

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM**

RFA NO. 13 OF 2008

Appellant:

Mr. Lalchhuana
S/o Nghaka (L)
Chanmari, Aizawl

By Advocates

: 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra
3. Mr. Joseph Lalfakawma
4. Mr. T.J. Lalnuntluanga

Versus

Respondents:

1. Mr. Lalremliana (Dead)
S/o Nghaka (L)
Chanmari, Aizawl

Represented by:

(i) Smt. Romawii
(ii) Mr. Zonghaksanga
(iii) Mr. Zonunthara

2. Smt. Thansangzuali
W/o Lalzuithanga
Chanmari, Aizawl

3. Smt. Rosangpuii
W/o Liansailova
Chanmari, Aizawl

4. Smt. Thandingliani
D/o Nghaka (L)
Vice Principal
School of Nursing, Lunglei

By Advocates

: 1. Mr. W. Sam Joseph
2. Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalenglina
5. Mr. Francis Vanlalzuala

Date of hearing : 25-04-2012

Date of Judgment & Order : 26-04-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge- 1
Aizawl District: Aizawl

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a *sine quo non* to vanish.

BRIEF FACTS

This appeal is directed against the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 25.02.2008 in Heirship Certificate Case No. 464 of 2000. Wherein, the learned Magistrate probated the Will left by the deceased Mr. Nghaka (L) in respect of properties under LSC No. 57 of 1969.

Assailed in the impugned judgment & order, Mr. C. Lalramzauva, learned senior counsel for the appellant stated that the alleged 'Will' was not valid as per the Mizo District (Inheritance of Property) Act, 1956 as the facet itself is doubtful where the witnesses appended their signatures in the back side of the alleged 'Will' without countersigned by the deceased. More so, evidence of the plaintiff in the trial court when the appellant himself was acted as PW deposed that at the time of opening the 'Will' left by the deceased, the signatures of witnesses was not found but later fabricated after filing of the suit.

On the other hand, Mr. W. Sam Joseph contended that the witnesses in the 'Will' were reliable persons and they themselves as DWs in the proceedings in the trial court also clearly deposed that it was made in their presence as per the voluntary wishes of the deceased. No fault and erred is committed for executing the said will.

Mr. C. Lalramzauva fairly admitted the signatures of the deceased in the alleged 'Will' as well as the contents thereof but aggrieved in the form of execution as the appearance of alleged 'Will' is under suspicious not inconformity with law. Moreover, in the Heirship Certificate case, probate of will is rather capricious in procedure.

FINDINGS

On relooking of the proceedings in the trial court, in the catena of moot point on 'Will', the PW deposed that *"About two weeks after the death of my father, Thanchami and her husband came to my house and said that there was a 'will' left by my late father and the same may be read out in the presence of all concerned. Accordingly, a convenient date was fixed a few days later, all our family members i.e. my brother and sisters along with their spouse and their respective children gathered together in the main house at my father's room. A copy of the said 'Will' along with the sketch map. Ext. P-1 is the 'will' appendix and Ext. P-II is the sketch map. The contents of Ext. P-I was read out on that day, a copy was also given to me. After two or three days, Pu Dunglema had stated that he would make copies of it"*. He further deposed that as he had some suspicion on it, he compared the 'Will' with original copy as showed to him by his sister namely- Smt. Lalzikpuii, he found that there were no signatures of witnesses in the said 'Will'. He was not shaken even during cross examination.

The DW Mr. Malsawma deposed that the deceased used to stay with them in their Quarters since 1993 till his death. On 19/10/1996 as per the wishes of the deceased he with Mr. Dunglema witnessed the 'Will' left by the deceased by giving their respective signatures on the back side of a 'Will'. He further deposed that he saw when the deceased/testator and Mr. Dunglema put their signatures in the 'Will'. Likewise, they also saw him when he put his signature in the said 'Will'. He was not shaken in during his cross examination.

The DW- Mr. Dunglema also deposed that on 19/10/1996 as per the wishes of the deceased he with Mr. Malsawma witnessed the 'Will' left by the deceased by giving their respective signatures on the back side of a 'Will'. He further deposed that he saw when the deceased and Mr. Malsawma put their signatures in the 'Will'. Likewise, they also saw him when he put his signature in the said 'Will'. He was not shaken in during his cross examination.

Whilst the appellant himself admitted the signature in the 'Will' as the signature of the deceased/testator and whilst the oral evidence deposed by DWs Mr. Malsawma and Mr. Dunglema is corroborated each other who witnessed execution of the said 'Will'. No deviation can be had except to uphold the decree on the basis of the said 'Will'. As submitted by Mr. C. Lalramzauva, Sr. Advocate, it is no need to close the candid of 'Will' although held in **N. Kamalam (Dead) & Anr. Vs. Ayyasamy & Anr.** in connection with Appeal (civil) 3164-3166 of 1997 decided on 03/08/2001 reported in 2001 AIR 2802, 2001 (1) Suppl. SCR 272, 2001 (7) SCC 503, 2001 (5) SCALE 65, 2001 (6) JT 219 thus-

"Turning on to the former expression onus probandi, it is now a fairly well-settled principle that the same lies in every case upon the party propounding the will and may satisfy the courts conscious that the instrument as propounded is the last

will of a free and capable testator, meaning thereby obviously, that the testator at the time when he subscribed his signature on to the will had a sound and disposing state of mind and memory and ordinarily, however, the onus is discharged as regards the due execution of the will if the propounder leads evidence to show that the will bears the signature and mark of the testator and that the will is duly attested. This attestation however, shall have to be in accordance with Section 68 of the Evidence Act which requires that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution and the same is so however, in the event of there being an attesting witness alive and capable of giving the evidence. The law is also equally well settled that in the event of there being circumstances surrounding the execution of the will, shrouded in suspicion, it is the duty paramount on the part of the propounder to remove that suspicion by leading satisfactory evidence.”

And also In **Mahesh Kumar (D) By Lrs. vs Vinod Kumar & Ors.** decided on 13 March, 2012 in connection with Civil Appeal Nos. 7587-7588 of 2004, the Supreme Court has held that-

“4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will.

And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

In the case at hand, the intention of the testator deceased is very clear, the ‘Will’ is executed by him on due voluntary consideration. I am therefore not in a position to non est of the said ‘Will’.

On the other point, the respondents in their written statements also prayed to dismiss of the suit by probate of the said ‘Will’ left by the deceased. The trial court also framed two issues namely- (i) Whether the ‘Will’ submitted by the OPs is valid or not (ii) If not, who is the legal heir of the deceased Mr. Nghaka. Even in the Heirship Certificate case, probate of valid ‘Will’ will be permissible towards justice, equity and good conscience due to backwardness of the riff raff in this isolated landlock hilly terrain including legal education, the rigour provisions of the Code of Civil Procedure, 1908 was exempted as the well settled law is that ‘Procedure is the handmaid of justice’ as held in **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719. The Apex Court also in the case of **M.S. Grewal v. Deep Chand Sood** reported in (2001) 8 SCC 151, held as under:

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

I therefore find that the said irregularities would not vitiate the proceedings and is immaterial like in the instant case as enshrined under rule 48 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 and by virtue of the unaltered proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908. In a nutshell, whilst the probated ‘Will’ is really the will under the signature of the testator and whilst the appellant himself inherited the properties of the said deceased as per the said ‘Will’, no injustice and capriciousness will be caused by realization of the said ‘Will’.

ORDER

Due to the aforesaid reasons, the instant appeal case being devoid of merits is hereby dismissed, no order as to cost.

Send back the lower court case record to learned Civil Judge-1, Aizawl

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 26th April, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1

Aizawl District: Aizawl

Memo No. RFA/13/2008, Sr. CJ (A)/ Dated Aizawl, the 26th April, 2012

Copy to:

1. Mr. Lalchhuana S/o Nghaka (L), Chanmari, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
2. Smt. Romawii W/o Lalramliana (L) through Mr. W. Sam Joseph, Adv.
5. Smt. Thansangzuali W/o Lalzuithanga, Chanmari, Aizawl through Mr. W. Sam Joseph, Adv.
6. Smt. Rosangpuii W/o Liansailova, Chanmari, Aizawl through Mr. W. Sam Joseph, Adv.
7. Smt. Thandiangliani D/o Nghaka (L), Vice Principal, School of Nursing, Lunglei through Mr. W. Sam Joseph, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Pesker to Mr. F. Rohlupaia, Civil Judge-1, Aizawl along with case record of the lower court.
5. Case record

PESKAR