

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

PROBATE CASE NO. 01 OF 2011

Plaintiff:

Master Allan Lalrinsanga (Minor)
Through Rosiama
Tlungvel Gate Veng

By Advocates

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

Versus

Defendants:

1. Smt. Roziki
D/o Thangvuka (L)
Mauphunkawn Darlawng
Serchhip District
2. District Transport Officer
Aizawl District, Aizawl
3. Manager
State Bank of India
Khumtung Branch
Serchhip District
4. Manager
Mizoram Rural Bank
Tlungvel Branch, Tlungvel

By Advocate's

For the defendant no. 1 : Mr. R. Lalremruata

Date of Arguments : 27-02-2012

Date of Judgment & Order : 28-02-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
SENIOR CIVIL JUDGE-1

JUDGMENT & ORDER

BRIEF FACTS

This is a suit for probate of alleged Will Dt. 15/2/2010 left by Mr. R. Lalrinawma S/o R. Rosiamliana which appointed the plaintiff as the heir of the said deceased in respect of all properties put in the name of the said deceased.

The defendant no. 1 by contesting in the case contended that the properties mentioned in the plaint were arbitrary not put in the name of Late Mr. R. Lalrinawma and also vehemently denied of the alleged will as at that time the deceased was in the Green Wood Hospital unable to write such will. More so, she denied that Mr. Rosiama could not act as the Next Friend/Guardian of the plaintiff. Thus, prayed to dismiss of the suit with exemplary costs.

ISSUES

The following issues were framed on 12/9/2011 such as-

1. Whether the disputed Wagon R. was purchased by the defendant no. 1 or not
2. Whether the Sale Letter as Annexure-A in the plaint was issued as a back date or not. And whether it was made in the presence of late Lalrinawma or not
3. Whether the will dt. 15/2/2010 is validly made or fake
4. Whether the defendant no. 1 and late Lalrinawma got married by means of Luhkhung or not

BRIEF ACCOUNT OF EVIDENCE

The plaintiff filed examination in chief of Mr. Rosiama by way of affidavit but could not produce for cross examination. Thus, his evidence is certainly non-est.

The defendant no. 1 also filed examination in chief of Smt. Roziki by way of affidavit, none appeared to cross examine. Thus, presumed to decline cross examination. In her examination, she affirmed the averments and submissions in her written statements.

FINDINGS

Issue No. 1

Whether the disputed Wagon R. was purchased by the defendant no. 1 or not

As no evidence is adduced by the plaintiff during the course of proceedings, I am unable to adjudicate this issue in favour of the plaintiff.

Issue No. 2

Whether the Sale Letter as Annexure-A in the plaint was issued as a back date or not. And whether it was made in the presence of late Lalrinawma or not.

I have no choice, except the written statement of defendant no. 1 supported by her evidence. Thus, decided negatively for the plaintiff.

Issue No. 3

Whether the will dt. 15/2/2010 is validly made or fake

The observations for valid will requires to look as held in **Mahesh Kumar (D) By Lrs. vs Vinod Kumar & Ors.** decided on 13 March, 2012 in connection with Civil Appeal Nos. 7587-7588 of 2004, the Supreme Court has held that-

“4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will.

And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

The rigour and cautiousness in respect of ‘Will’ is also dealt in the case of **Smt. Mualvumi Vs. Shri Dolaia** decided on 14.6.2005 in connection with RSA No. 15 of 2003 delivered by Hon’ble Gauhati High Court, Aizawl Bench. No evidence and no grounds to probate the will is therefore found in the case at hand. Whilst the burden of proof as insisted by the provisions of the Mizo District (Inheritance of Property) Act, 1956 lies in the plaintiff, the plaintiff fails to proof his case. Thus, inevitably decided against the plaintiff.

Issue No. 4

Whether the defendant no. 1 and late Lalrinawma got married by means of Luhkhung or not

I have no choice, except the written statement of defendant no. 1 supported by her evidence. Thus, decided negatively for the plaintiff.

ORDER

Even in respect of the competent court having jurisdiction to entertain and dispose of the probate case, the law remain unchanged under the aegis of the Mizo District (Inheritance of Property) Act, 1956. Ss. 11 and 12 of the said Mizo District (Inheritance of Property) Act, 1956 authorised only the Subordinate District Council Court in granting and revoking of probates and all matters connected therewith. Pertinently, akin to Indian Succession Act, 1925 as confined in the subject matter jurisdiction of court irrespective of pecuniary matters, savings under Rule 34 of the Mizoram Family Courts Rules, 2008 remains empowered the court of civil judge to sit as appellate court in the disposal cases of village court which remains existed under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. Likewise, the first proviso of the said Rule 34 of the Mizoram Family Courts Rules, 2008 also deemed court of civil judge as the then defunct Subordinate District Council Court. Thus, very clear, unless and until making amendment of the Mizo District (Inheritance of Property) Act, 1956 with regards to competent court having power to probate of will, the matter will be governed by the provisions of Rule 34 of the Mizoram Family Courts Rules, 2008 read with the Mizoram Civil Courts Act, 2005 irrespective of pecuniary crux as the matter confined in the subject matter jurisdictions.

However, the entity of cause of action is well settled in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.** decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475, the Hon’ble Supreme Court has held that-

“Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the

plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.”

Pertinently, the very terminology of *prima facie* is already settled in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors.** decided on 22 February, 2011 in connection with IA Nos.16915-16916/2010 & IA No.1218/2011 in CS (OS) No.2528/2010, Hon’ble Justice Gita Mittal for Delhi High Court termed that-

“18. On a consideration of the ordinary meaning of the term 'prima facie' and the trend of judicial pronouncement it appears to me that "prima facie case" would mean a case which is not likely to fail on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, therefore, justify an investigation.”

In the light of the above well settled law, I find no concrete cause of action to adjudicate the case in favour of the plaintiff.

Thus, due to lack of cause of action and locus standi and due to no evidence of the plaintiff, the suit being devoid of merits is hereby dismissed. No order as to cost.

Rather the act of the plaintiff reminds me one recent observations In **Maria Margadia Sequeria Fernandes and Others vs Erasmo Jack De Sequeria (D) through L.Rs.** decided on 21st 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-

“84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount....

90. Experience has shown that all kinds of pleadings are introduced and even false and fabricated documents are filed in civil cases because there is an inherent profit in continuation of possession.....”

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 28th March, 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. PC/01/2011, Sr. CJ (A)/ Dated Aizawl, the 28th March, 2012

Copy to:

1. Master Allan Lalrinsanga (Minor) Through Rosiama, Tlungvel Gate Veng through Mr. C. Lalrinchhunga, Adv.
2. Smt. Roziki D/o Thangvuka (L), Mauphunkawn Darlawng, Serchhip District through Mr. R. Lalremruata, Adv.
3. District Transport Officer, Aizawl District, Aizawl
4. Manager, State Bank of India, Khumtung Branch, Serchhip District
5. Manager, Mizoram Rural Bank, Tlungvel Branch, Tlungvel
6. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR