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

RFA NO. 13 OF 2009

Appellant's:

Mr. Lalkhuma
S/o H. Laltawna (L)
Chaltlang, Aizawl

By Advocates : 1. Mr. S. Pradhan
2. Mr. Albert V.L. Nghaka
3. Mr. Lalropara Singson

Versus

Respondent's:

Mr. Sawmliana
S/o Rokhuma (L)
Kawnpui, Kolasib District

By Advocates : 1. Mr. H. Laltanpuia
2. Mr. Ricky Gurung
3. Mr. Saihmingliana Sailo
4. Mr. K. Zomuanpuia
5. Mr. J. Lalremruata Hmar

Date of hearing : 08-05-2012
Date of Judgment & Order : 09-05-2012

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, Addl. Subordinate District Council Court, Aizawl dt. 12.02.2008 in Heirship Certificate Case No. 51 of 2003. Wherein, the learned Magistrate decreed the suit properties viz. under LSC No. 102001/01/44 of 2003, Hortoki kawnga huan, Land and building covered under LSC No. KPI 139 of 1992 and Bank Account No. 1451 LF. 3 in Mizoram Rural Bank to the respondent.

Being assailed, the appellant through Mr. Albert V.L. Nghaka, learned counsel for the appellant stated that declaration of legal heir of the deceased Mr. Lalmuanpuia without probate of his will dt. 3/11/2008 is erred in law as it is his last will duly executed where all the relatives of the deceased including the appellant have a share in the properties left by the said Mr. Lalmuanpuia. He further submitted that when Mr. Lalmuanpuia was in need of hospitalized, the appellant alone taken into Hospital at Aizawl and thereby lookafter the deceased till his death.

On the other hand, Mr. H. Laltanpuia, learned counsel for the respondent contended that the appellant is not within the relative of the deceased Mr. Lalmuanpuia, the respondent alone is the surviving close and blood relatives of the deceased Mr. Lalmuanpuia being the brother of the deceased. With regards to maintenance of the deceased, as a poor person, they cannot borne the huge expenditure on medical expenses but paid all efforts from their end. For that purpose, they managed the properties of the deceased by way of sold, such amount was used for the medical expense of the deceased. More so, in the alleged will, there is only one witness in contravention of the Mizo District (Inheritance of Property) Act, 1956 and is not enforceable. The voluntariness of the testator is also doubtful. Therefore prayed to uphold the impugned judgment & order as no erred in law and facts.

FINDINGS AND REASONS

Although attempt and efforts is paid, case record of the lower court could not be reached as replied by the i/c Record Room under his letter No. 5/2010/RR/58 Dt. 1st May, 2012 but confidence to deal the case on merit even on admitted facts and circumstances at the time of hearing of the case.

As learned counsel for the appellant also admitted that there is only one witness in the alleged will Dt. 3/11/2008, the specific provisions of the Mizo District (Inheritance of Property) Act, 1956 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). The relevant provisions of the Mizo District (Inheritance of Property) Act, 1956 for ready reference is excerpt that-

"6. **Witness:-**
(1) A witness to a "Will" shall be of sound mind and no person below the age of twenty one and who is not sound mind shall be competent to be a witness to the execution of a "Will".
(2)The execution of a "Will" shall be in the presence of not less than two witnesses.
7. **Attestation:-**

(1) The testator of a "Will" must give his or her signature in the presence of the witnesses. If, however, he or she is unable to write, the left or the right thumb impression respectively just be given instead.
(2) The witnesses to a "Will" must also give their signature in the presence of the testator. If however, a male or female witness is unable to write, the left or the right thumb impression respectively must be given.
(3) Each witness to a "Will" must give his or her signature or thumb impression, as the case may be in the presence of the other witness.

8. **Invalidity:-**

(1) Any "Will" not attested in accordance with the provisions of this Act shall be void.
(2) Any "Will" or any part of a "Will" the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator is void.

The alleged will is therefore not tenable in law and will be non-est. Furthermore, S. 9 of the Mizo District (Inheritance of Property) Act, 1956 further insisted that-

"9. **Probate only to appointed executor:-** Probate shall be granted only to an executor appointed by the "Will"."

The original suit not pleaded as Probate of the will filed by the appellant but prayed for issuance of Heirship Certificate is arbitrary itself in the light of S. 9 of the Mizo District (Inheritance of Property) Act, 1956 whilst specific and proper pleadings is required. Failing on which, onerous burden of proof like its voluntariness and validity can not also be handled 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."

At the time of hearing, the so called '*Intuithlarna*' in between the deceased Mr. Lalmuanpuia and the respondent is also raised but which is immaterial like in the instant case while no other relatives is left by the deceased and due to the bonafide act of the respondent.

I therefore find no reasons to interfere in the impugned judgment & order passed by the learned Magistrate, Addl. Subordinate District Council Court, Aizawl dt. 12.02.2008 in Heirship Certificate Case No. 51 of 2003 as correctly and holistically appreciated evidences during the proceedings and reached conclusions with reasonable grounds in his lengthy judgment & order.

ORDER

Due to the aforesaid reasons, the instant appeal petition is dismissed as devoid of merits. No order as to costs.

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 9th May, 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/13/2009, Sr. CJ (A)/ Dated Aizawl, the 9th May, 2012

Copy to:

1. Mr. Lalkhuma S/o H. Laltawna (L), Chaltlang, Aizawl through Mr. S. Pradhan, Adv.
2. Mr. Sawmliana S/o Rokhuma (L), Kawnpui, Kolasib District through Mr. H. Laltanpuia, Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR