

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

RFA NO. 27 OF 2009

Appellants:

1. Mr. Lalrinsanga
S/o Lallunghnema (L)
Through Guardian ad litem
Smt. Malsawmtluangi
Chaltlang Salem Veng
Aizawl
2. Mr. Lalbuanga
Chaltlang Salem Veng
Aizawl- Mizoram

By Advocate's

: Dr. C.V.L Auva

Versus

Respondents:

1. Mr. Lalthangfala
Chaltlang Salem Veng
Aizawl
2. Smt. Ralliantawni
Chaltlang Salem Veng
Aizawl
3. Smt. Lalliani
Chaltlang Salem Veng
Aizawl

By Advocates

- : 1. Mr. W. Sam Joseph
2. Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalenglina
5. Mr. Francis Vanlalzuala
6. Mr. C. Lalfakzuala

Date of hearing : 07-05-2012

Date of Judgment & Order : 08-05-2012

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, Subordinate District Council Court, Aizawl dt. 27.07.2009 in Heirship Certificate Case No. 496 of 2009. Wherein, the learned Magistrate declared the legal heir of the deceased Smt. Rohmingthangi W/o Thansanga in respect of LSC No. 211 of 1980 as compromise decree on the basis of the agreement reached between parties in the lis.

Dr. C.V.L. Auva, learned counsel for the appellants aggrieved in paragraph no. 13 of the impugned judgment and order wherein, the transfer of the suit land by the plaintiff/appellant Mr. Lallunghnema to the appellant no. 2 was held invalid as without heirship certificate whilst it remains put in the name of the deceased Smt. Rohmingthangi. Dr. C.V.L. Auva submitted that solely for liquidation of debt, transfer was made by the appellant no. 1 not only for his own interest.

On the other hand, Mr. W. Sam Joseph vehemently contended that being a compromise decree and as the impugned judgment & order was delivered on the basis of the agreement of all parties in the lis, the appellant no. 1 being the plaintiff in the original case do not have locus standi to challenge the impugned judgment & order. More so, Mr. W. Sam Joseph contended that before obtaining Heirship Certificate, the appellant no. 1 have no authority to transfer the suit land to the appellant no. 2.

FINDINGS AND REASONS

Learned counsels of both parties admitted that the impugned judgment and decree was a compromise decree. The law on the consent decree like in the instant decree is already settled in **Pushpa Devi Bhagat (D) Th. LR.Smt. Sadhna Rai Vs. Rajinder Singh & Ors.** in connection with Appeal (civil) 2896 of 2006 decided on 11/07/2006 and reported in 2006

AIR 2628, 2006 (3) Suppl. SCR 370, 2006 (5) SCC 566, 2006 (7) SCALE 8, 2006 (6) JT 235, it was held that-

“Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.”

Thus, no interference being appellate court in the impugned order passed by the learned Magistrate, Subordinate District Council Court, Aizawl is not warrant. Furthermore, as the appellant no. 1 himself deposed in his examination in chief that the deceased Smt. Rohmingthangi was his mother and his elder brother objected to transfer the suit land under LSC No. 211 of 1980 in his name. So is the case, without obtaining heirship certificate and mutated in his own name, how the appellant no. 1 have an authority to transfer the suit land LSC No. 211 of 1980 remain in the name of the deceased Smt. Rohmingthangi to the appellant no. 2 whilst statutory law is very binding in the law court as recently held in **Rashmi Rekha Thatoi & Anr vs State Of Orissa & Ors.** decided on 4 May, 2012 in connection with Criminal Appeal No. 750 of 2012 (Arising out of S.L.P. (Criminal) No. 7281 of 2011, the Supreme Court has held that-

“32. In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a well settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. This has been so stated in Bay Berry Apartments (P) Ltd. and Anr. v. Shobha and Ors. [(2006) 13 SCC 737] and U.P. State Brassware Corporation Ltd. and Anr. v. Uday Narain Pandey [(2006) 1 SCC 479].”

Pertinently, till this court, there is no challenged/submissions on non-joinder of necessary parties in the original suit as the appellant no. 2 was not impleaded as parties in the original case. I therefore find no reasons to ventilate on non-joinder of necessary parties.

I therefore find no reasons to set aside and quash the impugned judgment & order passed by the Magistrate, Subordinate District Council Court, Aizawl dt. 27.07.2009 in Heirship Certificate Case No. 496 of 2009.

ORDER

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

Send back the lower court case record to Learned Civil Judge-1, Aizawl.

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 8th 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/27/2009, Sr. CJ (A)/ Dated Aizawl, the 8th May, 2012

Copy to:

1. Mr. Lalrinsanga S/o Lallunghnema (L) Through Guardian ad litem Smt. Malsawmtluangi, Chaltlang Salem Veng, Aizawl through Dr. C.V.L. Auva, Adv.
2. Mr. Lalbuanga, Chaltlang Salem Veng, Aizawl- Mizoram through Dr. C.V.L. Auva, Adv.
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4. Smt. Ralliantawni, Chaltlang Salem Veng, Aizawl through Mr. W. Sam Joseph, Adv.
5. Smt. Lalliani, Chaltlang Salem Veng, Aizawl through Mr. W. Sam Joseph, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Pesker to Mr. F. Rohlupaia, learned Civil Judge-1, Aizawl along with case record of lower court
6. Case record

PESKAR