

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

RFA NO. 23 OF 2009

Appellant:

Mr. Varhmingthanga Varte
S/o Thanrehlova (L)
AOC Veng, Serchhip

By Advocate's : Mr. R.C. Thanga

Versus

Respondents:

1. Smt. Lalramchhuani
D/o H.T. Rinkhuma
AOC Veng, Serchhip
2. Smt. V. Lalruatkimi
D/o V. Chawnehhunga (L)
Vaitin, Aizawl

By Advocates : 1. Mr. W. Sam Joseph
2. Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalenglana
5. Mr. Francis Vanlalzuala
6. Mr. C. Lalfakzuala

Date of hearing : 23-04-2012
Date of Judgment & Order : 24-04-2012

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 STORY

This appeal is directed against the judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 09.07.2009 in Heirship Certificate Case No. 32 of 2009. Wherein, the learned SDCC adjudicated the disputes on the basis of compromise reached between parties namely- Smt. Lalramchhuani and Smt. V. Lalruatkimi by appointing Smt. Lalramchhuani respondent no. 1 as the legal heiress of the deceased Mr. V. Chawnychunga who died on 28/3/2009 in respect of the landed property under LSC No. SCH-13 of 1986 and other moveable and immovable properties left by the said deceased. Meanwhile, the other party namely Smt. V. Lalruatkimi was decreed to received Rs. 2 lakhs from the liquid assets of the deceased father.

By virtue of alleged will left by the deceased Mr. V. Chawnychunga dt. 20/3/2009, the appellant assailed in the impugned judgment & order wherein, it was left that (i) the RCC main building will be owned by Smt. Lalramchhuani (ii) Upto Kitchen till the house of Mr. Ralzatawna will be owned by the appellant (iii) the northern side of Mr. Ralzatawna but below the area of Smt. Lalramchhuani will be owned by Mr. Lalengliana S/o K.T. Khuma (L). Without probate of the said alleged 'Will' in accordance with the Mizo District (Inheritance of Property) Act, 1956, the appellant alleged that the learned trial court committed an error in law.

The respondents in their written objections contended that the alleged will was not executed in conformity with the rigour of the Mizo District (Inheritance of Property) Act, 1956. Before adjudicating the original case, the learned trial court duly invited any objections from any interested parties through two local daily newspapers but the appellant did not posed in the trial court. Thus, estopped the appellant and thereby prayed to dismiss of the appeal petition.

TERMS OF RIVALRY

At the time of hearing, Mr. R.C. Thanga, learned counsel for the appellant betrayed their memorandum of appeal submitting that their grounds was not a 'Will' but a 'Gift Deed' duly executed by the deceased during his lifetime.

Mr. W. Sam Joseph, learned counsel for the respondents rather contended that if it be a Gift Deed, registration under the Registration Act and payment of stamp duties as per existing Stamp Act is mandatory which the said Gift Deed is simply written in the duplicate paper without following such mandatory provisions. Thus, the ground is not tenable in law.

FINDINGS AND REASONS

On perusal of the case record of learned trial court, invitation for making objection by any of the interested parties was duly published in the leading two local daily newspapers namely 'ROMEI' and 'VANGLAINI' very clear which were also circulated to the locality of the appellant. The respondent no. 2 who resided at Vaitin village also acquainted and response the said invitation and thereby contested in the proceedings in the trial court. The inaction of the appellant in time make attractive of the provisions of S. 115 of the Indian Evidence Act, 1872, wherein, it was stated that-

“115. Estoppel - When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

Per Lord Wright in **Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships Ltd.** (1946) 3 W.W.R. 759 at p. 764 which the Hon'ble Supreme Court also relied in **B.L. Sreedhar & Ors. Vs. K.M. Munireddy (dead) and Ors.** in connection with Appeal (civil) 2972 of 1995 and Appeal (civil) 2971 of 1995 decided on 05/12/2002 reported in 2003 AIR 578, 2002 (4) Suppl. SCR 601, 2003 (2) SCC 355, 2002 (9) SCALE 183, 2002 (10) JT 363, the law is sum up that-

"The essential factors giving rise to an estoppel are, I think-

"(a) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation was made.

"(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made.

"(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, Greenwood v. Martins Bank (1933) A.C.51.) See also Thompson v. Palmer, 49 C.L.R. 547; Grundt v. Great Boulder, 59 C.I.R.675; Central Newbury Car Auctions v. Unity Finance (1957)1 Q.B.371SD.MN”

The omission committed by the appellant for responding the open advertisement published in two local daily newspapers circulated in his locality is relevant to answer the instant case negatively.

The law on the consent decree like in the instant decree is already settled in **Pushpa Devi Bhagat (D) Th. LR.Smt. Sadhna Rai Vs. Rajinder**

Singh & Ors. in connection with Appeal (civil) 2896 of 2006 decided on 11/07/2006 and reported in 2006 AIR 2628, 2006 (3) Suppl. SCR 370, 2006 (5) SCC 566, 2006 (7) SCALE 8, 2006 (6) JT 235, it was held that-

“Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.”

As submitted by Mr. W. Sam Joseph, on perusal of Gift Deed (If it be) annexed in the memorandum of appeal as Annexure- 2, it was alleged executed on 20/3/2009. However, in the Annexure-1 of the memorandum of appeal (which was a copy of LSC No. SCH-13 of 1986), It remains in the name of the deceased Mr. V. Chawnhunga. If it be a ‘Gift Deed’ why mutation was not made during the lifetime of the holder. Otherwise, undisputedly, mutation cannot be made as per existing Land and Revenue Laws as it insisted the consent and signature of the holder of LSC. Moreover, in the alleged ‘Gift Deed’, not only the appellant but also Mr. Lalengliana S/o K.T. Khuma have an interest and share in the disputed property but he remain silent on the disputed property. The plausibility is therefore susceptible even on that ground alone.

Pertinently, the submissions of Mr. R.C. Thanga, learned counsel for the appellant is correct in terms of that their grounds is ‘Gift Deed’ not a ‘Will’ as the introductory part itself speaks that ‘*I Mr. V. Chawnhunga, AOC Veng, Serchhip hereby divided/distributed my house site on this 20-03-2009 (Friday)*’. It cannot therefore be termed as a ‘Will’. But as discussed and enumerated above, it is not sustainable in law for adjudicating the instant case in favour of the appellant.

Thus, I find no reasons to interfere in the impugned judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 09.07.2009 in Heirship Certificate Case No. 32 of 2009.

ORDER

In view of the above findings and reasons, no option is left to this court being first appellate court except to dismiss of the appeal case due to devoid of merits and untenable in law. The instant appeal petition is therefore dismissed, no order as to costs.

Send back the case record of learned trial court 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 24th 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/23/2009, Sr. CJ (A)/ Dated Aizawl, the 24th April, 2012

Copy to:

1. Mr. Varhmingthanga Varte S/o Thanrehlova (L), AOC Veng, Serchhip through Mr. R.C. Thanga, Adv.
2. Smt. Lalramchhuani D/o H.T. Rinkhuma, AOC Veng, Serchhip through Mr. W. Sam Joseph, Adv.
3. Smt. V. Lalruatkimi D/o V. Chawnchhunga (L), Vaitin, Aizawl through Mr. W. Sam Joseph, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Pesker to Learned Civil Judge-1, Aizawl along with case record of trial court.
6. Case record.

PESKAR