

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

DECLARATORY SUIT NO. 21 OF 2010

Plaintiff:

Smt. Lalthathangi
W/o C. Malsawma (L)
Darlawm, Aizawl District

By Advocate's : Mr. C. Lalrinchhunga

Versus

Defendants:

1. The Secretary to the Govt. of Mizoram
Home Department
2. The Director General of Police
Govt. of Mizoram
3. The Commandant
3rd Battalion MAP
Mualpui, Aizawl
4. The Director
Accounts & Treasuries
Govt. of Mizoram
5. Smt. Darhmingthangi
W/o Chhingdailova
Chawnpui Veng, Saitual
6. Miss Vanlalzawnchhuahi
D/o C. Malsawma (L)
C/o Smt. Darhmingthangi
W/o Chhingdailova
Chawnpui Veng, Saitual

By Advocates:

For the defendants Nos. 1-4	: 1. Mr. R. Lalremruata, AGA 2. Miss Bobita Lalhmingmawii, AGA
For the defendants Nos. 5&6	: 1. Mr. C. Lalramzauva, Sr. Adv. 2. Mr. A. Rinliana Malhotra 3. Mr. T.J. Lalnuntluanga 4. Mr. K. Laldinliana

Date of Arguments : 07-08-2011
 Date of Judgment & Order : 08-08-2012

BEFORE

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

JUDGMENT & ORDER

NUCLEUS OF THE CASE

This is a suit for declaration that the plaintiff was the lawful wedded wife of the deceased Mr. C. Malsawma at the time of his death on 27.1.2010. The plaintiff in her plaint submitted that she married with the said Mr. C. Malsawma on 9th July, 1999 in accordance with Mizo Customary Laws by solemnizing the marriage in accordance with Mizoram Presbyterian Church Bye Laws. The husband of the plaintiff thereby left the plaintiff to live with a spinster. Since the said Mr. C. Malsawma never return to her although patiently waited him. They never divorced with Mr. C. Malsawma according to Mizo customary laws. Late Mr. C. Malsawma merely committed cohabitation with his spinster. During their separation, the deceased Mr. C. Malsawma rather committed bigamy with Smt. K. Lalrampari which is clearly a void marriage. The plaintiff claimed that due to infidelity of the said C. Malsawma, she was separated from him and she remain nursed the said Mr. C. Malsawma since the beginning of his sickness till his demised. For the purpose of claiming the service benefits of late Mr. C. Malsawma who was a D/G-II, 3rd Battalion, MAP, she required to declare as the legal wife late Mr. C. Malsawma and hence prayed accordingly.

The defendants 5 and 6 by contesting in the case submitted written statements stating that the plaintiff left the deceased Mr. C. Malsawma by taking out of her all personal belongings. Although Mr. C. Malsawma went to call back the plaintiff for two times, the plaintiff refused to return back. After divorced by the plaintiff, there was no reason to include the name of the plaintiff in the service record of Mr. C. Malsawma. Thus, prayed to dismiss of the suit with exemplary costs.

The other defendants did not contested in the suit till arguments

ISSUES

The following issues were therefore framed on 20/5/2011 and amended towards correct findings namely-

1. Whether the plaintiff has locus standi to file the instant suit or not.
2. Whether the plaintiff has cause of action against the defendants or not.

3. Whether a requisite court fees is paid by the plaintiff or not.
4. Whether there was a divorce between the plaintiff and the deceased Govt. employee. If so, under what grounds.
5. Whether the deceased Mr. C. Malsawma got marriage with Smt. K. Lalrampari as per Mizo customs and practices after divorce with the plaintiff
6. Whether the marriage of the plaintiff and the deceased Mr. C. Malsawma can be regularized/resumed as the plaintiff look after the deceased Mr. C. Malsawma by returning back to marital home for more than a year till his death.
7. Whether the 'Will' left by the deceased Mr. C. Malsawma executed in favour of the defendants 5 and 6 Dt. 6th Sept., 2008 can be acted upon
8. Whether the plaintiff or defendants 5 and 6 entitled to inherit the service benefits of the deceased Mr. C. Malsawma and to what extend
9. Whether the plaintiff is entitled to the relief claimed or not.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Smt. Lalthathangi W/o C. Malsawma (L), Darlawn, Aizawl District (Hereinafter referred to as PW-1)
2. Smt. Lalnunmawii W/o Sangzuala, Darlawn, Aizawl District (Hereinafter referred to as PW-2)
3. Mr. P.C. Lalhmangaiha S/o Lalbiakthanga, Shillong Veng, Darlawn (Hereinafter referred to as PW-3)

The **PW-1** in her examination in chief after affirming her averments in the plaint deposed that she left the deceased Mr. C. Malsawma by means of 'Tlan' which is different from divorce (Inthen) and she neither left him by way of 'Sunchhuah' nor 'Mak'. After eight years of living separately with her husband, as her husband suffered cancer and need her care as her late husband refused all others except the plaintiff by sending his brother in law as envoy, they resumed the wedlock and started to look after her deceased husband. After the death of her husband, she approach the police department for claiming service benefits but refused as she was not included in the list of family members in the service record of the said deceased. She further deposed that-

Ext. P-1 is her plaint

Ext. P-1 (a) and (b) are her signatures

Ext. P-2 is a her affidavit in support of her plaint

Ext. P- 2(a) is her signature

Ext. P-3 is a copy of Marriage Certificate

Ext. P-4 is a copy of 'Inneih Lehkha'

Ext. P-5 is a copy of Acknowledgement made by the VCP, Salem Veng

In her cross examination, she deposed that she married the deceased on 9/7/1999 and enjoyed marriage life till January, 2000 which is less than one year. When she left the deceased, she went back to her parental home at Darlawn. Although the deceased Mr. C. Malsawma came to call her back for three times, she refused to return back. She left the deceased in January, 2000 with all her belongings when the deceased was not at home. She admitted that the deceased did not put her name in all his service nomination papers. She is the second wife of the deceased and also married with Smt. K. Lalrampari by the deceased in 2008. She also admitted as a fact that due to the deceased entered into love affairs with another girl, she left the deceased as the deceased directed her. The said women whom the deceased entered into love affairs was Mrs. Rongengi living near Zodin Cinema Hall. But in her knowledge, the deceased did not take the said Rongengi as his wife. In her knowledge, the deceased also divorced the said Smt. K. Lalrampari. She admitted that the defendant no. 6 is the daughter of the deceased with his first wife. She admitted that there was no re-marriage with the deceased after his divorce with his third wife. When she came back to the house of the deceased, the deceased was not in a position to say anything as he was suffering from cancer.

In her re-examination, she further deposed that although she refused to return back to the deceased when calling her, she have no an intention to divorce him permanently. She refused to return back as the deceased was having another girl and still under intoxications.

The **PW-2** in her examination in chief deposed that the plaintiff's father and her father are brothers. She knew that the plaintiff married the deceased on 9th July, 1999 and as the deceased used to have a girl friend, the plaintiff left him by way of 'Tlan'. After many years, when the husband of the plaintiff was on his death bed, the plaintiff returned back and resumed marital life with the deceased. After one year of such resumption, Mr. C. Malsawma was passed away.

In her cross examination, she admitted that as the deceased have a girl friend the plaintiff and the deceased were separated. She also admitted that although the plaintiff was asked by the deceased for three times, the plaintiff refused to go back to him. She also admitted that when the plaintiff left the deceased, she took out all her belongings to her parental home.

The **PW-3** in his examination in chief deposed that as same clans with the deceased, the deceased Mr. C. Malsawma acted him as a father at Darlawn as per Mizo customs. He well acquainted with the marriage of the plaintiff and the deceased and after separated for so long, as the deceased Mr. C. Malsawma was suffered from chronic disease, he was asked by the deceased to call back the plaintiff. He therefore contacted the parents of the plaintiff well in advance. After that, the deceased sent his brother in law namely Mr. Vanhmingthanga to call back the plaintiff, he thereby accompanied the said Mr. Vanhmingthanga to call back the plaintiff in their house, the parents of the plaintiff also agreed as the deceased Mr. C. Malsawma was seriously ill health. Mr. Vanhmingthanga therefore taken back the plaintiff to the deceased in the following day. After passing one

year from returned back of the plaintiff to the deceased, the said Mr. C. Malsawma was died.

In his cross examination, he admitted that he did not know whether the deceased have first wife before the plaintiff or not. After marriage of the plaintiff with Mr. C. Malsawma, he had no regular contact with the family of the deceased. He denied that the marriage of the deceased with Smt. K. Lalrampari was valid marriage was his marriage with the plaintiff remain continued.

For the defendants 5 and 6:

The defendants 5 and 6 had produced the following witnesses namely-

1. Smt. Darhmingthangi W/o Chhingdailova, Chawnpui Veng, Saitual (Hereinafter referred to as DW-1 for defts 5 and 6)
2. Mr. Vanhmingthanga S/o Zaitluanga, Bungkawn High School Veng, Aizawl (Hereinafter referred to as DW-2 for defts 5 and 6)

The **DW-1 for defts 5 and 6** in her examination in chief deposed that the deceased Mr. C. Malsawma is her second youngest son. Whilst the deceased was out on official duty, the plaintiff left the deceased. The deceased himself went to Darlawn to call back the plaintiff for two times but the plaintiff refused to return back. The deceased thereby married one Smt. K. Lalrampari on 8/4/2008. The said Smt. K. Lalrampari thereby left the deceased on 28/8/2008 after detected the cancer virus of the deceased. Although nobody called her back, the plaintiff simply came back to the deceased and remained with the deceased till 3/4/2010. The plaintiff will have no any ground to inherit the service benefits of the deceased. The deceased rather voluntarily executed a 'Will' on 6/9/2008 and also put her name and the daughter of the deceased in all service nomination papers of the deceased.

Ext. D-1 is a copy of statement made by Smt. Shillongthangi

Ext. D-2 is a copy of Marriage Certificate of Mr. C. Malsawma and Smt. K. Lalrampari

Ext. D-3 is a copy of Deed of Will executed by the deceased Mr. C. Malsawma

Ext. D-4 is a copy of Details of family of Mr. C. Malsawma (L)

Ext. D-5 is a copy of Declaration of legal heir of the deceased Mr. C. Malsawma

Ext. D-6 is a copy of Nomination for Death Cum Gratuity

Ext. D-7 is a copy of Forms of Nomination of Mr. C. Malsawma (L)

Ext. D-8 is a copy of Kindred Roll of Mr. C. Malsawma (L)

In her cross examination, she admitted that after her son Mr. C. Malsawma joined Police, they never lived together. Although she admitted that her son Mr. C. Malsawma used to drink alcohol, he never disturbed his family. She thought that the plaintiff divorced the deceased by way of 'Sumchhuah' as she refused to return back. The plaintiff was trying to call back by the deceased but not sent an envoy. After eight years passed of

separation of the plaintiff and the deceased, the deceased married one Mrs. K. Lalrampari. They have no any refusal of the plaintiff to stay with the deceased when the deceased was suffering from cancer as treated as visited being ex wife. She admitted that she earned Rs. 1000/- per month of the pension benefit of the deceased as pensioner of Burma Army. She admitted that she did not pray a relief for probate of the 'will' of the deceased.

In her re-examination, she deposed that as her son Mr. C. Malsawma was out for his official post, they were separated. The deceased trying to call back of the plaintiff before remarriage with Smt. K. Lalrampari.

The **DW-2 for defts 5 and 6** in his examination in chief deposed that the deceased Mr. C. Malsawma is his brother in law. The plaintiff was trying to call back by the deceased but not sent an envoy. After eight years passed of separation of the plaintiff and the deceased, the deceased married one Mrs. K. Lalrampari. When, the deceased was suffering from cancer, the plaintiff simply used to stay again with the deceased in her own accord without any invitation, when the plaintiff went to Darlawn for taking her belongings, he also accompanied with the plaintiff for return back to Aizawl but not meant to call her back. He informed no persons about his tour at Darlawn. The deceased rather voluntarily executed a 'Will' on 6/9/2008 besides other valid service nominations.

In his cross examination, he deposed that the deceased trying to call back of the plaintiff by inviting his friend Mr. Ramchhana. In his knowledge, the plaintiff is good in nature. As he never visits, he went to Darlawn when the plaintiff was moving to come back to the deceased. He admitted that when he went to Darlawn, he also took a meal in the house of the plaintiff.

FINDINGS

Issue No. 1

Whether the plaintiff has locus standi to file the instant suit or not.

Undisputedly, valid marriage was performed by the plaintiff and the deceased on 9th July, 1999. On the version of the plaintiff as the defendants 5 and 6 in their evidence did not know the reason why, the plaintiff left the deceased after a short span of their marriage. Even the deceased got marry another women but divorced, the plaintiff look after the deceased who was in need of love and care due to cancer patient for about one year. The plaintiff must have locus standi to file the instant suit as there was disputes on validity of her status whether a wife of the deceased or not as examined within the law settled in **S.P. Gupta Vs. President Of India And Ors.** decided on 30/12/1981 reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365.

Issue No. 2

Whether the plaintiff has cause of action against the defendants or not.

Admittedly, as the plaintiff look after the deceased who was in need of love and care due to cancer patient for about one year and pursued for

claiming service benefits of the deceased and refused to incline in her favour due to not named in the service nominations, the plaintiff will also have cause of action against the defendants in terms of the law settled in **Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472.

Issue No. 3

Whether a requisite court fees is paid by the plaintiff or not.

For determining the real crux, the prayer of the plaintiff in her plaint is reiterated as follows –

- (a) Declaring that the plaintiff was the lawful wedded wife of the late Mr. C. Malsawma who was employed as D/G-II, 3rd Bn. MAP, Mualpui at the time of his death on 27.01.2010 and that she is his only surviving widow
- (b) Declaring that the entries in the service records of the late Mr. C. Malsawma are liable to be corrected to show the plaintiff as his lawfully wedded wife/widow
- (c) Declaring that the plaintiff is entitled to all such benefits of service as are granted by rules to the wife/widow of a deceased government servant.

Meanwhile, as per paragraph no. 15 of the plaint, the valuation of the suit like service benefits of the deceased was estimated as Rs. 3 lakhs. Being claiming declaratory suit, court fees at Rs. 30/- is paid by the plaintiff. It is therefore attracted the provisions of Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) vis. ‘*Consequential relief*’. The 44 years old precedent in the case of **Chief Inspector Of Stamps, U.P., Allahabad vs Mahanth Laxmi Narain And Ors.** decided on 29 October, 1969 reported in AIR 1970 All 488, Full Bench of the Allahabad High Court observed in respect of ‘Consequential relief’ that-

“24. In Suit No. 83 of 1953, out of which the special appeals arise, both the Civil Judge as well as the learned Single Judge in appeal have held that the suit was for a declaratory decree in which the consequential relief of injunction was prayed for and was, therefore, governed by Sub-section (iv) (a). This finding is correct. The consequential relief sought was for an injunction, restraining the defendants from obstructing the plaintiffs from using the hall belonging to the Mandali. The Civil Judge held that the relief of injunction was in respect of immovable property, that it was incapable of valuation and, therefore, must be valued at the market value of the immovable property (hall) which was Rs. 12,000/-. The learned Single Judge held that the relief of injunction was not in respect of any immovable property and that the court-fee was payable on the amount at which the two reliefs were valued in the plaint, i.e.,

Rs. 5,200/-. Both these views are erroneous. The injunction is clearly in respect of immovable property, i.e., the hall, and this relief is capable of valuation. As held above, the suit has to be valued according to the value of the relief of injunction and the relief of injunction has to be valued in accordance with the provisions of Sub-section (iv-B).”

In the instant case, the manner of relief sought clearly indicates that it is within the ambit of consequential relief like prayer for service benefits of the deceased Mr. C. Malsawma and for making correction of service record of the said deceased. Bearing mind the above legal notions and principles, Rs. 30/- only as court fees stamp (affixed in the instant suit) is not enough and insufficient in the instant case where consequential relief is prayed for and the requisite court fees in terms of the suit valuation in the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is required to make up by the plaintiff.

Issue No. 4

Whether there was a divorce between the plaintiff and the deceased Govt. employee. If so, under what ground.

The plaintiff being PW-1 during her cross examination also admitted as a fact that due to the deceased entered into love affairs with another girl, she left the deceased as the deceased directed her. She left the deceased in January, 2000 when performed their marriage on 9th July, 1999 as revealed by Ext. P- 3. If she left the deceased Mr. C. Malsawma as directed by him, it can be termed as divorce on the ground of ‘Mak’. As the deceased Mr. C. Malsawma was absent as admitted by PW-1 during leaving of the deceased by the plaintiff, the said deceased failed to escort the plaintiff to her village. The relevant portion of Mizo Customary Laws is quoted for ready reference as follows-

“46. MA OR MAK: (Divorce by husband and thereby pays up all the marriage price). If a man divorce his wife on ‘Mak’ he must pay all her marriage price including the outstanding balance, whether she is ‘Thisen pal’ or not. The wife who has been divorce on ‘Mak’ can take with her all personal belongings and her dowry. A man who divorces his wife on ‘mak’ must escort safely his divorced wife to her village where she will be settled.”

Thus, laws on divorce on ‘Mak’ can be epitomized that-

- (i) Cleared of all marriage price
- (ii) Divorce as per the wishes/direction of the husband
- (iii) No written form of ‘Mak’ is required/mandatory
- (iv) The wife is entitled to take back all her personal belongings and her dowry
- (v) Escort of divorce wife by the husband till safe reaching of her village where to be settled.

In the case at hand, there was no claim of due to marriage price, the plaintiff also admitted as PW-1 during her cross examination that all her belongings were took out when she left the house of the deceased Mr. C. Malsawma. Howsoever, leaving the husband by the plaintiff and separated for a number of years. During separation getting another marriage with another women by the husband can not be held as continuing marriage as per Mizo Customs and practices. If not falls under the ground of 'Mak', it will certainly be divorce on the ground of 'Peksachang' or 'Pasal aumloh hlana chhuak' as the plaintiff admitted as PW-1 that during the absence of her husband, she left their marital home by taking out of all her personal belongings and also refused to return back even after calling by her husband for three times as admitted as PW-1 during her cross examination. For ready reference, relevant portion of Mizo Customary Laws is excerpt as below-

“51. PEKSACHANG: (Divorce by husband in which he will not claim back the marriage price that has been paid nor will have to pay the unpaid balance). 'Peksachang' is another form of divorce in which the husband will not claim back the marriage price that has been paid, and the wife will not claim the unpaid balance of her marriage price.

52. PASAL AWMLOH HLANA CHHUAK: (Leaving husband's house during his absence). If a husband left the country or has been away from house for a long time for any reasons, and if his wife left his house during his absence at her own accord, she shall be treated as 'Sumchhuah' (divorce by wife and thereby returns all her marriage price). If, however, she leaves her husband's house due to misunderstanding with the family members of her husband, she shall not be treated as 'Sumchhuah' the matter will be decided according to the merit of the circumstances. If she wants to stay in her own home during the absence of her husband, she is entitled to do so at the consent of her husband, but her family members cannot claim her maintenance from her husband when he comes back for the period of her stay with them. If she refuses to return to her husband when he comes back, she shall be treated as 'Sumchhuah'. If she dies while waiting for her husband, the balance of her marriage price shall be paid by her husband, if she is 'thisen pal'. If she is not 'Thisen pal', the balance of her marriage price need not be paid.”

In short, it can be held that there was divorce between the plaintiff and the deceased Mr. C. Malsawma before the said Mr. C. Malsawma remarried with one Mrs. K. Lalrampari.

Issue No. 5

Whether the deceased Mr. C. Malsawma got marriage with Smt. K. Lalrampari as per Mizo customs and practices after divorce with the plaintiff

Undisputedly, when the plaintiff was separated from the deceased Mr. C. Malsawma in January, 2000, marriage with Smt. K. Lalrampari was performed on 8/4/2008 which is solemnized as per the Bye Laws of Mizoram Presbyterian Church coping with Mizo Customary Laws as elicited by Ext. D-2. Although the plaintiff denied as valid marriage, no evidence is adduced to proof its invalidity in terms of Mizo Customary Laws which is extracted as below-

“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.”

Thus, it can be held that the deceased Mr. C. Malsawma got marriage with Smt. K. Lalrampari as per Mizo customs and practices after divorce with the plaintiff whilst the plaintiff failed to proof that the said marriage was arbitrary due to failure to complete negotiation of families of marriage parties by sending an envoy and failure to register in Mizo customs and practices like in the Church record/registry.

Issue No. 6

Whether the marriage of the plaintiff and the deceased Mr. C. Malsawma can be regularized/resumed as the plaintiff look after the deceased Mr. C. Malsawma by returning back to marital home for more than a year till his death.

The so called Mizo Customary Law is silent on regularization/resumption of marriage when calling back of the divorced wife except money paid for calling back the divorced wife by a girl who promised to marry a husband but later refused. Likewise, no provision for performing re-marriage with the same wife is embodied in Mizo Customary Laws. Till arguments, the plaintiff claimed that there was difference of ‘*Tlan*’ and ‘*Inthen*’ (Divorce). Howsoever, the crux was already settled under issue no. 5 finding that there was divorce of the plaintiff with deceased Mr. C. Malsawma in accordance with Mizo Customary Laws. Meanwhile, although ‘*Tlan*’ and ‘*Inthen*’ cannot be differentiated under the ambit of Mizo Customary Laws, any divorce wife can be recalled/called back with the knowledge and permissions of parents and thereby presumed resumption of marital life with rights accrued therein which is common practices in the society.

In the case at hand, the PW-3 convincingly deposed that by employing his brother in law, the deceased Mr. C. Malsawma called back of the plaintiff whilst the DW-2 who is the said brother in law of the deceased also admitted that he went to Darlawn and also took a meal in the house of the plaintiff and also came back to the house of the deceased Mr. C. Malsawma with the plaintiff. It cannot therefore be held as credible of the version of PW-3 stating that the deceased Mr. C. Malsawma called back of the plaintiff when he was in his sickness bed, the plaintiff therefore nursed and care the deceased with the permission of her natural parents so fairly. Unfortunately, may be because of that the deceased was with chronic

disease suffering from cancer, the name of the plaintiff was lacking in all his service profile for claiming service benefits. Pertinently, undisputed fact is that the plaintiff lived with the deceased Mr. C. Malsawma more than a year after she joined him for their marital life, the said deceased Mr. C. Malsawma remain silent on making correction of his service records in favour of the plaintiff.

In this belated stage, after deceased of the concerned government employee like Mr. C. Malsawma, all the burden in favour of the plaintiff is embarked to the law court whilst service benefits and claims were specifically governed by statutory laws. The law on that point 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."

Prudence on abiding statutory law is also well delineated 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.

Thus, as it is at a very belated stage after the death of Mr. C. Malsawma, it may be appropriated to refrain from delving on service benefits of the deceased Mr. C. Malsawma whilst it is undisputed that the said deceased left valid nominations in his service sheet which is in accordance with statutory service laws.

Issue No. 7

Whether the 'Will' left by the deceased Mr. C. Malsawma executed in favour of the defendants 5 and 6 Dt. 6th Sept., 2008 can be acted upon

As admitted by the defendant no. 5 as DW-1 that there was no petition for probate of a 'Will' or counter claim, this issue is therefore left to the appropriate forum in the appropriate mode of procedure as it can not be travelled beyond pleadings is the well settled proposition of law in the civil proceedings.

Issue No. 8

Whether the plaintiff or defendants 5 and 6 entitled to inherit the service benefits of the deceased Mr. C. Malsawma and to what extend

Although the plaintiff claimed correction of the service records of the deceased Mr. C. Malsawma and declare her as entitle service benefits of the said deceased being a wife/widow.

Issue No. 9

Whether the plaintiff is entitled to the relief claimed or not.

As already elucidated and discussed above with insufficient court fees, I have no relief in favour of the plaintiff as prayed in the plaint.

ORDER

In view of the afore findings and elaborations, as inevitably the suit is hereby dismissed due to lack of merits and lacunae in payment of requisite court fees. Parties are directed to bear their own costs.

With this order, the case shall stand disposed of.

Give this order copy to all concerned.

Given under my hand and seal of this court on this 8th August, 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. DS/21/2010, Sr. CJ (A)/

Dated Aizawl, the 8th August, 2012

Copy to:

1. Smt. Lalthathangi W/o C. Malsawma (L), Darlawn, Aizawl District through Mr. C. Lalrinchhunga, Adv.
2. The Secretary to the Govt. of Mizoram, Home Department through Mr. R. Lalremruata, AGA
3. The Director General of Police, Govt. of Mizoram through Mr. R. Lalremruata, AGA
4. The Commandant, 3rd Battalion MAP, Mualpui, Aizawl through Mr. R. Lalremruata, AGA
5. The Director, Accounts & Treasuries, Govt. of Mizoram through Mr. R. Lalremruata, AGA

6. Smt. Darhmingthangi W/o Chhingdailova, Chawnpui Veng, Saitual through Mr. C. Lalramzauva, Sr. Adv.
7. Miss Vanlalzawnchhuahi D/o C. Malsawma (L) C/o Smt. Darhmingthangi W/o Chhingdailova, Chawnpui Veng, Saitual through Mr. C. Lalramzauva, Sr. Adv.
8. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District-Aizawl
9. Case record

PESKAR