left a 'Will' and on the basis of the said 'Will' the ops applied for the Heirship Certificate before the Magistrate 1<sup>st</sup> Class, Sub, District Council Court, Aizawl and after the court was satisfied, Heirship Certificate was issued jointly in the names of the respondents. On the basis of the HC, the Ops have transferred the said LSC in jointly in their names on 23.7.1990. Thereafter they had did whatever they liked with the said land and buildings and the petitioner did not make any objection till he filed the present appeal and the condonation application.

21. Counsel for the respondent also pointed out that the Limitation Act, 1963 is applicable to Mizoram. All doubts regarding the applicability of the Limitation Act, 1963 is put to rest by the Honourable Supreme Court in the decision they made in the case of J. **Thansiana –vs- State of Mizoram in Civil Appeal No. 3536/2008 this was also confirmed by the Honourable High Court of Gauhati in the case of RSA No.5 of 2015 Lalzarliana Vs Lalfakawmi.** In the said Judgment and order the Honourable High Court held that "Besides the above, the respondent's mother had expired on 18.07.1992. The respondent could have filed the application for Heirship any time after 18.07.1992 if the respondent had any claim/right to the property. However, for reasons best known to the respondent, the respondent has not claimed LSC No. 562/1977 till filing of RFA No. 24/2014 in the year 2014. It may also be noted that the Hon'ble Supreme Court in the case of J. Thansiana –vs- State of Mizoram in Civil Appeal No. 3536/2008 has held vide its judgment dated 8.9.2015 that the Limitation Act, 1963 is applicable in the State of Mizoram."

22. It is very clear from the above judgement and order, that the Limitation Act, 1963 is applicable to Mizoram. In this context, he joined the Enoch's cult by renouncing his

parents and all the family members and all the properties way back on 15<sup>th</sup> August 1988 and as the petitioner was not willing to take care of his old parents, his father Thakawnga (L) left a will in favour of Piandanga(L), father of the respondents. As the father of the respondents died before the death of Thakawnga, he executed a valid will in favour of the respondents jointly. On the basis of the said 'Will', Shri K.L.Liana, the then Magistrate, Sub. District Council Court, Aizawl issued the heirship certificate no.130 of 1990 which is challenged by the petitioner at this belated stage due to greed.

23. The petitioner approached this court under Section 17 (2) of the Mizoram Civil Courts Act, 2005 read with Order XLI Rule 1 CPC against the order dated 11<sup>th</sup> June 1990 passed by the Magistrate, Subordinate District Council Court, Aizawl in Heirship Certificate Case no. 130 of 1990. The provisions of S.17(2) of the Mizoram Civil Courts Act, 2005 talks about the appeal against the decrees and orders passed by the Court of Senior Civil Judge in original Suit or proceedings of civil nature when the amount or value of the subject matter of the original suit or proceedings is less than five lakhs of rupees. This appeal and the condonation application cannot be allowed as the appeal is preferred against the order passed by the Subordinate District Council Court, Aizawl. By virtue of the provisions of the Mizoram Courts Act, 2005, this court has no power to entertain the present application and on that ground alone the application for condonation of delay should be dismissed.
24. It is clear that the Limitation Act, 1963 is applicable to Mizoram and the court cannot go against the provisions of the said Act. As per Article 116 of the said Act the petitioner should have preferred the appeal to this court within thirty days from the date of the decree or order. In the present case the Heirship Certificate was issued on 11<sup>th</sup> June 1990 and the petitioner should have filed the appeal within 11<sup>th</sup> July 1990. The delay in approaching the court is more than 24 years. If the application is allowed gross injustice would be caused to the respondents.
25. The petitioner should have filed the application for declaring him to be the legal heir within three years from the date of death of his father Thakawnga(L). Pu Thakawnga died on 19<sup>th</sup> February 1990 and if at all the petitioner had any right to claim the property, as per the provisions of Article 58 of the Limitation Act, the petitioner should have approached the court within 18<sup>th</sup> February 1993. I don't believe that the

petitioner was not aware of the issuance of the HC by the competent court in favour of the respondents soon after the same was issued. Even if the petitioner did not have any knowledge about the issuance of the HC, he should have approached the court within three years of the death of his father for declaring him to be the legal heir of the deceased Thakawnga.

26. Even in the case reported in 1980 AIR (Gauhati) 70 Sailala Vs. Ngurtaiveli it was clearly held by the Honourable High Court of Gauhati that **"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."**
27. In the present case the petitioner stood by when various acts were done within the property and did not complain or approached any court, hence he lost his right to complain or challenge the right accrued by the respondents. At this belated stage the petitioner cannot be allowed to disturb the right already accrued in favour of the respondents.
28. The fact that the petitioner refused to do his duty of taking care of his aged parents due to joining a cult proves he had voluntarily severed (cut off) all the relationship with his family and all the properties, now, claiming the said properties after a lapse of more than 25 year from the death of his father proves that he had acquiesced his right to claim the said property which was already inherited by the respondents by virtue of the 'Will' left by the deceased Thakawnga.

29. The Ld. Counsel for the applicant Mr. C. Lalrinchhunga submitted that the applicant came to know issuance of the said Heirship Certificate obtained by the respondent in respect of landed property left by his deceased father, but he was not in a position to contest the Heirship Certificate No.130/90 as he was fully restrained by his religious faith to have any social intercourse with other person and has no option to do anything outside his religious beliefs. This means that the applicant have a chance to contest the Heirship Certificate in time but kept silence or neglected preferring to follow his religious doctrine, and why the applicant preferred an appeal at this belated stage of more than 24(twenty four) years is not known. There was no any affidavit to support his application for condonation of delay as demanded by Order XLI Rule 3 'A' of Civil Procedure Code.

30. The applicant is found to have a lot of chance to challenge the Heirship, but kept silence for more than 24 years. If his religious creed does not permit to contest the Heirship within the prescribe period, why did he contest at this belated stage if he is still belongs to the same religious denomination. However, the applicant came to know that the Respondent obtained Heirship Certificate as stated by his Ld. Counsel but prohibit to contest by his religious belief that the appellant know that Heirship Certificate was issued in favour of Respondent, at this belated period of 24 years. The Court has to show leniency to contest and challenge the Heirship to the applicant. But applicant came to know the issuance of Heirship to the Respondent in time, but restrained by his religious faith as stated by his Ld. Counsel.

31. Considering the submission of both parties accompanied by Apex Court ruling, and on careful perusal of the relevant Section of Limitation Act etc., I find no reasonable ground to condone the delay of 24 years as the applicant had willful and gross negligence of the case and period.

So, the applicant Lalringliana is found neglected to contest and challenged the issuance of Heirship Certificate to the Respondents in time knowingly and preferred to follow the religious doctrine of Enoka's Creed, and hence delay of more than 24 years cannot be condoned.

The petition is dismissed.

Since condonation of delay cannot be granted the main case also stand disposed.

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

Memo No 104/ADJ-I(A)/2016 : Dated Aizawl, the 3<sup>rd</sup> May, 2016.

Copy to :

1. District Judge, Aizawl Judicial District, Aizawl.
2. Lalringliana C/o C. Lalrinchhunga, Advocate.
3. Rosailova C/o W. Sam Joseph, Advocate.
4. Rosiamliana C/o W. Sam Joseph, Advocate. Advocate.
5. Judicial Section.
6. Case record.
7. Guard file.

PESHKAR