

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

*RFA NO. 28 OF 2009*

*Appellant:*

Smt. Thangzuali  
D/o Thanveli (L)  
Venglai, Zanolawn  
Kolasib District

*By Advocates*

: 1. Mr. C. Lalrinchhunga  
2. Mr. H. Lalmuankima  
3. Mr. K. Lalnunhlina

*Versus*

*Respondent's:*

Mr. Lalduhawma  
S/o Thlenglina  
Zanolawn, Kolasib District

*By Advocate's*

: Mr. F. Lalenglina

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**

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**INTRODUCTORY**

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1<sup>st</sup> 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 5<sup>th</sup> 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, Addl. Subordinate District Council Court, Kolasib dt. 24.07.2009 in Heirship Certificate Case No. 36 of 2009. Wherein, the learned ASDCC declared and appointed the respondent as the legal heir of the deceased Smt. Thanveli in respect of Periodic Patta No. 41 of 1988 located at Bangla Veng, Zanolawn.

The appellant stated in her memorandum of appeal inter alia that although application for Heirship Certificate No. 36 of 2009 was published in the local daily newspapers, it was beyond the knowledge of the appellant as it was published at Kolasib and no circulation reach to her. Thus, prayed to set aside the impugned judgment & order.

The respondent in his written objections contended that after notice for objection if any was duly published in the Daily Newspapers namely-Ramnuam and Turnipui circulated to the area of the residence of the appellant. None contested in the proceeding. No laches in the impugned judgment & order is committed by the learned trial court.

### **TERMS OF RIVALRY**

At the time of hearing, Mr. C. Lalrinchhunga, learned counsel for the appellant submitted that there is another property left by the deceased Smt. Thanveli D/o Thantluanga (L), Bangla Veng, Zanolawn which is sought in her favour.

On the other hand, Mr. F. Lalenglina remain stood in their stand in their written objection as no error was committed in the learned trial court.

### **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 Ramnuam and Turnipui circulated to the area of the residence of the appellant. More so, commonly known that although Zanolawn is located within Kolasib District where circulation of Ramnuam and Turnipui daily newspapers, a bumpkin/villagers like the instant appellant may not afford to subscribe the same and have a chance not to aware of the proceedings in the lis. Indeed, it is pertinent to mention that although the respondent is presumed is with much knowledge about the interested party in the lis. He fails to institute a case against such interested parties by rather simply submitted a petition for Heirship Certificate without impleadment of necessary parties which itself is bad for non-joinder of necessary parties.

Furthermore, without giving opportunity of being heard of the appellant in the disputed properties will be inimical to the so called natural justice as recently held in **Justice P.D. Dinakaran Vs. Hon'ble Judges**

**Inquiry Committee and others** in connection with Writ Petition (Civil) No. 217 of 2011 decided on 05-07-2011, their Lordship of Hon'ble Supreme Court recognized that-

"23. The traditional English Law recognised the following two principles of natural justice:

(a) *Nemo debet esse judex in propria causa*: No man shall be a judge in his own cause, or no man can act as both at the one and the same time - a party or a suitor and also as a judge, or the deciding authority must be impartial and without bias; and

(b) *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

However, over the years, the Courts through out the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions/decisions. At the same time, the Courts have repeatedly emphasized that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions, if any, applicable, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice."

More so, in the celebrated case of **Cooper v. Wandsworth Board of Works**, 1963 (143) ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam', says God, 'where art thou' has thou not eaten of the tree whereof I commanded thee that 'thou should not eat'."

Since then the principle has been chiselled, honed and refined, enriching its content. In **Mullooh v. Aberdeen** 1971 (2) All E.R. 1278, it was stated:

"the right of a man to be heard in his defence is the most elementary protection."

In a nutshell, without hearing the appellant in the proceedings, natural justice which is the basic of guaranteed fair trial will be minimized, Hon'ble Apex Court lamented in incomplete hearing the case in **State of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors.** decided on 16 August, 2011 in connection with Civil Appeal No.5374 of 2005, the Supreme Court has held that-

"15. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based, on mainly events which happened in the past.

Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.”

Thus, the impugned Heirship Certificate No. 36 of 2009 Dt. 24<sup>th</sup> July, 2009 issued by the learned Magistrate, Additional Subordinate District Council Court, Kolasib in Heirship Certificate Case No. 36 of 2009 is liable to set aside and quash.

### **ORDER**

Even in case of ex parte proceedings of the lower court, an appellate court have jurisdiction to set aside of the decree as observed in **Baldev Singh Vs. Surinder Mohan Sharma & Ors.** in connection with Appeal (civil) 7162-7163 of 2002 decided on 01/11/2002 reported in 2003 AIR 225, 2002 (4) Suppl. SCR 43, 2003 (1) SCC 34, 2002 (8) SCALE 296, 2002 (9) JT 235, it was held that-

“It is now a well-settled principle of law that an ex parte decree is as good as a contesting decree unless it is set aside. An ex parte decree can be set aside by the court passing it or by an appellate court only at the instance of a person aggrieved thereby.”

In view of the above findings and reasons, the impugned Heirship Certificate No. 36 of 2009 Dt. 24<sup>th</sup> July, 2009 issued by the learned Magistrate, Additional Subordinate District Council Court, Kolasib in Heirship Certificate Case No. 36 of 2009 is hereby set aside and quashed. No order as to costs.

As civil courts in Mizoram are modulating in tune with the nascent insulation of judiciary from the executives with some changes of enactments and institutions not suit for directing de novo trial. Hence, in view of the on going process of systematization of civil courts in the state of Mizoram in

line with the nascent insulation of judiciary from the executives, instead of remanding back of the case to the learned lower court viz. Civil Judge for de novo trial, parties are at liberty to file a fresh suit/case in the appropriate court of law having subject matter, pecuniary and territorial jurisdiction as it will be convenient for parties as well as adjudicating court meant to avoid procedural lapses.

Send back the case record of learned trial court to Learned Civil Judge, Kolasib

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 26<sup>th</sup> 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/28/2009, Sr. CJ (A)/      Dated Aizawl, the 24<sup>th</sup> April, 2012

Copy to:

1. Smt. Thangzuali D/o Thanveli (L), Venglai, Zanolawn- Kolasib District through Mr. C. Lalrinchhunga, Adv.
2. Mr. Lalduhawma S/o Thlengliana, Zanolawn, Kolasib District through Mr. F. Lalengliana, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Pesker to Learned Civil Judge, Kolasib along with case record of trial court.
5. Case record.

PESKAR