

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

RFA NO. 22 OF 2006

Appellant:

Smt. Lianzuali
W/o Lalhleia (L)
Model Veng, Aizawl

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

Versus

Respondent:

Smt. Lalhmunmawii
W/o F. Lalsanglawma (L)
Thingsai, Lunglei

By Advocates : 1. Mr. B. Lalramenga
2. Mr. F. Robert Hmingthansanga

Date of hearing : 12-03-2012

Date of Judgment & Order : 14-03-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge- 1
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 STORY

This appeal is directed against the judgment & order passed by learned Magistrate, Subordinate District Council Court, Lunglei dt. 27.09.2006 in Heirship Certificate Case No. 72 of 2005. Wherein, the learned Magistrate ordered, declared and directed that the Miss Lallawmzuali D/o Lalsanglawma (L) was the legal heir of the deceased Mr. Lalsanglawma in respect of LSC No. 209601/01/279 of 2001. Being a minor, Smt. Lalmunmawii as natural mother was again appointed the Guardian of the said minor Miss Lallawmzuali. However, for compensation of the wife of Mr. Lalhleia who constructed a house in the suit land, Smt. Lianzuali was decreed @ Rs. 5,000/- to be paid by the said Smt. Lalmunmawii as the legal guardian of Miss Lallawmzuali. In the memorandum of appeal, the appellant stated that the impugned judgment & order was erred in law that (i) Revenue authorities were not impleaded as they are the necessary parties as illegally processed LSC No. 209601/01/279 of 2001 in the name of the deceased Mr. Lalsanglawma (ii) LSC No. 209601/01/279 of 2001 was mutated wrongly in the name of the deceased Mr. Lalsanglawma without the knowledge of the appellant being the wife of the holder of the said LSC namely Mr. Lalhleia.

In her written objection, the respondent contended that the suit property was belonging to Mr. Lalsanglawma and no point for raising such issues had arisen as mutation was done as per the wishes of Mr. Lalhleia (L). No erred in law and facts occurred in the impugned judgment & order and thereby prayed to dismiss of the appeal petition.

FINDINGS

On the facet of the impugned judgment & order and on perusal of the lower case record including evidences adduced therein, the undisputed facts is that during the lifetime of the deceased Mr. Lalsanglawma, the suit LSC was mutated in his name. After his deceased, he left his wife Smt. Lalmunmawii and his sole daughter Miss Lallawmzuali. On perusal of the written statement filed by the appellant/defendant in the original case, no pleadings on non-joinder of necessary parties was raised. Undisputedly, the appellant silent during the lifetime of the deceased Mr. Lalsanglawma in regards to mutation of the suit LSC, the position of law on estoppels is applicable clearly depicted in **P.S. Gopinathan Vs. State of Kerala and Others** reported in (2008) 7 SCC 70, wherein, the Supreme Court held thus;

"44.Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is

estopped and precluded from questioning the said order dated 14-1-1992.”

Per Lord Wright in **Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships Ltd.** (1946) 3 W.W.R. 759 at p. 764), it was observed that-

"The essential factors giving rise to an estoppel are, I think-

"(a) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation was made.

"(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made.

"(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, *Greenwood v. Martins Bank* (1933) A.C.51.) See also *Thompson v. Palmer*, 49 C.L.R. 547; *Grundt v. Great Boulder*, 59 C.I.R.675; *Central Newbury Car Auctions v. Unity Finance* (1957)1 Q.B.371SD.MN

Admitted facts clearly elicited that the doctrine of estoppel is applicable in the instant case in respect of the belated ground on mutation of the suit LSC into the name of Mr. Lalsanglawma. If it be so, admittedly and as evidence also clearly revealed, the said Mr. Lalsanglawma left one minor daughter and wife. Section 109 (10) of Mizo Customary Laws, 1956 is attracted which reads as under-

“(10) Ordinarily woman cannot inherit properties:

However, if a person has daughters but no son, his daughters may inherit his properties. In the case of more than one daughter, the youngest daughter will be given first preference as in the case of sons.

I therefore find no ground to interfere in the impugned judgment & order passed by learned Magistrate, Subordinate District Council Court, Lunglei dt. 27.09.2006 in Heirship Certificate Case No. 72 of 2005.

ORDER

Due to the aforesaid reasons, the instant appeal case being devoid of merits is hereby dismissed, no order as to cost.

Send back the lower court case record to learned Civil Judge-1, Lunglei, she is further kindly requested to return original copy of LSC No. 209601/01/279 of 2001 which remains in the case record to the decree

holder subject to retaining certified true copy of the same in the case record as per O. XIII, R. 9 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 14th 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. RFA/22/2006, Sr. CJ (A)/ Dated Aizawl, the 14th March, 2012

Copy to:

1. Smt. Lianzuali W/o Lalhleia (L), Model Veng, Aizawl through Mr. L.H. Lianhrima, Adv.
2. Smt. Lalhmunmawii W/o F. Lalsanglawma (L), Thingsai, Lunglei through Mr. B. Lalramenga, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Peskar to learned Civil Judge-1, Lunglei along with case record of the lower court.
5. Case record

PESKAR