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

RFA NO. 31 OF 2009

Appellants:

1. Master Lalringngheta (12 years)
   S/o Ramnghinglova (L)
   Through next friend and natural guardian
   Smt. Lalmuanpuii
   Zotlang, Aizawl

2. Miss Lallawmsangi (16 yrs)
   D/o Ramnghinglova (L)
   Through next friend and natural guardian
   Smt. Lalmuanpuii
   Zotlang, Aizawl

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

Versus

Respondents:

1. Smt. Tlanghmingthangi
   Khatla, Aizawl

2. Smt. Zothanpuii Ralte
   D/o Ramnghinglova (L)
   Upper Republic, Aizawl

By Advocates :

For the respondent no. 1. : 1. Mr. C. Lalramzauva, Sr. Adv.
2.Mr. A. Rinliana Malhotra
3. Mr. T.J. Lalnuntluanga
4. Mr. K. Laldinliana
5. Mr. Joseph Lalfakawma
6. Miss Penlui Vanlalchawii

Date of hearing : 12-04-2012
Date of Judgment & Order : 16-04-2012

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 learned Magistrate, Subordinate District Council Court, Aizawl dt. 04.09.2009 in Heirship Certificate Case No. 135 of 2007. Wherein, the learned Magistrate declared and ordered as the legal heir of the deceased Mr. Ramnghinglova as follows-

1. Smt. Tlanghmingthangi as the legal heiress in respect of (i) House Site under LSC No. Azl. 123 of 1967 located at Khatla with RCC building (Main House) (ii) Land under LSC No. Azl. 1628 of 1991 located at ITI Veng, Aizawl (iii) Maruti Car – 800 bearing Registration No. ZRM- 9669 and (iv) Pistol under Arms Locense No. 13828/Azl/PR/2003.

2. Mr. Lalringngheta as the legal heir in respect of House site land under LSC No. Azl. 104901/01/1188 of 2005 located at Khatla, Aizawl

Smt. Tlanghmingthangi was further embarked to liquidate the liabilities of the said deceased in respect of (i) loan amounting to Rs. 5,82,449/- under Loan account no. 62/HIG under MUCO Bank Ltd. Aizawl (ii) a piggery loan of Rs. 3 lakhs taken from Mizoram Rural Bank which was taken by the deceased in 2006 in the name of the said Smt. Tlanghmingthangi and (iii) a loan of Rs. 50,000/- to be repaid @ Rs. 8340/- per month from the Mizoram Rural Bank, Khatla Branch. Learned trial court exonerated the appellant no. 1 from the debt liabilities of his deceased father as a minor.

Assailed in the impugned judgment & decree, the appellants in their memorandum of appeal challenged on the inter alia grounds that (i) the deceased Mr. Ramnghinglova have only one son who is the appellant no. 1 and entitled to inherit the properties of his father according to Mizo Customary Laws as no option except to declare the appellant no. 1 as the legal heir (ii) the learned trial court was biased in favour of the respondent no. 1 right from the date of filing of the application by the respondent no. 1 (iii) Mizo Customary Laws is not applied for adjudication of the case by the learned trial court.

At the time of hearing of the case, Mr. W. Sam Joseph clarified that at the first instance for issuance of Heirship Certificate, without giving opportunities to the other interested parties, the learned trial court decreed all benefits forthwith to the respondent no. 1 even before seven days clear for issuance of Heirship Certificate which clearly witnessed the biasness of the learned trial court. He further argued that as per Mizo Customary Laws and practices, only the male son is entitled to inherit the properties of the deceased father.

At the result of hearing, followings are the admitted position of factum of the case-

1. The deceased Mr. Ramnghinglova first married with Mrs. Zothanpari who is not contested in the instant case since ab initio. They begotten one child namely Smt. Zothanpuii Ralte pose as respondent no. 2 but she is not also contested in the case since the beginning.

2. The mother of the appellants and their natural guardian namely- Mrs. Lalmuanpuii is the second wife of the said deceased but only by means of payment of marriage price without solemnization of their marriage.

3. The respondent no. 1 is the third wife of the deceased by making payment of marriage price and solemnization of their marriage but having no issues/child in their wedlock.

4. The deceased have only one son who is pose as appellant no. 1

5. The deceased was look after by the respondent no. 1 at the time of his death and also managed funeral functions and its allied by occupying the main house of the deceased till date.

6. Mr. W. Sam Joseph Learned counsel for the appellants prayed to set aside the impugned judgment & order and to adjudicate the case in favour of the appellant no. 1 being the only son of the deceased.

7. The respondent no. 1 fairly did not have an interest in the properties left by the deceased.

TERMS OF RIVALRY

Although the learned trial court framed only one issue namely- 'Whether the petitioner (Now respondent No. 1) or the Opposite Parties are entitled to inherit the properties of the deceased. If so, to what extend'. At the time of hearing, Mr. C. Lalramzauva, learned senior counsel for the respondent no. 1 vehemently argued in the following terms that -

1. The alleged marriage in between the deceased Mr. Ramnghinglova and the mother of the appellants namely- Mrs. Lalmuanpuii was not a valid marriage in accordance with Mizo Customary Laws as it was made without solemnization. Thus, the status of the appellants are like illegitimate son and daughter who are incapable to inherit the properties of the deceased father in accordance with Mizo Customary Laws.

2. The trial court was fully justified for arriving decisions by embarking huge debt liabilities of the deceased to the holder of the lion share viz. the respondent no. 1

Mr. W. Sam Joseph rather denied of the points of arguments of his learned colleagues stating that the marriage of the deceased and the mother of the appellants were legally valid by taking the ratio laid down by the Hon'ble Apex Court in **S.P.S. Balasubramanyam vs Suruttayan Alias Andali Padayachi & Ors**. decided on 29 November, 1991 reported in AIR 1992 SC 756, 1992 Supp (2) SCC 304. Howsoever, in the light of the decisions of Hon'ble Supreme Court in **Revanasiddappa & Anr. vs Mallikarjun & Ors.** decided on 31 March, 2011, whether illegitimate or legitimate son, the appellant no. 1 is entitled to inherit the properties of his deceased father.

Thus, in the instant appeal case, the following points require to settle and examine namely-

1. Whether the alleged marriage in between the deceased Mr. Ramnghinglova and the mother of the appellants namely- Mrs. Lalmuanpuii was a valid marriage in accordance with Mizo Customary Laws although it was made without solemnization or not. What are the status of the appellants according to Mizo Customary Laws and whether they are incapable to inherit the properties of the deceased father in accordance with Mizo Customary Laws or not.

2. Whether the trial court committed biasness for arriving the impugned judgment & order or not.

3. Whether the impugned judgment & order is liable to set aside or not. If so, who are entitle to inherit the properties of the deceased and to what extend.

For the above purpose, without re-appreciation of evidence as it is purely a matter of law points mandate to adjudicate on the admitted facts at the time of hearing, close examination and decisions may be made.

FINDINGS

Point No. 1

Whether the alleged marriage in between the deceased Mr. Ramnghinglova and the mother of the appellants namely- Mrs. Lalmuanpuii was a valid marriage in accordance with Mizo Customary Laws although it was made without solemnization or not. What are the status of the appellants according to Mizo Customary Laws and whether they are incapable to inherit the properties of the deceased father in accordance with Mizo Customary Laws or not.

Admittedly, the alleged marriage in between the deceased Mr. Ramnghinglova and the mother of the appellants namely- Mrs. Lalmuanpuii was performed by giving marriage price but without solemnization. Being serious terms of rivalry, a holistic examination is a sine quo non. The relevant provisions of Mizo Customary Laws on marriage is firstly extracted which is under Chapter-III as follows-

"C H A P T E R – III
OF MARRIAGE

19. Recognized marriage is one performed by an authorized person after initiation had been completed through go between by the families of the marrying parties by means of envoy. Marriage shall be registered as prescribed by laws.

20. **MARRIAGE PRICE:** In every marriage, according to the Mizo custom marriage price may or may not be paid according to the mutual agreement reach in the marrying families, and if the marriage price is paid the legitimate receiver is the father of the bride, and then the brother or the nearest relative. Marriage price of a bastard whose father is unknown shall be received by her mother. Marriage price is divided into two parts, i.e. *Main marriage price* and *Subsidiary marriage price*. The subsidiary marriage price is meant for enlarging the family circle.

(a) The main marriage price:– not exceeding Rs 100/-. It shall be increased by Rs 20/- for a bride who has dowry.
(b) The subsidiary marriage price: -

(1)	Sumhmahruai	fixed at	Rs 20/-
(2)	Sum fang	‘’	Rs 10/-
(3)	Pusum	“	Rs 10/-
(4)	Palal	“	Rs 10
(5)	Ni-ar	“	Rs 5/-
(6)	Naupuakpuan	“	Rs 5/-

(i) ‘Sumhmahruai’ is to be received by the father or brother of the bride.
(ii) ‘Sumfang’ is to be received by the father or brother of the bride; it is generally received by the paternal uncle or cousin brother of the bride.

(iii) 'Pusum' is to be received by the maternal grandfather of the bride, i.e. mother's father, and if he has passed away, it goes to the mother's brother of the bride.

(iv) 'Palal' is to be received by a person whom the bride closes to ancestors as her grandfather. The receiver shall contribute a fowl and a pot of rice-beer or equal amount of these for the regularization of her marriage.

(v) 'Ni-ar' is to be received by the paternal aunt of the bride.

(vi) 'Naupuakpuan' is to be received by the sister (especially the elder sister) of the bride. It is meant for a reward for nursing and caring of the bride while she was childhood.

'Thian man' (A reward paid to the bride's maid). This is neither regarded as a must her included in the marriage price nor to be refunded in case of separation of the couple and necessary to be repaid by the recipient.

'Lawichal' (A reward paid to the leader of the bride's party). This is generally paid when marriage between persons of different villages is performed, and it cannot be claimed as a must.

21. WOVEN BLANKET AND BASKET CONTAINER. Should any woman marry, she shall be accompanied by a woven blanket called 'Pawnpui' or a quilt; a basket container called 'Thul' or a box. If these are purchased by the bridegroom or made in his house after marriage, the marriage price will be reduced by Rs 20/- called as 'Tlai'. If the bride dies while making such woven blanket or quilt after marriage, her marriage price shall not be reduced by Rs 20/-

As enumerated in the preceding that the making of blanket or quilt for the bride in her husband's house causes reduction of the balance of her marriage price, there shall be no such reduction of her marriage price if she is not accompanied by woven blanket or the quilt. And as such, a woven blanket or quilt shall not be taken back by her parents until her husband marries another wife in the event of death of the married women.

22. DOWRY: The dowry (Thuam) of a bride shall be as listed below or more, but if it is less than these, it cannot be accepted as dowry:

1. 'Thival' bead – Three strings or,
2. Old 'Thifen' bead – one string and real 'Thival' bead – one string or,
3. An amber bead worth of not less than Rs 20/- or,
4. Cash not less than Rs 20/-

As dowry is exclusively the wife's property, it cannot be disposed of without her consent. In case of divorce on 'Mak' or 'Sumchhuah', a women can be taken back of her dowry. In case of severe famine and family trouble in disease, the dowry can be spent for the relief of the family. If it is spent with a promise to replace, the husband shall replace the dowry that has been spent for the preceding purposes, and if he intentionally does not like to fulfill the promise, it can be litigated. Should the dowry of the wife be spent for 'Chawn' feast and 'Sechhun' feast on mutual agreement, and should the husband divorce her on 'Mak' afterwards, he shall repay the dowry that has been spent.

The dowry of the wife that has been spent for relief in time of scarcity or in the case of death in the family without firstly making a clear promise between the husband

and the wife for its replacement, the same cannot be claimed back by the wife in case of separation afterwards. If the promise is made, the husband shall replace it or repay her its equivalent value. If 'Thutphah' (Literally meaning 'Seat' which is generally Rs 20/-) is the only remaining unpaid balance of the marriage price, the same need not be paid if the dowry is taken back.

Explanation of 'Thutphah'; it is the last remaining unpaid balance of the marriage price (Generally Rs 20/-) which can be spent by the wife for her own relief in times of scarcity at her old age, and for the guarantee to enable her or her family to take back her dowry. If 'Thutphah' has been paid up, the receiver of the marriage price cannot claim back the dowry, it shall go to her husband or her children.

Should the husband divorce his wife on 'Mak', he shall pay all her marriage price including the so called 'Thutphah' and the dowry shall be taken back by the wife. Even 'Thutphah' has been paid, the wife has a right to take her dowry back if the divorce is on 'Mak'.

The wife should not divide her dowry during her life time, but she feels that she is not going to live long because of her ill-health, she can divide her personal belongings to her sisters and her children. Such personal belonging that can be divided do not include the properties acquired by her in her husband house but only those she has brought in from her paternal house. Should the wife die, her personal belongings like the basket container called as 'Tingthul' that have been brought from her paternal house can be divided by her children amongst themselves. But the dowry shall not be divided, it is at the disposal of the receiver of her marriage price.

23. ZAWLPUAN (A special blackish cloth in marriage bond). Any woman who marries is accompanied by 'Zawlpuan.' It is for the purpose to cover the corpus of her husband in the event of he dies. In case of divorce even in adultery, the wife shall take back the 'Zawlpuan' along with her, marriage without accompanying 'Zawlpuan' will neither increase nor reduce the marriage price....."

Thus, it is very clear that for performing valid/recognized marriage according to Mizo Customary Laws, after negotiated courting by envoys, an authorized persons solemnized the marriage. At the time of paying marriage price, ceremony for distribution of subsidiary marriage price to the relatives of the bride like *Palal, Niar, Naupuakpuan, Pusum* etc. was made. A married women is also accompanied by her dowry and 'Zawlpuan'.

For that purpose, N.E. Parry, ICS in his book entitled "*A Monograph on Lushai Customs and Ceremonies*" published by Ri Khasi Offset Printers on behalf of the Tribal Research Insitute, Aizawl, Mizoram, 1928 authored that "*When a men wants to get married, he must first of all approach the girl's parents and settle with them about their daughter's price..... if the girl accepts the proposal, the parents informed the suitor and from that time the couple are considered to be betrothed. ..... As soon as the wedding day has been settled the bridegroom's people and bride's people both prepare 'Zu' for the marriage feast and when all has been prepared on the day fixed for the bridegroom sends two representatives known as Palai..... On this day, the marriage agreement must be put into writing by the village writer and he must record the total amount of the price.....*"

In the book entitled "*The Early Mizo Society*" by Dr. (Mrs.) N. Chatterji published by the Tribal Research Institute, Art & Culture Department, Govt. of Mizoram (1975), it was written that "*On the wedding day the Khawchhiar (Village Writer) used to record the fact of the marriage……The subsidiary price known as 'Mantang' used to be distributed amongst quite a large number of people connected closely with the bride. The object appears to have been not only the recognition of responsibility shared by such people in the growth and upbringing of the girl but also to ensure continuance of such solicitude for her in the new life she entered on her marriage……..*"

The recent compilation of Mizo Customary Laws by the Committee on Mizo Customary Laws published in the Mizoram Gazette, Ext. Ordinary; Vol. XXXIV, Dt. 6.4.2005, Issue No. 66, Under Chapter- 3 section 36 of the said compilation, since the ancient times, marriage was settled by sending envoys in between the marriage families. The '*Sadawt*' (Priest) took a fowl for amicable settlement. Marriage price was paid to the family of the bride. The '*Sadawt*' enmeshed the hairs of the marriage party and thereby sacrificed '*Ar Zangtuak'*. He (The *Sadawt*) therefore solemnized the marriage. At the present days, the Church Ministers and other authorized persons solemnized the marriage.

In the book titled "*Zofate lo khawsak chhoh dan*" authored by Mr. F. Rongenga Printed at Beraw Press, New Market 'S', Sarawn Road (2000) at page no. 52, for fixing the day of marriage, the Mizos hesitate to fix in the afternoon of August (Thitin thla) and in the beginning of September (Mimkut thla). And in the book titled "Pipu Lenlai" authored by Mr. Selletthanga published by Lianchhungi Book Store, Bara Bazar, Aizawl (1987) at page no. 35, it was mentioned that in the night before the marriage date was fixed, gathering for payment of marriage price was formed. It denotes that date of marriage/ceremony of marriage was compulsory for valid marriage under Mizo customary laws. Undisputedly, due to financial constraint, the marriage price was usually due by the bridegroom.

Moreover, in the text book of Mizo Language (Class XII- CORE) under Mizoram Board of School Education reprint 2003 printed by the Mizoram Board of School Education under Part- B, Chapter- 2, there was a chapter for Mizo Marriage written by Mr. B. Lalthangliana in pages no 37 and 38, it was discussed that after marriage ceremony was performed, the 'Sadawt' had taken their top heirs of the bride and bridegroom and thereby solemnized (Chhamphual) of the marriage with the following words-

"Ka nau Miss _____ leh Mr _____ innei hi
Zawla suanglungpui iangin nghet se,
Hai ang tarin tum ang vuai se,
Fanau maltluan chawiin,
Mal tin, mal zain zawng se,
Chin lai khuaah,
Phunbung angin thuam luai luai tawh se,"

The *Sadawt* thereby hit the fowl and killed it known as 'Arzangtuak'. The marriage was therefore completed. Similar contents/provisions is also

included in the Text Book of Classes 9 and 10 titled '*Mizo Nunhlui*' (Part- II) under Mizoram Board of School Education Ninth Edition 2003 printed and published by Tawrh Press, Aizawl on behalf of the Mizoram Board of School Education under Section 1, Chapter- I, Part 7 at pages no. 60 and 61.

One plausible reasons for omitting solemnization under Mizo Customary Laws, 1956 as excerpt above was that Mr. N.E Parry, the then Britishers being the Indian Civil Service who administered the erstwhile Lushai Hills (Mizoram) by a secondary information as he was from outside Mizo community authored the said "*A Monograph on Lushai Customs and Ceremonies*" in 1928 when most of the then Mizos were illiterate and therefore followed his compilation by the later publishers/writers including the authority who compiled the said Mizo Customary Laws, 1956 due to lack of other written literatures revealing the exact Mizo customs and practices.

For the purpose of interpretation on the terminology of 'solemnization', In **Gopal Lal vs State Of Rajasthan** decided on 30 January, 1979 reported in 1979 AIR 713, 1979 SCR (2)1171, 1979 SCC (2) 170, the Hon'ble Supreme Court observed thus-

> "The word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form', according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is 'celebrated or performed with proper ceremonies and in due form' it cannot be said to be 'solemnized'."

And in **Garja Singh And Another vs Surjit Kaur And Another** decided on 11 October, 1990 reported in AIR 1991 P H 177, II (1992) DMC 50, (1992) 102 PLR 612, Hon'ble Punjab and Haryana High Court dealt that-

> "11. In the instant case, there is no plea or proof that the marriage of defendant No. 1 with the deceased was solemnised with customary rights or ceremonies. Merely going through some ceremonies like distribution of Gur and Shakkar with the intention that the parties be taken to have been married will not make them the customary ceremonies prescribed by law or sanctioned by custom. Even in the general customary law in Punjab as applicable to the predominently agricultural tribes, the 'Karewa' marriage with the brother or some male relative of the deceased husband requires no religious ceremonies and confers all the rights of a valid marriage. Defendant No. 1 had no connection whatsoever with the deceased prior to the execution of the 'Karewa Nama', Exhibit D-4. The marriage with a stranger has to be performed in accordance with the customary rights or ceremonies as prescribed by law. There is no allegation, much less proof, as to what were the customary ceremonies performed for solemnizing the marriage between the

deceased and defendant No. 1. (See Para 75 of Customary Law by Sir W, H. Rattigan, Fourteenth Edition)."

The Indian Christian Marriage Act, 1872 [Act No. 15 of 1872 (18th July, 1872)] also embodied that-

"4. **Marriages to be solemnized according to Act.**- Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. **Persons by whom marriages may be solemnized**.- Marriages may be solemnized in India-

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the Grant and revocation of licenses to solemnize marriages.

6. **Grant and revocation of licenses to solemnize marriages**.- The State Government, so far as regards the territories under its administration, may, by notification in the Official Gazette, grant licenses to Ministers of Religion to solemnize marriages within such territories and may, by a like notification revoke such licenses."

As directed by Hon'ble Supreme Court in **Smt. Seema Vs. Ashwani Kumar** in connection with Transfer Petition (civil) 291 of 2005 and decided on 14/02/2006 reported in 2006 AIR 1158, 2006 (2) SCR 220, 2006 (2) SCC 578, 2006 (2) SCALE 333, 2006 (2) JT 378, the Mizoram Compulsory Registration of Marriage Act, 2007 (Act No. 7 of 2007) was enacted, for that purpose, the Mizoram Compulsory Registration of Marriage Rules, 2007 Dt. 7th December, 2007 was also framed out, Rule 5 of the said Rules reads as under-

"5. **Memorandum of Marriage:**

(1) The Memorandum of Marriage shall be in Form "B" and shall be signed by the bride and the bridegroom and by two witnesses, duly affixing the passport size photograph of the bride and the bridegroom or a marriage photo on the Memorandum of Marriage and the duplicate Memorandum and the same shall be presented by the parties to the marriage to the Marriage Registrar within thirty days from the date of marriage for registration of the factum of the marriage."

On perusal of the Form 'B' under the said Rules for submitting Memorandum of Marriage to the Marriage Registrar, the date of Marriage, place of Marriage, signature of the person who solemnized the marriage with date and marriage photograph or passport size were mandate to include.

Turn into the entity of valid Customary Laws, the Hon'ble Supreme Court in the case of **State of Bihar & Ors. Vs. Subodh Gopal Bose & Anr.** decided on 22/08/1967 and reported in 1968 AIR 281, 1968 SCR (1) 313 held as-

> "A custom is a usage by virtue of which a class of persons belonging to a defined section in a locality are entitled to exercise specific rights against certain other persons or property in the same locality. To the extent to which it is inconsistent with the general law undoubtedly the custom prevails. But to be valid a custom must be ancient, certain and reasonable, and being in derogation of the general rules of law must be construed strictly"

Also in **Yeghoto Sumi Vs. State of Nagaland and Ors.** 1997 (2) GLT 568, the Hon'ble Gauhati High Court also held an observation on Customs that-

> "It is well settled principle of law that a custom, in order to be a valid custom, must be ancient, reasonable and not opposed to public policy or enactment of legislature- administering customary oath to the parties in dispute for settlement of the dispute has been in practice from time immemorial amongst the Naga Tribes in general and Sema Tribe in particular"

How can therefore it be held that merely paying and receiving marriage price as valid and lawful marriage under Mizo Customary Laws which is not valid under the entity of the Mizoram Compulsory Registration of Marriage Act, 2007 (Act No. 7 of 2007). However, being a social and beneficial legislation, no doubt having separate footing, for the purpose of the Protection of Women from Domestic Violence Act, 2005, In the case of **D.Velusamy vs D.Patchaiammal** decided on 21 October, 2010 in connection with Criminal Appeal Nos. 2028-2029 of 2010 [Arising out of Special Leave Petition (Crl.) Nos.2273-2274/2010], the Supreme Court has held that-

> "33. In our opinion a `relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:-
>
> (a) The couple must hold themselves out to society as being akin to spouses.
>
> (b) They must be of legal age to marry.
>
> (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
>
> (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. (see `Common Law Marriage' in Wikipedia on Google) In our opinion a `relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived

> together in a `shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a `domestic relationship'.
>
> 34. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a `keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage"

Interestingly to note that, western culture and lifestyle presently enveloped Indian culture, traditions and lifestyle including the uniqueness of Mizos, the modern filthy youth and their partners goes easy way of life but which can rather hamper their future life. Marriage without solemnized will certainly elicited the duplicate lifestyle of modern Mizos which itself is against public policy and not reasonable for life sustenance and not certain as the onerous would always the genuineness of the said Marriage Price Receipt. It is very clear that to become a lawful and valid marriage according to Mizo Customary Laws, the ingredients can be epitomized as follows-

(1) Prior settlement of the families of marriage parties through envoys in respect of the quantum and mode of payment of marriage price, date and time of marriage, matters of ceremony/gathering and solemnization.

(2) Marriage price including '*Manpui*' (Main marriage price) and '*Mantang*' (Subsidiary marriage price) will be paid to the parents/guardians of the bride. *Mantang* will thereafter be distributed to the close relatives and friends of the bride.

(3) Marriage of Mizo Christians will be solemnized by the authorized person like in common and prevalent practice namely- the Church Minister/Elder according to their respective denomination's bye laws and regulations in the day fixed for marriage (ceremony of marriage). In case of Mizos non- Christians and inter-caste marriage, option remains there to solemnize their marriage in accordance with the Special Marriage Act, 1954 where the Deputy Commissioners in every administrative district in Mizoram were appointed as Marriage Officer competent to solemnize the marriage.

(4) As merely as token, some light dowry and '*Zawlpuan*' (A cloth which will be used to wrap the dead body of the bridegroom) etc. will accompany the bride.

(5) The bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage in terms of the provisions of the Prohibition of Child Marriage Act, 2006 (Act No. 6 of 2007)

(6) Consummation is immaterial.

Pertinently, since the ancient times, commonly known and revealed by the literatures that the Mizos were with deep religious mindset, their general administration and social life were also coupled with religious rites and ceremonies with the pivotal role of the two modes of Priests namely '*Sadawt*' and '*Bawlpu*'. Marriage was used to perform and solemnize by the said '*Sadawt*'. Admittedly, marriage is not a social contract but a religious issues, after conversion into Christianity, although the provisions of the Indian Christian Marriage Act, 1872 [Act No. 15 of 1872] was not applicable, the Church Ministers/Elders in various church denominations used to administer/solemnize marriage according to Mizo Christian rites and ceremonies in accordance with their respective regulations and practices which the modernism could not be eschewed, overshadowed and overlapped. Otherwise, loose and filthy lifestyle, immorality and sex delinquency which is against reasonableness and inimical to the benign of the Mizoram Compulsory Registration of Marriage Act, 2007 (Act No. 7 of 2007). So is the legal principles and settled law, the alleged marriage in between the deceased Mr. Ramnghinglova and the mother of the appellants namely- Mrs. Lalmuanpuii being without solemnization cannot be held as a valid marriage. The reliance taken by Mr. W. Sam Joseph is in **S.P.S. Balasubramanyam vs Suruttayan Alias Andali Padayachi & Ors**. decided on 29 November, 1991 reported in AIR 1992 SC 756, 1992 Supp (2) SCC 304, the Supreme Court has held that-

> "2. The appellate Court however, held to the contrary. It held that since Chinna thambi and Pavayee No. 2 continuously lived under the same roof and cohabited for a number of years the law would raise presumption that they lived as husband and wife. There was no other evidence to destroy that presumption. So stating the plaintiffs suit was decreed. In the second appeal the High Court took a different view. It was held that presumption available in favour of Pavayee No. 2 by her continuous living with Chinnathambi has been destroyed by other circumstances in the case. The High Court relied upon three circumstances to rebut the presumption (i) Non-mentioning the name of Pavayee No. 2 in the will Ex. B-1; (ii) Not referring the names of Pavayee No. 2 and her children by Chinnathambi in the compromise Ex. B-32; and (iii) The evidence of P.W. 6 and D.W. 4. We do not think that the circum-f stances relied upon by the High Court are relevant to destroy the presumption which is otherwise available to recognise Pavayee No. 2 as the wife of Chinnathambi. The first two circumstances relied upon by the High Court are indeed neutral. The absence of any reference to Pavayee No. 2 in Ex. B-1 or in Ex. B-32 cannot be held against the legitimacy of the children of Pavayee No. 2 born to Chinnathambi. Equally, we do not find anything from the evidence of P.W. 6 or D.W. 4. Both these witnesses did not deny that Chinnathambi and Pavayee No. 2 were living together. It is not in dispute that children including Ramaswami were born to Chinnathambi. In our opinion, the circumstances and the evidence relied upon by the High Court

> are not relevant to destroy the presumption that Chinnathambi and Pavayee No. 2 lived together as husband and wife."

Undisputedly, the above decision was made by Hon'ble Apex Court for the purpose of section 5 of the Hindu Marriage Act, 1955 which is clearly distinct from Mizo Customary Laws and practices. Cautious for reading precedent is made recently in **Jik Industries Ltd. & Ors. vs Amarlal V.Jumani & Anr.** decided on 1 February, 2012 in connection with Criminal Appeal No. 263. of 2012 (Arising out of SLP (Crl.) No.4445/2009), the Supreme Court has held that-

> "69. It is well settled that a judgment is always an authority for what it decides. It is equally well settled that a judgment cannot be read as a statute. It has to be read in the context of the facts discussed in it."

And in **Union Of India & Anr vs Arulmozhi Iniarasu & Ors.** decided on 6 July, 2011 in connection with Civil Appeal Nos. 4990-4991 of 2011 (Arising Out of S.L.P. (C) Nos. 25200-25201 of 2010), the Supreme Court has held that-

> "12.Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. (Ref.: Bharat Petroleum Corpn. Ltd. & Anr. Vs. N.R. Vairamani & Anr. (2004) 8 SCC 579; Sarva Shramik Sanghatana (KV), Mumbai Vs. State of Maharashtra & Ors. (2008) 1 SCC 494 and Bhuwalka Steel Industries Limited Vs. Bombay Iron & Steel Labour Board & Anr. (2010) 2 SCC 273.)"

And also in **Fida Hussain & Ors. vs Moradabad Dev. Authority & Anr.** decided on 19 July, 2011 in connection with Civil Appeal No. 5448 of 2006, the Supreme Court has observed thus-

> "20) It is now well settled that a decision of this Court based on specific facts does not operate as a precedent for future cases. Only the principles of law that emanate from a judgment of this Court, which have aided in reaching a conclusion of the problem, are binding precedents within the meaning of Article 141. However, if the question of law before the Court is same as in the previous case, the judgment of the

> Court in the former is binding in the latter, for the reason that the question of law before the Court is already settled. In other words, if the Court determines a certain issue for a certain set of facts, then, that issue stands determined for any other matter on the same set of facts."

Thus, the reliance taken by Mr. W. Sam Joseph for determining the validity of the marriage of the deceased and the natural mother of the appellants is not relevant to rely on as Hindu Marriage laws and Mizo Marriage Laws are certainly different.

If the above findings is negative for the appellants the legal points on begets of a child without valid marriage according to Mizo Customary Laws is next task to close look. Mr. C. Lalramzauva accused that the appellants are the illegitimate children of the deceased as procreated without valid marriage. On the other hand, Mr. W. Sam Joseph, contended the accusation as no payment for customary fine of illegitimate children was made by the deceased in respect of the appellants. As reading out by Mr. C. Lalramzauva, section 60 of Mizo Customary Laws, 1956 may be excerpt for ready reference as -

> **"60. SAWN:**
>
> Customary fine to be paid by the father of illegitimate child to a mother of such child is Rs. 40/- and fine be the same even in case of such illegitimate children are twins, the mother cannot refuse to look after the child before the child attains three years of age. If the father does not take the child within one year from the child's attaining three years, he cannot take later such child into his custody forcefully. But, such child can live with his father or with his mother according to his own choice. The mother can hand over the child to his father after the child attains three years of age.
>
> If a girl commits sexual intercourse with more than one person and if the father of such illegitimate child cannot be ascertained, the child shall belongs purely to his/her mother.
>
> If customary fine has been paid by the alleged father, the mother cannot allege another person to be the father of the child.
>
> **NOTE*:*** If a girl procreates an illegitimate child from the same person for the second time in succession, then it shall not be customary fine of Rs 40/- for such second illegitimate child. But it shall be paid for the third and so on. Customary fine of Rs 40/- shall be paid for the first illegitimate child, but not for the second. Rs 40/- for the third, but not for the fourth. Rs 40/- for the fifth and so on if the father and mother are the same (Vide Notification No. JUD 10/58/114 of 3rd Oct., 1958)."

In the recent compilation of Mizo Customary Laws of 2005 by Mizo Customary Law Committee notified under No. H. 12018/119/03- LJD/62,

the 4th April, 2005 published in the Mizoram Gazette, Extra Ordinary; Vol. XXXIV, Dt. 6.4.2005 Issue No. 66, under section 107, 'Sawn' (Illegitimate) son was defined that a child procreated without husband and if the father of the child could not be identified, the child should be termed as "Falak' (A child without father). The customary fine of 'Sawn' was Rs. 40/- payable after the child attains 3 months old. If a girl procreates an illegitimate child from the same person for the second time in succession, then it shall not be customary fine of Rs 40/- for such second illegitimate child. But it shall be paid for the third and so on. Customary fine of Rs 40/- shall be paid for the first illegitimate child, but not for the second. Rs 40/- for the third, but not for the fourth. Rs 40/- for the fifth and so on if the father and mother are the same. For the general terminology, in the Chambers 21st Century Dictionary edited by Mairi Robinson as Editor in Chief published by the Allied Chambers (India) Ltd., New Delhi (2000), illegitimate means (i) born of parents who were not married to each other at the time of the birth (ii) happening outside marriage. By hesitating humiliating terms, the status of the appellants from the deceased is very clear. Nowhere in the provisions of Mizo Customary Laws stated that when the father of the child is ascertained and accepted, without payment of '*Sawn man'* (Customary fine for illegitimate child), if the birth of the child is without valid marriage, they cannot be termed as illegitimate child (Sawn). In the instant case, there is no disputed that the appellants are the child of the deceased.

Whether the appellant no.1 is the illegitimate son of the deceased or not, Mr. W. Sam Joseph's submission requires to examine. He relied in **Revanasiddappa & Anr. vs Mallikarjun & Ors.** decided on 31 March, 2011, wherein, the Supreme Court has observed thus-

> "11. The question which crops up in the facts of this case is whether illegitimate children are entitled to a share in the coparcenary property or whether their share is limited only to the self- acquired property of their parents under Section 16(3) of the Hindu Marriage Act?
>
> ....13. Thus, the abovementioned section makes it very clear that a child of a void or voidable marriage can only claim rights to the property of his parents, and no one else. However, we find it interesting to note that the legislature has advisedly used the word property and has not qualified it with either self-acquired property or ancestral property. It has been kept broad and general.
>
> ...43. We are, therefore, of the opinion that the matter should be reconsidered by a larger Bench and for that purpose the records of the case be placed before the Hon'ble the Chief Justice of India for constitution of a larger Bench."

As speak itself, the ratio the above observations was made under Section 16(3) of the Hindu Marriage Act and remains subject to finality in the appropriate/larger Bench in the Hon'ble Supreme Court. For that purpose, besides the afore quoted series of observations of Hon'ble Supreme

Court, In **C.I.T vs. Sun Engg. Works (P) Ltd**. – 1992 (4) SCC 363 (vide para 39) the Apex Court observed:

> "It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete `law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

Also in **Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd** - (2003) 2 SCC 111 (vide paragraph 59), the Supreme Court observed:

> "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

And in the case of **Ambica Quarry Works & Anr. Vs. State of Gujarat & Ors**. decided on 11/12/1986 and reported in 1987 AIR 1073, 1987 SCR (1) 562, 1987 SCC (1) 213, JT 1986 1036, 1986 SCALE (2)1037, their Lordship of Hon'ble Apex Court verdict that-

> "The ratio of any decision must he understood in the background of the facts of that case. A case is only an authority for what it actually decides, and not what logically follows from it."

Obviously, taking the ratio as held in **Revanasiddappa & Anr. vs Mallikarjun & Ors. (supra)** for dealing Mizo Customary Laws is immaterial.

However, the relevant sub-sections under section 109 of Mizo Customary Laws reads as under-

> **"(2) ROKHAWM**: (Inheritance). Except as provided in paragraph 10 of this Chapter, no Mizo can appoint any person to be his heir. Nearest male relative of the deceased is his legal heir. The order of preference will be given to:- A son, the youngest son in the case of the deceased having many sons. In the case of a man who has no issue it is his brother who inherits and in the absence of a brother, a nearest male relative inherits. In the absence of near male relatives, a woman inherits to the exclusion of distant kinsman. If a man dies leaving behind him his wife and children and if they can maintain themselves nobody should disturb them.
>
> If, however, the mother and her children cannot maintain themselves a nearest male relative will inherit, but he must support them and arrange the marriage of the deceased's sons and the marriage price of the deceased's daughter goes to him. It is

obligatory on the part of the heir to repay the deceased's debt and he is also entitled to claim repayment of money lent by the deceased. A natural heir cannot refuse to inherit on the ground that the deceased was in heavy debts and in the absence of any other natural heir he is under obligation to inherit and to repay the debts. He should also support the wife of the deceased failing which the deceased wife is entitled to appoint any person who is willing to support her as heir of the deceased. If the heir resides in a village other than that of the deceased's family the latter should go to the village where the heir resides and stay with him either in his own house or in a separate house for it is not possible to support deceased's wife and children from a distant village. Deceased's wife and children shall not abstain themselves from work just because they are supported but should work and help the heir according to their capacities.

(3)**PA ROKHAWM**: (Inheritance from one's father) A man's direct heirs are his sons, in the case of more than one son, the youngest son shall be given the title of legal heir. The reason why the youngest son inherits is because he is supposed to support the aged parents. The youngest son cannot inherit all the properties merely because he is the youngest unless he supports the aged parents till death, and whosoever among the brothers is ready and willing to support the parents till death will inherit. In the case of a rich father the youngest son does not inherit all the properties but will share with his brothers. If there are three brothers, they will share the properties, the youngest will receive two shares which is two-fourth while the other two will get one share each. If the properties happen to be a gun, a mythun and a cow, the youngest will make his choice; and if it happens to be cash the youngest son will get one extra share. If the father distributes his properties in his life time, his children will get according to that distribution.

If a person has three son and the first two sons are residing in another village and the youngest son predeceased his father, and again if the father also dies, his properties will be equally divided between the two elder sons. Either of the two brothers who is ready to support the family of the deceased father will get an extra share of the property; if, however, the deceased's wife is ready and willing to remain in the house occupying the main bed and discharging the duties as functions of the mother, nobody should disturb her especially where there are unmarried daughters or divorced daughter or other grand children of the deceased living with her. If through grudge against the two heirs who have been living in separate houses of their own, the mother is trying to dispose of her husband's properties, the two heirs may take the properties and distribute them between themselves. If either of the two heirs; through poverty or otherwise, is unable to support the family of the deceased father, he may not have a share but the one who can support the family of the deceased father will inherit."

The relevant provision is again filtered that (i) "If a man dies leaving behind him his wife and children and if they can maintain themselves nobody should disturb them". Which is not applicable in the instant case as the appellant no. 1 is different from the respondent no. 1 and whilst the natural mother of the appellant no. 1 cannot be held as the wife of the deceased. (ii) "A man's direct heirs are his sons, in the case of more than one son, the youngest son shall be given the title of legal heir. The reason why the youngest son inherits is because he is supposed to support the aged parents. The youngest son cannot inherit all the properties merely because he is the youngest unless he supports the aged parents till death, and whosoever among the brothers is ready and willing to support the parents till death will inherit". Cogently, this provision is again not applicable in the instant case, although the appellant no. 1 is the only son of the deceased but the deceased was supported and managed purely by the

respondent no. 1 till his death whilst the appellant no. 1 is separated from the deceased in a different family.

Point No. 2

Whether the trial court committed biasness for arriving the impugned judgment & order or not.

The crux is indispensable to examine as recently observed in **N.K. Bajpai vs Union Of India & Anr.** decided on 15 March, 2012 in connection with Civil Appeal No. 2850 of 2012 (Arising out of SLP (C) No.8479 of 2010), the Supreme Court has held that-

> "35. Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories, i.e., suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action, with reference to -the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the decision would attract judicial castecism but if it falls in the latter, it would hardly effect the decision, much less adversely.
>
> ...37. The element of bias by itself may not always necessarily vitiate an action. The Court would have to examine the facts of a given case.....
>
> ...41. The word `bias' in popular English parlance stands included within the attributes and broader purview of the word `malice', which in general connotation, means and implies `spite' or `ill will'. It is also now a well settled proposition that existence of the element of `bias' is to be inferred as per the standard and comprehension of a reasonable man. The bias may also be malicious act having some element of intention without just cause or excuse. In case of malice or ill will, it may be an actual act conveying negativity but the element of bias could be apparent or reasonably seen without -any negative result and could form part of a general public perception."

Admittedly and as per the submission of Mr. W. Sam Joseph, whilst the deceased was died on 6/3/2007, the learned trial court entertained petition for Heirship Certificate on 13/3/2007 and thereby issued Heirship Certificate in favour of the respondent no. 1 as applied in toto. But by admitting the irregularities committed by the trial court itself, as per Review Petition No. 4 of 2007 and its order Dt. 2/4/2007, the said Heirship

Certificate was nullified and tried the case in the participation of interested parties in the lis. The very doctrine of due process of law is defined very recently in **Maria Margadia Sequeria Fernandes and Others vs Erasmo Jack De Sequeria (D) through L.Rs**. decided on 21 March, 2012 in connection with Civil Appeal No. 2968 of 2012 (Arising out of SLP (C) No. 15382 of 2009), the Hon'ble Supreme Court has held that-

> "81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court."

Thus, by taking the ratio laid down in **N.K. Bajpai vs Union Of India & Anr. (supra.)**, although the trial court buried justice due to hurried justice at the first instance, as later ventilated to other interested parties, no irregularities which can vitiate the proceedings for reading the impugned judgment & order is found.

Point No. 3
Whether the impugned judgment & order is liable to set aside or not. If so, who are entitle to inherit the properties of the deceased and to what extend.

In the instant case and distinct family relationships not covered by the written Mizo Customary Laws, the law already settled by the Hon'ble Gauhati High Court, Aizawl Bench in **Smt. Lalhumi Vs. Mr. Ramthianghlima** in connection with Civil Revision No. 27/90 (MB) decided on 21.11.1990 is attracted, wherein it was held that in the circumstances where the provisions of Mizo Customary Laws is silent, adjudication in consonance with justice, equity and good conscience is the only arena for deciding the case. In this direction, as admitted the respondent no. 1 who legally married with the deceased but no issues, look after and managed the deceased during pre and post death. Meanwhile, admittedly, it is the liability of the deceased to maintain the appellants even under the provisions of section 125 of the Code of Criminal Procedure, 1973 but unable to pay maintenance due to untimely sad demised. By giving lion share to the respondent no. 1 with leaving the huge debt to her and also giving landed property in the heart of Aizawl city to the appellant no. 1 by the learned trial court is reasonable. For this purpose, the disputed properties is scheduled as below-

i) House Site under LSC No. Azl. 123 of 1967 located at Khatla with RCC building (Main House) is with an area of 180.07 Sq. m
ii) Land under LSC No. Azl. 1628 of 1991 located at ITI Veng, Aizawl is with an area of 525 Sq. m
iii) Maruti Car – 800 bearing Registration No. ZRM- 9669
iv) Pistol under Arms License No. 13828/Azl/PR/2003.

v) LSC No. Azl. 104901/01/1188 of 2005 located at Khatla, Aizawl is with an area of 98.85 Sq. m

Before dealing further of the crux, in respect of Pistol as it is governed by the Arms Act requiring license as per the Guidelines for issue of Arms License as notified under No. L. 11012/18/2001-HMA Dt. 20th July, 2006 published in the Mizoram Gazette, Ext. Ordinary, Vol. XXXV, Dt. 4.8.2006, Issue No. 198 either through the Divisional Forest Officer or the District Superintendent of Police, it is not a matter of inheritable rights. I cannot hold the decisions of learned trial court in that regards as the law is well settled in **Manish Goel Vs. Rohini Goel**, reported in AIR 2010 SC 1099, the Supreme Court after placing reliance on large number of its earlier judgments held as under :-

> "No Court has competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injuncted by law."

And in the case of **State Of West Bengal vs Subhas Kumar Chatterjee & Ors**. decided on 17 August, 2010 in connection with Civil Appeal No. 5538 of 2008, the Supreme Court has observed that-

> "No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law."

Lastly in the case of **Central Board of Secondary Education Vs. Nikhil Gulati & Anr.** decided on 13/02/1998 and reported in 1998 AIR 1205, 1998 (1) SCR 897, 1998 (3) SCC 5, 1998 (1) SCALE 634, 1998 (1) JT 718, it was observed thus-

> "Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on *principle and precept*, it should better desist from passing such orders, for it puts the *'Rule of Law'* to a mockery, and promotes rather the *'Rule of Man'*."

With regards to entitlement of the property of the deceased, although, Mr. W. Sam Joseph seized the decisions of Hon'ble Gauhati High Court

Court in **Smt. Ralliani & Ors. Vs. Smt. Kaithuami & Ors.** reported in 2008 (Suppl.) GLT 820 decided on 07.11.2007. Wherein, the married daughter can be able to inherit the properties of deceased father. Thus, no relevance is met. Again, the learned trial court declared and ordered as the legal heir of the deceased Mr. Ramnghinglova as follows-

1. Smt. Tlanghmingthangi as the legal heiress of (i) House Site under LSC No. Azl. 123 of 1967 located at Khatla with RCC building (Main House) (ii) Land under LSC No. Azl. 1628 of 1991 located at ITI Veng, Aizawl (iii) Maruti Car – 800 bearing Registration No. ZRM- 9669 and (iv) Pistol under Arms Locense No. 13828/Azl/PR/2003.

2. Mr. Lalringngheta as the legal heir in respect of House site land under LSC No. Azl. 104901/01/1188 of 2005 located at Khatla, Aizawl

I therefore find no reasons to set aside and quash the impugned judgment & order towards justice, equity and good conscience except to annihilate decisions on Pistol under Arms Locense No. 13828/Azl/PR/2003 as no inheritable rights existed. Pertinently, although the land located at ITI locality is larger than the land decreed to the appellant no. 1, the locality of Khatla is more valuable than ITI locality. Being the holder of lion share, embark of Smt. Tlanghmingthangi to liquidate the liabilities of the said deceased in respect of (i) loan amounting to Rs. 5,82,449/- under Loan account no. 62/HIG under MUCO Bank Ltd. Aizawl (ii) a piggery loan of Rs. 3 lakhs taken from Mizoram Rural Bank which was taken by the deceased in 2006 in the name of the said Smt. Tlanghmingthangi and (iii) a loan of Rs. 50,000/- to be repaid @ Rs. 8340/- per month from the Mizoram Rural Bank, Khatla Branch by exonerating the appellant no. 1 from the debt liabilities of his deceased father as a minor is also acceptable.

ORDER

Due to the aforesaid reasons, the impugned judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 04.09.2009 in Heirship Certificate Case No. 135 of 2007 is hereby modified in the following terms-

1. Smt. Tlanghmingthangi is hereby declared and appointed as the legal heiress of the deceased Mr. Ramnghinglova in respect of (i) House Site under LSC No. Azl. 123 of 1967 located at Khatla with RCC building (Main House) (ii) Land under LSC No. Azl. 1628 of 1991 located at ITI Veng, Aizawl and (iii) Maruti Car – 800 bearing Registration No. ZRM-9669

2. Mr. Lalringngheta is also hereby declared and appointed as the legal heir of the deceased Mr. Ramnghinglova in respect of House site land under LSC No. Azl. 104901/01/1188 of 2005 located at Khatla, Aizawl

Smt. Tlanghmingthangi is further directed to timely liquidate the outstanding liabilities of the said deceased in respect of (i) loan amounting to Rs. 5,82,449/- under Loan account no. 62/HIG under MUCO Bank Ltd. Aizawl (ii) a piggery loan of Rs. 3 lakhs taken from Mizoram Rural Bank which was taken by the deceased in 2006 in the name of the said Smt. Tlanghmingthangi and (iii) a loan of Rs. 50,000/- to be repaid @ Rs. 8340/- per month from the Mizoram Rural Bank, Khatla Branch by exonerating the appellants from the debt liabilities of their deceased father as a minor.

Learned Civil Judge-1, Aizawl is kindly requested to issue necessary Heirship Certificate in the above terms by re-constructing case record of the learned trial court if deems fit and necessary as no transmission of the lower court case record to this court whilst the terms of rivalry is only on law points in the admitted factum. In a nutshell, transmission of the case record of learned trial court was not insisted as no need of re-appreciation of evidence and perusal of the record, No order as to cost.

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 16th 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/31/2009, Sr. CJ (A)/ Dated Aizawl, the 16th April, 2012

Copy to:

1. Master Lalringngheta (12 years) S/o Ramnghinglova (L) Through next friend and natural guardian Smt. Lalmuanpuii, Zotlang, Aizawl C/o Mr. W. Sam Joseph, Adv.
2. Miss Lallawmsangi (16 yrs) D/o Ramnghinglova (L) Through next friend and natural guardian Smt. Lalmuanpuii, Zotlang, Aizawl C/o Mr. W. Sam Joseph, Adv.
3. Smt. Tlanghmingthangi, Khatla, Aizawl C/o Mr. C. Lalramzauva, Sr. Adv.
4. Smt. Zothanpuii Ralte D/o Ramnghinglova (L), Upper Republic, Aizawl
5. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
6. Pesker to Mr. F. Rohlupuia, learned Civil Judge-1, Aizawl
7. Case record

PESKAR