

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

AIZAWL

RFA No.46 of 2013

A/o H.C. Case No.271/2010.

R. Lalnunpuii. Appellant.

Versus

Lianchhungi. Respondent.

BEFORE

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

PRESENT

For the Appellant : B. Lalramenga & Ors, Advocate.

For the Respondent : J. Lalremruata & Ors, Advocate

Date of Hearing : 22.04.2016.

Date of Judgment : 10.05.2016.

JUDGMENT & ORDER

This appeal is preferred by appellant R. Lalnunpuii of Ramhlun South, Aizawl challenging the Judgement dt. 15.10.2013 passed by Civil Judge –IV, Aizawl in Heirship Certificate Case No.271 of 2010.

1. The brief fact of the case which led to file this appeal is that the appellant R. Lalnunpuii is the ex-wife of the deceased P.C. Lalramzauva and the respondent, Lianchhingi, mother of deceased P.C. Lalramzauva. The respondent, Lianchhingi had fought for Heirship over the deceased Service benefit and the Civil Judge –IV had passed on Judgement Order dt. 15.10.2013 in favour of respondent Lianchhingi is mother of deceased P.C. Lalramzauva and hence this RFA.

2. Both parties were heard at length, through their respective Counsel. Mr. B. Lalramenga, Counsel for the appellant submitted that appellant R. Lalnunpuii is wife of deceased P.C. Lalramzauva, Heirship Certificate granted to the respondent is objected in the trial court, and also made counter claim. First application of Heirship shall be disposed first, and there was violation of Section 10 CrPC which was came to the knowledge of the trial court. The appellant is the legal wife of the deceased but the trial court had decided as divorce wife. The letter of divorce (IN MAKNA) was not delivered by the appellant, and she did not know that she was divorced by her deceased husband. But trial court decided that due to the separation, for a period of about one month as divorce the trial court has to decide according to the Pension Rule of Govt., and aggrieved with the issuance of Heirship Certificate by the trial court, and the appellant R. Lalnunpuii is deserved to get Heirship and none other, and prayed to set aside the Heirship Certificate issued in favour of respondent.

3. Mr. J. Lalremruata Hmar, Ld. Counsel for the respondent submitted that there was no doubt that the appellant was the wife of the deceased but she was already divorced. She used to live without knowing about the condition of her deceased husband letter of Divorce (IN MAKNA) was available in the Lower Court record, and P.W. No.4 had clearly informed the trial court about the divorce.

4. Mr. B. Lalramenga, Advocate, Ld. Counsel for the appellant submitted his argument that after Shri P.C. Lalramzauva died on 15.05.2010, his mother who is the present Respondent applied for an Heirship Certificate against the Service Benefits of the deceased P.C. Lalramzauva who died in harness while he was working as an Assistant Auditor, Accounts & Treasuries under the Government of Mizoram. The application for Heirship Certificate was thereafter notified in the local newspaper and then the present Appellant raised an objection in writing before the Id. Trial Court thereby making a Counter Claim as well. However, while the said matter was about to be proceeded, the Respondent, Smt. Lianchhingi adeptly and surreptitiously filed another fresh application for Heirship Certificate for the said same service benefits by concealing the fact about objection-cum-counter claim filed by the present Appellant against the original application and also strongly actuated the Id. Trial Court to issue the Heirship Certificate in her favour by stating that the prescribed period of notice had expired. Since the present Appellant is able to trace out only the Heirship Certificate application filed by the Respondent and since the written objection-cum-counter claim filed by her could not be found, the same was not annexed to the Memo of Appeal.

- (i) That as the Respondent pressed the Ld. Trial Court to issue an Heirship Certificate to her by stating that the statutory period of 45 days' Notice had expired, the Id. Trial Court issued an Heirship Certificate No. 271 of 2010 in favour of the Respondent inasmuch as there was concealment of filing of an objection-cum-counter claim by the present Appellant against the application of the Respondent.
- (ii) That having been aggrieved with issuance of the said Heirship Certificate No. 271 of 2010, the present Appellant preferred a Review Petition No. 14/2010. Then, the Id. Addl. SDCC allowed the Review Petition thereby directing to have a fresh trial. The Appellant subsequently filed her written objection-cum-counter claim and then, evidences were taken. After the trial had completed, the Id. Trial Court passed the impugned

Judgment dated 15.10.2013. During the proceeding of the Heirship Certificate Case No. 271 of 2010, the predecessor-Court i.e., Addl. SDCC ceased functioning and as such, the said case was taken up by the Id. Court of Civil Judge-IV, Aizawl.

That being aggrieved with the impugned Judgment dated 15.10.2013, the present Appeal has been filed and the grounds for Argument raised in this regard are as follows:

GROUND FOR ARGUMENT

- (i) *For that the impugned Judgment dated 15.10.2013 is erred as well as bad in law and in fact and as such, the same is liable to be quashed and set aside. To be more specific, it is submitted that the impugned Judgment dated 15.10.2013 had been emanated from the Application for Heirship Certificate filed by the Respondent herein subsequent to the original Heirship Application which was filed on 25.05.2010 and which was not yet disposed of till date. As explained above, the Respondent initially filed the Application for Heirship Certificate wherein Heirship Certificate was applied for in respect of GPF, GIS and DCRG of the deceased Shri. P.C. Lalramzauva. Inasmuch as a newspaper publication for a public notice in this regard was acknowledged by the present Appellant, she submitted a Written Objection-cum-Counter Claim before the Id. Addl. SDCC, Aizawl who entertained the original Heirship Application which was registered as Heirship Certificate Case No. 271/2010. The Id. Addl. SDCC received the Appellant's Written Objection-cum-Counter Claim on 18.06.2010 thereby fixing 29.07.2010 for appearance of the Parties i.e., the present Appellant and the Respondent. However, on 29.07.2010, the Parties were absent due to which 25.08.2010 was again fixed for appearance of the said Parties. In the meantime, the present Respondent deliberately filed, by concealing about*

the original Application for Heirship subsequent Application by fraudulently misguiding the Id. SDCC that Certificate the record of Heirship Case No. 271/2010 was missing and untraceable. At the same time, the Respondent pressed the said Trial Court to instantaneously issue an Heirship Certificate by granting the said subsequent Application on the ground that the period of the notice published in the Newspaper had matured. It appeared that the Id. SDCC, without considering and without knowing the fact that the newspaper notice was for the original/former Heirship Certificate Application, accepted the prayer of the Respondent and as such, the subsequent Heirship Certificate Application filed by the Respondent was granted to her by the Id. SDCC on the basis of the said Newspaper publication of the notice which in fact, was for the original Heirship Certificate Application. At any event, when the Respondent filed the subsequent Heirship Certificate Application on 29.07.2010 by concealing the existence of the original Heirship certificate Application i.e., Heirship Case No. 271/2010, no notice by way of a newspaper publication or otherwise, was issued by the Id. Addl. SDCC for the subsequent Application and the notice published in the newspaper pertaining to Heirship Certificate No. 271/2010 which matured after the expiry of 45 days from the date of its publication was wrongly taken into account for the subsequent Application for Heirship Certificate filed by the Respondent. Hence, it is apparently clear that due to mala fide misguidance caused to the Id. Addl. SDCC by the Respondent that the subsequent Heirship Certificate Application was entertained and granted by the Id. Addl. SDCC.

When the subsequent Heirship Certificate Application was filed, the registration number of the original Heirship Certificate Application i.e., Heirship Certificate Case No. 271/2010 was given as the registration number of the subsequent Application and this may be due to the reason that the Id. Addl. SDCC considered the subsequent Application as the reconstructed Application since the Respondent fraudulently submitted

*before the Id. Addl. SDCC that the case record of the original Heirship Certificate Case No. 271/2010 was missing. In fact, the present Appellant who acknowledged about the factual position of the case and the illegal action of the Respondent, preferred the Review Petition No. 14/2010 to challenge the Heirship Certificate No. 271/2010 which was issued to the Respondent on 29.09.2010. Then, the Review Petition was allowed and a trial was conducted by the Id. Addl. SDCC and thereafter, the impugned Judgment dated 15.10.2013 which is assailed herein was passed. The crux of the matter which may not be overlooked by this Hon'ble Court is that the impugned Judgment dated 15.10.2013 was passed in respect of the subsequent Application for Heirship Certificate illegally filed by the Respondent and this is error being manifested in law inasmuch as the original Heirship Certificate Application should have been entertained and disposed of first instead of taking up the subsequent Application which was fraudulently presented by the Respondent. The present Appellant annexed the Original Application in the Memo of Appeal as Annexure – 1 and though the Review Petition No. 14/2010 aforesaid is not annexed to the present Memo of Appeal, the same is annexed to this Written Argument for this Hon'ble Court's kind reference so as to prove the fact that the present Respondent fraudulently misguided the Id. Trial Court by filing a subsequent fresh Application while the original Application i.e., Heirship Certificate No. 27/2010 was still pending. It is further submitted that in the original Application for Heirship Certificate (i.e., Annexure – 1 to the Memo of Appeal) the Respondent prayed for giving Heirship Certificate for GPF, GIS and DCRG only and no prayer was made in respect of the Family Pension of the deceased Shri P.C. Lalramzauva. Therefore, issuance of the impugned Heirship Certificate No. 27/2010 which is challenged herein is beyond the scope of the prayer of the Respondent, apart from the other cogent grounds which are suffice for quashing and setting aside of this impugned Heirship Certificate and which are explicated in the following paragraphs. **Photo copy of the***

Review Petition No. 14/10 along with its enclosures/annexures are annexed hereto and are collectively marked as Annexure – 1.

- (ii) *That it is illegal and untenable to issue the impugned Heirship Certificate No. 27/2010 for the Family Pension and the deceased Shri P.C. Lalramzauva inasmuch as the Pension Rules governs disbursement of the Family Pension to a person who survived the government employee and who is rightfully entitled to as provided in the said Pension Rules. Similarly, in respect of the other Service benefits, Heirship Certificate cannot be issued irrespective of the absence of the nominees against these benefits. In fact, these Service Benefits are not like the movable or immovable properties for which Heirship Certificate's were applied and were given by the competent Court. In the event of the absence of nominees for the said Service benefits, the question of disbursement to a person entitled to the same should be settled in accordance with the existing Rules which govern the Government employees.*
- (iii) *For that the Id. Trial Court had erred in making an abrupt decision that the Appellant and her deceased husband, Shri P.C. Lalramzauva were divorced by way of 'Mak'. The Id. Trial Court based its decision in this regard on the observation that the Appellant and her deceased husband were living apart and the Appellant did not know the whereabouts and the health condition of her said husband. This conclusion of the Id. Trial Court while discarding the 'Makna lehkha' (letter of divorce) produced by the Respondent is contradictory, based on conjectures and surmises and unsustainable in law. In its impugned Judgment dated 15.10.2013, the Id. Trial Court decided that the sole ground raised by the Respondent that the 'Makna letter' allegedly executed by the deceased P.C. Lalramzauva has no evidentiary value and it was also decided that the same had not been delivered to the Appellant. This reveals the fact that nothing about the divorce by way of 'Mak' has been known or conveyed to the*

Appellant. While this had been the conclusion of the Id. Trial Court, it was decided in the impugned Judgment dated 15.10.2013 that the lack of knowledge about the whereabouts and health condition of her deceased husband by the Appellant entailed to confirmation of the divorce between them. This, in fact, is not based on the evidence and is untenable in law.

The evidences of the Appellant's witnesses before the Id. Trial Court had clearly deposed that the Appellant and her deceased husband were not divorced at any point of time till the demise of Shri P.C. Lalramzauva. In fact, since the deceased P.C. Lalramzauva who was an alcohol abused person used to stray away from his house where he was residing with the present Appellant by searching for a liquor most of the time, particularly close to the period of his demise, it was difficult for the Appellant to know each and every move and the whereabouts of her deceased husband despite her constant effort to trace her deceased husband and in spite of following him wherever he goes, so far as the Appellant is able to do so. Even in his re-examination, the Respondent's witness, Shri R. Lalmuana deposed that inasmuch as the Appellant was in Champhai at the time of the death of Shri. P.C. Lalramzauva, it was not possible for her to know about the abrupt demise of Shri P.C. Lalramzauva. In this regard, it would be of paramount importance to mention that at that particular time, the Appellant went to Champhai to visit her relatives. However, since she underwent severe illness in Champhai which put her in a bed-rest condition, she could not return to Aizawl in her home. As such, there was no divorce or separation from her deceased husband. Moreover, the unfortunate deterioration of Shri P.C. Lalramzauva's health just before his death was not conveyed to the Appellant who was lying on her sick bed at Champhai at that particular period of time. The Appellant in her cross examination deposed that she did not take care and look after her deceased husband on his death bed since putting of her said husband in the hospital was not informed to her. Even in her re-examination, the Appellant clarified that since her

deceased husband had been wandering to enjoy drinking and sometimes spent several nights at his parental house, it was difficult for her to know each and every move of her deceased husband even during his lifetime. Hence, all these evidences of the Appellant were not considered by the Id. Trial Court and instead, a baseless conclusion has been made by presuming that the Appellant's lack of knowledge about the whereabouts and health condition of her deceased husband could tantamount to her divorce from the deceased P.C. Lalramzauva. This being devoid of any concrete evidence and baseless cannot warrant giving of the Heirship Certificate to the Respondent. Hence, the impugned Judgment dated 15.10.2013 is liable to be set aside and quashed.

- (iv) For that the Id. Trial Court had committed grave error in coming into the conclusion that the Respondent should be given the service benefits of the deceased Shri P.C. Lalramzauva as per the Office Memorandum No. G.17011/4/2010-F.APF.54 dated 27.10.2010 issued by the Govt. of Mizoram whereas it is mandatory to implead the Govt. and the concerned deptt. in the said Heirship case to decide the question of giving the Heirship Certificate in respect of the service benefits such as GPF, GIS & DCRG of the deceased Shri P.C. Lalramzauva. In any event, the manner of giving the Heirship Certificate to the Respondent on the basis of the said Office Memorandum is illegal, inappropriate and unsustainable. As such, the impugned Judgment dated 15.10.2013 is liable to be set aside and quashed.*
- (v) For that the Id. Trial Court had erred in law and in fact in the manner of rejecting and dismissal of the counter claim of the present Appellant before the Id. Trial Court.*
- (vi) For that the Id. Trial Court had deliberately failed to take into account the fact that the Appellant was lawfully married to the deceased P.C. Lalramzauva as per the Mizo Customary Law by paying the bride's price*

by the said deceased. The fact that the Appellant is the lawful wife of Shri P.C. Lalramzauva (L) has not been rebutted or challenged by the Respondent and from any quarter. However, despite this admitted fact and in spite of discarding the 'Makna lehkha' allegedly executed by Shri P.C. Lalramzauva (L), the Id. Trial Court simply decided that just because of lack of knowledge about her deceased husband by the Appellant for some period of time that there was a separation/divorce between the Appellant and her late husband. Hence, this baseless conclusion and decision of the Id. Trial Court cannot stand the test of law and as such, the impugned Judgment dated 15.10.2013 is liable to be set aside and quashed.

(vii) For that the Id. Trial Court did not consider the fact that the Appellant was included in the family declaration form of Shri P.C. Lalramzauva (L) in respect of his service book and that the same had not been challenged or cancelled or modified till date.

(viii) For that in any view of the matter, the impugned Judgment dated 15.10.2013 is liable to be set aside and quashed.

5. Mr. J. Lalremruata Hmar, Advocate Ld. Counsel for the respondent also submitted his argument that the brief facts of the case which has led to file this instant RFA is that the appellant herein was the ex- wife of the deceased P.C.Lalramzauva and the respondent, the mother. Deceased P.C.Lalramzauva aforementioned and the appellant herein had divorced their marriage before the demised of the aforementioned P.C.Lalramzauva. That , on 15.05.2010 , P.C.Lalramzauva , the Ex – husband of the appellant Smt. R.Lalnunpuii had met with an untimely demised and the appellant herein and the respondent had fought for Heirship over the deceased Service benefit ever since.

1. The Ld. Trial Court was pleased to pronounced its judgment on 15.10.2013 and had ruled its decision in favour of the respondent herein i.e., Smt. Lianchhingi, mother of the deceased.
2. The appellant herein had submitted this instant RFA by raising certain pleadings and seven (Seven) grounds of appeal in their Memo of Appeal.
3. Now the respondent submitted the following points of Arguments to substantiate the decision of the Id. Trial court.
 - 1) Firstly, the humble respondent begs to submit that, the averments made by the appellant in their MEMO of appeal were just a mere a means to try to misguide Your Honour from actually seeing the merit of the case.
 - 2) That the appellant based their grounds of appeal on mere technicality and tries to misguide Your Honour to actually see the Merit of the case, whereas the MERIT of the case tends to favour the answering respondent.
 - 3) Admittedly the appellant in her cross-examination Para -6 at the Lower court stated ,“ **It is a fact that I donot know the whereabouts and the health condition of P.C.Lalramzauva(L) more than one month before his death**”, this has corroborated that the appellant and the deceased P.C.Lalramzauva had divorced prior to his deceased as stated by the Id. Trial Judge in his judgment in H.C.No 271 of 2010 , a relevant portion quoted herein as “**Besides , the position wherein the parties have been living separately for around 7(Seven) months prior to demise of the husband , coupled with the fact that the respondent did not even know the whereabouts and the health condition of her husband P.C.Lalramzauva (the deceased) more than one month before his death and her opinion that it is not absurd thereof, the abstention of the respondent during the funeral rites of the deceased , all goes to strengthen the position that the respondent and the deceased are already divorced prior to the death of the deceased husband**”. The aforesaid quoted

portion alone indicates that the appellant herein has no right to claim Heirship over the property and service benefits of the deceased P.C.Lalramzauva, hence, the appeal is liable to be dismissed outright.

- 4) Further, the Id. Trial judge, correctly stated that in the aforesaid judgment that the appellant herein had unilaterally left the deceased and the deceased P.C.Lalramzauva had executed letter of divorce after the appellant had left her. This decision was based from the deposition of PW No 4 P.C.Vanlalsawmi who stated, "**The respondent , on learning about the divorce , had called up the said PW that the deceased did the obvious thing. And thereafter, on January 2010, the respondent took back her remaining personal belongings in presence of the said PW, the petitioner and one Hualthangpuui. That, it is also not denied by the respondent that on the death of her husband, she only covered the corpse of the deceased with cloth on the night he died and was not present on the day of his funeral rites**".

Photo copy of judgment and order in H.C No 271 of 2010 is annexed hereto and marked as annexure - I and the relevant page flagged as X.

- 5) The Id.Trial Court does not erred in disposing the counter claim submitted for by the appellant herein in favour of the Respondent (Smt. Lianchhingi), the Id. Trial Court has correctly decided in favour of the answering Respondent which was proved in the paragraph stated above.
- 6) The Appellant raises that she is still in family declaration form (Specimen Form Schedule-III) which they annexed to their memo of appeal as Annexure-V could not be treated as a valid document since the State Government and the Insurance Company (ICICI) had already cancelled their agreement.

Photo copy of letter from Chief Controller of Accounts dt 6.09.2010 is annexed hereto and marked as annexure- II.

7) The Appellant approached this Hon'ble Court after she was divorced by the deceased P.C.Lalramzauva which was proved by the Respondent in the lower Court. This instant appeal only indicate that the Appellant herein was only after the money left by the deceased due to her sheer greed. Hence, this instant appeal may be dismissed with cost.

On perusal of case record of Lower Court, it was found that the trial court mainly depend on the statement of P.W. No.4, P.C. Vanlalsawmi, which was not cross by the appellant.

6. The trial court observed that from the evidence of pw-4, P.C. Vanlalsawmi(sister of the deceased), whose evidence was not crossed by the respondent even after three chance given to her, it can be seen that the respondent and the deceased started living separately from September 2009 after the respondent unilaterally left the deceased. And only on 4.11.09 P.C. Lalramzauva executed the impugned letter of divorce. That the respondent, on learning about the divorce, had called up the said pw from Champhai wherein the respondent had intimated her opinion to the said pw that the deceased did the obvious thing. And thereafter on January 2010, the respondent took back her remaining personal belongings in the presence of the said pw, the petitioner and one Hualthangpuii. That, it is also denied by the respondent that on the death of her husband, she only covered the corpse of the deceased with cloth on the night he died and was not present on day of his funeral rites. Given this evidence which is not crossed by the respondent, this Court has no choice but to accept its veracity, and argument against it by the respondents counsels at the stage of final argument cannot be considered as having any counter effect in the absence of any cogent counter evidence relating to the facts stated therein.

7. Therefore given the above facts, this Court cannot help but consider the respondent as having notice of the divorce effected by the deceased on 4.11.09 even if the concerned letter of divorce was not duly delivered formally to the respondent or her brother. Besides, as already observed, there is no requirement

in the Mizo customary law to reduce the divorce into writing or be it witnessed. It would suffice if the opposite party is notified thereof. Therefore the infirmity of the divorce letter being not properly witnessed and not duly delivered to the respondent or her brother, stated by the respondent on which the whole edifice of her standpoint is based, even though found to be so, does not inflict any legal infirmity on the said divorce as the respondent had knowledge of it and even took back her personal remaining belongings in acknowledgement thereof. Besides, the position wherein the parties have been living separately for around 7(seven) months prior to demise of the husband, coupled with the fact that the respondent did not even know the whereabouts and the health condition of her husband P.C. Lalramzauva(the deceased) more than one month before his death and her opinion that it is not absurd thereof, the abstention of the respondent during the funeral rites of the deceased, all goes to strengthen the position that the respondent and the deceased are already divorced prior to the death of the deceased husband.

8. From the evidences adduced by the witnesses in the Lower Court, appellant did not take care of her deceased husband who was ill health due to the regular consumption of liquor, but who badly needed tender care of his wife (appellant), she did not behave like faithful wife. In the normal practice of Mizo Society, a man can divorce his wife at any time by way of MAK, and woman also can divorce her husband by way of SUMCHHUAH. It is never demand to reduce into writing. Had the deceased did not leave service benefit, the respondent may not claim to be the wife of deceased. The appellant was absent even during funeral rites of deceased. However, the appellant is found to have been failed of duty bound as wife of deceased and also find her that she does not deserve to get any benefit from the service of her deceased husband even she did not receive letter of divorce(IN MAKNA).

9. In my considered view, I find no ground to involve in the Judgement Order of trial court of Civil Judge –IV, Aizawl. The appealed is dismissed.

Give copy of this order to all concern.

Case record of Lower Court be sent back.

Appeal is disposed.

(VANLALMAWIA)

Addl. District & Judge-I

Aizawl

Judicial

District, Aizawl.

Memo No ____/ADJ-I(A)/2016 : Dated Aizawl, the 10th May, 2016.

Copy to :

1. District Judge, Aizawl Judicial District, Aizawl.
2. R. Lalnunpuii C/o B. Lalramenga & Ors, Advocate.
3. Lianchhungi C/o W. J. Lalremruata Hmar, Advocate.
4. I/C Record keeper with Case Record of H/C case No.271/2010,
Vincent Lalrokima, Civil Judge.
5. Judicial Section.
6. Case record.
7. Guard file.

PESHKAR