

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

RFA NO. 20 OF 2008

Appellant:

Smt. Janet Laldinliani
D/o Thangluaia (L)
Bawngkawn, Aizawl

By Advocate's : Mr. L.H. Lianhrima

Versus

Respondent's:

Rev. Thangluaia
S/o L.K. Siama (L)
Bawngkawn, Aizawl

By Advocates : 1. Mr. Nelson N. Sailo, Sr. Adv.
2. Smt. Dinary T. Azyu

Date of hearing : 14-06-2012

Date of Judgment & Order : 18-06-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge
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 FACTS

This appeal is directed against the Heirship Certificate issued under Memo No. SDCC/HC-416/2001/3882-4, Dated Aizawl, the 22nd Aug., 2001 issued by the learned Magistrate, Subordinate District Council Court, Aizawl. Wherein, the learned Magistrate appointed the respondent as the legal heir of the deceased Smt. Lalzuali in respect of (i) LSC No. 116 of 1974 (ii) LSC No. 792 of 1985 (iii) LSC No. 1864 of 1984 (iv) LSC No. 1865 of 1984 (v) LSC No. 28 of 1977 and (vi) LSC No. 3007 of 1989.

In the memorandum of appeal, the appellant assailed that without issuing notice to all concerned as necessary parties, the learned SDCC forthwith issued the impugned Heirship Certificate. Although, under the official seal of concerned village council President, acknowledgement of all relatives appears appended but which is a fake and denied by the said President, Village Council, Bawngkawn namely Mr. P. Lianzama by enclosing a copy of his letter.

The respondent by filing written objection and additional written objections contended that the instant appeal case is barred by law of limitation whilst rule 30 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 stipulated time period for appeal is sixty days of the date of order excluding the time required for obtaining a copy of the order appealed against. More so, on the basis of the agreement of family circles including the appellant, the impugned judgment & order was passed by the learned trial court which precluded interference of this court being appellate court.

TERMS OF RIVALRY

At the time of hearing, learned counsels of parties remain submitted their respective grounds in their written arguments. Mr. L.H. Lianhrima, learned counsel for the appellant took reliance in the case of **Gauhati University Vs. Niharlal Bhattacharjee** decided on 3 November, 1995 and reported in 1995 SCC (6) 731, JT 1995 (8) 206, wherein, it was held that-

“It would thus be seen that when the summons is proved to be duly served, then the limitation begins to run under Article 123 from the date of decree. But when the summons, though served, but the defendant had not had due time, clause (c) Rule 6 of Order 9, envisages further notice to be given, fixing a future date and the court shall direct notice of such date to be given to the defendant. In this case, admittedly, no such step had been taken. It is seen that though notice was served on the appellant on May 28, 1990 and the date fixed for appearance was May 29, 1990, there was no time much less sufficient, to reach the court for appearance on that date. While adjourning the suit to July 19, 1990. the said date was not communicated to the appellant, as envisaged in clause (c) of Rule 6 of Order 9. Thus, the summons was not duly served. The limitation began to run only

when the appellant had knowledge of the ex parte decree. From the date of the knowledge, admittedly, the application was filed within 30 days. The courts below had not adverted to this aspect from this perspective.”

In this task, Mr. N. Sailo for the respondent contended that in their memorandum of appeal, the appellant is silent to explain the reasons for delay of filing the appeal. Whilst learned counsel for the appellant stated that as soon as knowing the impugned judgment & order by the appellant when the respondent warned the appellant to evict from the suit land, the instant appeal is filed, Mr. N. Sailo further embarked that in the said memorandum of appeal, the grounds which appears cause delay was mentioned by the appellant on the ground that as the matter was persuaded for negotiation. More so, Mr. N. Sailo further stressed that in the usual practice, the appellant is bound to file any miscellaneous application for seeking condonation of delay which may result for accurate findings but the instant case is lacking the same.

FINDINGS

As per the written objections filed by the respondent, it can be seen that an application for Heirship Certificate was filed on 21/8/2001 and on the facet of the application itself, learned Magistrate, SDCC put initials and simply written that “*Issue H/C as prayed for*”. The impugned Heirship Certificate was therefore issued under Memo No. SDCC/HC-416/2001/3882-4, Dated Aizawl, the 22nd Aug., 2001. I find that this itself is contrary to the law settled by the Hon’ble Supreme Court as recently held in **Justice P.D. Dinakaran Vs. Hon’ble Judges Inquiry Committee and others** in connection with Writ Petition (Civil) No. 217 of 2011 decided on 05-07-2011 and in **State of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors.** decided on 16 August, 2011 in connection with Civil Appeal No.5374 of 2005 as inimical to natural justice. It is also further capricious as due to unreasoned order which is observed mandatorily by the Hon’ble Supreme Court in **Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors.** decided on 2 March, 2012 in connection with Civil Appeal No. 2085 of 2012 which held thus-

“36. The emphasis on recording reason is that if the decision reveals the ‘inscrutable face of the sphinx’, it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.”

As submitted by Mr. N. Sailo, the impugned judgment & order was passed on the basis of the no-objection certificate allegedly signed before the concerned Village Council President which the appellant denied in the instant case. Pertinently, in the case of ex parte decree, the law settled in **Sushil Kumar Sabharwal vs Gurpreet Singh And Ors.** decided on 23 April, 2002 reported in (2002) 3 CALLT 77 SC, JT 2002 (4) SC 489 and in **Smt. Sudha Devi vs M.P. Narayanan & Ors** decided on 26 April, 1988 and reported in 1988 AIR 1381, 1988 SCR (3) 756 is mandate in nature. However, if the appellant did not object the application for heirship certificate filed by the respondent in the trial court, it is again oblique to abide the terms scheduled under Rules 4, 5 and 6, O. XII of the CPC which the learned trial court fails to invoke. In this arena, the submission of Mr. N. Sailo, learned senior counsel for the respondent is not acceptable in law. In this direction, the observations laid down in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008) is having coercive and persuasive value, the Supreme Court thereby has held that-

“70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of ‘civil disputes’ governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction.”

Thus, in contravention of the provisions of the Code of Civil Procedure, 1908 will be hampered for justice, equity and good conscience. Very pertinent to say that application of spirit of the Code in Mizoram would meant that whenever and wherever the provisions of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is silent for proceedings of the lis, the fundamental provisions of the CPC will be applied in the court established/constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. Abuse of the process and travelled without basis will be beyond the spirit of the Code.

With respect to law of limitation, Section 5 of the Limitation Act, 1963 is attracted as held by Hon'ble Gauhati High Court in the case of **Union Of India (Uoi) And Ors. vs V.L. Rawna And Ors.** decided on 12 January, 2007 reported in 2007 (1) GLT 742, for the ready reference, the provision is extracted as follows-

“5. Extension of prescribed period in certain cases -

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

In the case of **Union Of India (Uoi) And Ors. vs V.L. Rawna And Ors.** decided on 12 January, 2007 reported in 2007 (1) GLT 742, the Gauhati High Court has held that -

“8. This issue may be closed at this stage by saying that though Rule 18 of the Administration of Justice Rules does not say anything about condonation of delay, Section 5 of the Limitation Act can be availed of for condonation of delay. No doubt there was no prayer for condonation of delay on the part of the appellants herein, but once the Court permitted the appellants to withdraw the appeal with liberty to file afresh within the period specified, the same amounts to condonation of the delay. This issue need not detain me any further.”

However, in case of ex parte decree, period of limitation will be counted from the date when knowing such decree by the applicant as held in **Mahabir Singh Vs. Subhash & Ors** in connection with Appeal (civil) 4881 of 2007 decided on 12/10/2007 reported in 2008 AIR 276, 2007 (11) SCR 436, 2008 (1) SCC 358, 2007 (12) SCALE 337, 2007 (13) JT 194.

No doubt, the law of limitation like in the instant case where the state are put as parties is applicable in the state of Mizoram as held by the Hon'ble Gauhati High Court in **Lalchawimawia & Ors. Vs. State of Mizoram** decided on 5-5-1999 in connection with WP (C) No. 4 of 1996 reported in 1999 (3) GLR 100 and the later case in **L. Biakchhunga vs State Of Mizoram And Ors.** decided on 1/8/2005 and reported in (2006) 2 GLR 610. By understanding the very purpose and entity of Law of Limitation, reliance may be taken as held in **Vareed Jacob vs Sosamma Geevarghese & Ors** decided on 21 April, 2004 in connection with Appeal (civil) 2634 of 2004 and reported in 2004 AIR 3992, 2004 (1) Suppl. SCR 534, 2004 (6) SCC 378, 2004 (5) SCALE 102, 2004 (2) Suppl. JT 165, the Supreme Court has observed that-

“A suit or a proceeding which is barred by limitation would oust the jurisdiction of the court to entertain the same. When a proceeding is barred by limitation, it culminates in a right to the non-suit.”

And in **Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors.** in connection with Appeal (civil) 2815 of 2008 decided on 16/04/2008 reported in 2008 (6) SCR 653, 2008 (6) SCALE 403, 2008 (4) JT 652, the Supreme Court has held that-

“17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.”

Clearly spelt out in the case of **Mr. Krishna Gopal Kakani Vs. Bank of Baroda** in connection with Civil Appeal No. 8448 of 2001 and reported in 2008 (13) SCALE 160, 2008 (11) JT 62, the Supreme Court observed that-

“12. A reading of this provision reveals that the time of three years would start running from the date when the right to sue accrues.”

Also in **Ramlal and others v. Rewa Coalfields Ltd.** reported in AIR 1962 SC 361, the Supreme Court held as under:

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right.”

In this catena, the impugned Heirship Certificate was issued under Memo No. SDCC/HC-416/2001/3882-4, Dated Aizawl, the 22nd Aug., 2001 and filed the instant appeal case on 3/10/2008 but the reasons for such delay is not properly explained as alleged by Mr. N. Sailo. More so, for ascertaining the date of knowledge of the impugned decree by the appellant, the appellant remain fails to submit any specific plea so as to ascertain the truth, mere assumption and presumption to be resulted by oral arguments is not enough. Such is the lacunae of the instant case arbitrary to the provision of Section 5 of the Limitation Act, 1963. It therefore indicates that the jurisdiction of this court is ousted to entertain the instant appeal by virtue of Rule 30 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. So is the case, as held in **Vareed Jacob vs Sosamma Geevarghese & Ors (supra.)**, the jurisdiction of this court is also ousted to entertain the instant suit. By virtue of the observation in **Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors.** (supra.), the suit is liable to dismiss due to barred by law of limitation as also held by Hon'ble Gauhati High Court, Aizawl Bench in **Smt. Thanmawii Vs. Smt. Lalchhuangi & Ors.** in connection with RSA No. 5/2010 Dt. 01-12-2011.

The very object and purpose of law of limitation is simple to say that every litigation should be filed in a reasonable period of time from the date of occurrence or right to sue begins so as to make effective, colourable, purposeful and tuneful adjudication. In the case at hand, as fairly admitted by Mr. L.H. Lianhrima during the course of hearing, some of the disputed properties were already sold out like the location of Police Station, Bawngkawn by the respondent as there was an unusual long time gap in between the date of the impugned decree and filing of the instant appeal case resulting multiplicity of the lis which may cause difficulty to reach seen justice in the real sense.

Thus, the interference being an appellate court in the impugned Heirship Certificate issued under Memo No. SDCC/HC-416/2001/3882-4, Dated Aizawl, the 22nd Aug., 2001 issued by the learned Magistrate, Subordinate District Council Court, Aizawl may be called for in the law point but as barred and curbed by law of limitation, the entire process of the instant case is therefore liable to dismiss.

ORDER

In view of the findings elaborated as above and as inevitably, the instant case is dismissed due to barred by law of limitation but 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 18th June, 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/20/2008, Sr. CJ (A)/ Dated Aizawl, the 18th June, 2012

Copy to:

1. Smt. Janet Laldinliani D/o Thangluaia (L), Bawngkawn, Aizawl through Mr. L.H. Lianhrima, Adv.
2. Rev. Thangluaia S/o L.K. Siama (L), Bawngkawn, Aizawl through Mr. Nelson N. Sailo, Sr. Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR