

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

FAO NO. 07 OF 2009

Appellant:

Mr. H. Lalchhanhima
S/o H. Thangchungnunga (L)
Chaltlang Lily Veng, Aizawl

By Advocate's : Mr. R. Laltanpuia

Versus

Respondents:

1. Smt. Khumtiri
W/o H. Thangchungnunga (L)
Chaltlang Lily Veng, Aizawl

2. Mr. H. Ramengmawia
S/o H. Thangchungnunga (L)
Chaltlang Lily Veng, Aizawl

By Advocates : 1. Mr. W. Sam Joseph
2. Mr. F. Lalenglina
3. Mr. Hranghmingthanga
4. Mr. Francis Vanlalzuala
5. Mr. C. Lalfakzuala

Date of hearing : 01-02-2012

Date of Judgment & Order : 02-02-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

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.

BRIEF FACTS

This appeal is directed against the first order passed by learned Magistrate, Additional Subordinate District Council Court, Aizawl dt. 4.9.2009 in Review Petition No. 14 of 2009 in connection with Heirship Certificate No. 633 of 2004. Wherein, learned Magistrate, Additional Subordinate District Council Court, Aizawl admitted the said Review Petition without considering law of limitation. Thus, prayed to quash the said impugned order.

On the other hand, the respondents submitted that as the said Heirship Certificate No. 633 of 2004 was issued without their knowledge and interference. Review Petition is the only measures to adopt for the sake of justice.

Mr. W. Sam Joseph, learned counsel for the respondents submitted that at the date of filing application, the said Heirship Certificate No. 633 of 2004 was issued by Subordinate District Council Court, Aizawl on 16-11-2004 without hearing necessary parties and without impleadment of the same which was in violation of natural justice viz. audi alteram partem. As the well settled law is that limitation can only be counted only with effect from the date of knowledge of the cause of action. There is no implication of law of limitation for filing the impugned Review Petition.

Mr. R. Laltanpuia, learned counsel for the appellant contended that without condoning delay for filing of Review Petition, there is no ground to condone undue delay for filing of the impugned Review Petition. More so, the learned Additional Subordinate District Council Court, Aizawl is not competent to entertain Review Petition in the case which is disposed of by Subordinate District Council Court, Aizawl. Thus, the impugned first order dt. 4.9.2009 in Review Petition No. 14 of 2009 in connection with Heirship Certificate No. 633 of 2004 is liable to set aside and quash.

DECISIONS AND REASONS THEREOF

On lengthy hearings of the case viewing the pros and cons towards justice, equity and good conscience, as it is a nascent stage of insulation of judiciary from the executives in Mizoram by introducing the new Mizoram Civil Courts Act, 2005, modulation of adjudicatory courts is the on going process. Faithfully and fairly, learned counsels of both parties reach amicable settlement so as to streak out of justice by means of quashing the impugned order dt. 4.9.2009 in Review Petition No. 14 of 2009 in connection with Heirship Certificate No. 633 of 2004 and also quashing Heirship Certificate No. 633 of 2004 with a liberty to file a fresh suit in the appropriate court of law towards upholding natural justice viz. "Audi alteram partem". In this catena, reliance may be taken in **Mahadev Govind Gharge & Ors vs Spl. Land Acquisition Officer**, Upper Krishna Project, Jamkhandi decided on 10 May, 2011 in connection with Civil Appeal Nos. 5094 of 2005, the Supreme Court has observed thus-

“35. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances.

36. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve its end object of just, fair and expeditious justice to parties without seriously prejudicing the rights of any of them.”

Thus, Heirship Certificate No. 633 of 2004 issued under Memo No. SDCC/HC-633/04/2231-3 Dated Aizawl, the 16th Nov., 2004 and the proceedings of Review Petition No. 14 of 2009 is hereby quashed and set aside. Parties are at liberty to file a fresh suit in the appropriate court of law under the umbrella of O. XXXIIA of the Code of Civil Procedure, 1908.

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 2nd Feb., 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. FAO/7/2009, Sr. CJ (A)/

Dated Aizawl, the 2nd Feb., 2012

Copy to:

1. Mr. H. Lalchhanhima S/o H. Thangchungnunga (L), Chaltlang Lily Veng, Aizawl through Mr. R. Laltanpuia, Advocate
2. Smt. Khumtiri W/o H. Thangchungnunga (L) Chaltlang Lily Veng, Aizawl through Mr. W. Sam Joseph, Adv.
3. Mr. H. Ramengmawia S/o H. Thangchungnunga (L), Chaltlang Lily Veng, Aizawl through Mr. W. Sam Joseph, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR