

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

*PROBATE CASE NO. 01 OF 2012*

*Plaintiff:*

Mr. Lalhuzauva  
S/o Lalrinawmi  
Sihphir Vengthar, Mizoram

*By Advocates*

: 1. Mr. M. Zothankhuma, Sr. Adv.  
2. Mr. R. Laltanpuia  
3. Miss Avilla Laltanpuii

*Versus*

*Defendants:*

1. Smt. Ngurkhumi  
D/o Lalmangteka Sailo (L)  
Kolasib, College Veng
2. Smt. Varparhi  
D/o Lalmangteka Sailo (L)  
Churachanpur, Saikawt, Manipur
3. Smt. Lalthanzaui  
D/o Lalmangteka Sailo (L)  
Dawrpui, New Market, Aizawl
4. Mr. Lalamlova  
S/o Lalmangteka Sailo (L)  
Chaltlang Lily Veng, Aizawl
5. Mr. Lalberhuma  
S/o Lalmangteka Sailo (L)  
Ramhlun Venglai, PWD Mual  
Aizawl
6. Mr. Sailianpuia  
S/o Lalmangteka Sailo (L)  
East Phaileng, Mizoram
7. Mr. Singhmingthanga  
S/o Lalmangteka Sailo (L)  
Bawngkawn Chhim Veng, Aizawl
8. Mr. Timothea  
S/o Lalmangteka Sailo (L)

Puilo, Mizoram

*By Advocate's* : 1. Mr. W. Sam Joseph  
2. Mr. Francis Vanlalzuala  
3. Mr. Bhanu Kavar

Date of hearing : 27-02-2012

Date of Order : 28-02-2012

### **BEFORE**

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

### **ORDER**

---

### **BRIEF FACTS**

This is a suit for probate/letter of administration of wills dt. 2.2.2007 and 17.12.2009 executed by the deceased Mrs. Rohnuni W/o Lalmangteka Sailo (L), Sihphir Vengthar. In the said wills, the deceased Mrs. Rohnuni appointed the plaintiff as her grandson to inherit her properties including the land and building under Pass No. 773 of 2010 located at Sihphir Vengthar.

The defendants in their written statements contended that the plaintiff fails to submit the provisions of law under which probate can be made. In respect of the properties left by the deceased Mr. Lalmangteka Sailo, Heirship Certificate No. 130 of 1981 was already issued in favour of the defendant no. 8. In a nutshell, they submitted that the plaintiff do not have locus standi and cause of action for filing the instant case.

### **TERMS OF RIVALRY**

At the stage of preliminary hearing, the suit was called for hearing in the light of O. VII, R. 11 of the CPC, Mr. W. Sam Joseph, learned counsel for the defendants objected further proceedings of the case in the following terms-

- (i) There is no other choice for proceedings of Probate Case except under the Mizo District (Inheritance of Property) Act, 1956 as it remains in force. In the submitted two wills, left thumb impression was given by the deceased Smt. Rohnuni whilst section 7 of the Mizo District (Inheritance of Property) Act, 1956 specifically insisted to put right thumb impression by a women/female testatrix which is clearly invalid as per the rigour of section 8 of the Mizo District (Inheritance of Property) Act, 1956. Mr. W. Sam Joseph had taken reliance 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.

- (ii) More so, the applicability of Indian Succession Act, 1925 in Mizoram is specifically barred by notification.
- (iii) The provisions of the Mizo District (Inheritance of Property) Act, 1956 specifically empowered/authorized only the Subordinate District Council Court to adjudicate the probate case and now equivalent to court of civil judge under rule 34 of the Mizoram Family Courts Rules, 2008.

On the otherhand, Mr. Michael Zothankhuma vehemently contended that there is not barring notification of the applicability of the entity of Indian Succession Act, 1925. Thus, letters of administration was also their pleadings. Right or thumb impression is therefore immaterial at the era of the insulation of judiciary from the executives in the state.

### FINDINGS

In the dictionary meaning, letter of administration would meant that a formal document issued by a court of probate appointing a manager of the assets and liabilities of the estate of the deceased in certain situations but where the provisions of the Mizo District (Inheritance of Property) Act, 1956 is silent on it.

If the plaintiff filed the instant case under the entity of the Indian Succession Act, 1925, the competent court having subject matter jurisdiction is the court of District Judge by virtue of Ss. 2 (bb) read with 371 of the said Act of 1925.

The scheme of separation of judiciary from the executives under the edifice of Article 50 of the Constitution of India and its implementations in the state of Mizoram changes nothing in respect of the in force laws except under changes eke out by the provisions of the Mizoram Civil Courts Act, 2005, the Mizoram Judicial Service Rules, 2006 and the Mizoram Family Courts Rules, 2008.

With regards to the applicability of the Indian Succession Act, 1925, the moot point is clearly answered by the provisions of Article 371G of the Constitution of India. As the said Act of 1925 was not in force in the then Union Territory of Mizoram, unless the Legislative Assembly of Mizoram by a resolution so decides, there is no justification for implementation of the said Indian Succession Act, 1925 only in the pretext of having separate judicial service personnel from the executives.

Very clear, section 7 of the Mizo District (Inheritance of Property) Act, 1956 specifically insisted to put right thumb impression by a women/female testatrix which is cogently invalid as per the rigour of section 8 of the Mizo District (Inheritance of Property) Act, 1956. Which is also held as mandatory 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 (Vide para. 24).

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 investigate further of the case.

### **ORDER**

Thus, due to lack of cause of action and locus standi, the instant plaint with connected Miscellaneous Applications Nos. 3 and 8 of 2012 are hereby rejected under O. VII. R. 11 (a) of the CPC at this threshold to avoid undue disturbance of parties. No order as to cost.

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 28<sup>th</sup> February, 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/01/2012, Sr. CJ (A)/

Dated Aizawl, the 28<sup>th</sup> Feb., 2012

Copy to:

1. Mr. Lalhuzauva S/o Lalrinawmi, Sihphir Vengthar, Mizoram through Mr. M. Zothankhuma, Sr. Adv.
2. Smt. Ngurkhumi D/o Lalmangteka Sailo (L), Kolasib, College Veng through Mr. W. Sam Joseph, Adv.
3. Smt. Varparhi D/o Lalmangteka Sailo (L), Churachanpur, Saikawt, Manipur through Mr. W. Sam Joseph, Adv.
4. Smt. Lalthanzauvi D/o Lalmangteka Sailo (L), Dawrpui, New Market, Aizawl through Mr. W. Sam Joseph, Adv.
5. Mr. Lalzamlova S/o Lalmangteka Sailo (L), Chaltlang Lily Veng, Aizawl through Mr. W. Sam Joseph, Adv.
6. Mr. Lalberhuma S/o Lalmangteka Sailo (L), Ramhlun Venglai, PWD Mual, Aizawl through Mr. W. Sam Joseph, Adv.
7. Mr. Sailianpuia S/o Lalmangteka Sailo (L), East Phaileng, Mizoram through Mr. W. Sam Joseph, Adv.
8. Mr. Singhmingthanga S/o Lalmangteka Sailo (L), Bawngkawn Chhim Veng, Aizawl through Mr. W. Sam Joseph, Adv.
9. Mr. Timothea S/o Lalmangteka Sailo (L), Puilo, Mizoram through Mr. W. Sam Joseph, Adv.

10. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
11. Case record

PESKAR