

**IN THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE  
AIZAWL JUDICIAL DISTRICT : AIZAWL.**

**PRESENT**

Smt.Helen Dawngliani  
Addl. District & Sessions Judge

RFA. No.28/2013  
IN Guardianship Certificate No.78/2011

David B.Lalhruaitluanga  
S/o B.Zohmingthanga  
R/o Ramhlun Venglai, Aizawl ..... Appellant

Versus

Vanlalmangihi  
D/o Lalnunzauvi  
R/o Khatla, Aizawl ..... Respondent

Date of Hearing ..... 10.4.2014  
Date of Order ..... 6.5.2014

**A P P E A R A N C E**

For the Appellant ..... Mr. R. Laltanpuia  
Ms. Dorothy Lalrinchhani, Advocates  
For the Opposite parties ..... Mr. Lalbiaknunga Hnamte, Advocate

**J U D G M E N T & O R D E R**

1. This appeal is filed under Section 17(3) of the Mizoram Civil Courts Act, 2005 against the Judgment & Order dt.29.4.2-13 passed by the court of Civil Judge-III, Aizawl in Guardianship Case No.78/2011.

2. Brief facts of the case:-

The respondent and appellant were married according to Mizo custom and Mizo Christian Marriage Practices on 28.10.2010. On 21.3.2011, a daughter, Rebek B.Lalrinsangi was borne out of their wedlock. Thereafter, on 30.5.2011, the marriage between the appellant and respondent was dissolved by way of "Sumchhuah". The respondent then approached the Ld Trial court by filing an application which was registered as Guardianship Case No.78/2011. The case was contested by the appellant. The case was finally disposed off vide impugned Judgment & Order dt.29.4.2013 declaring the respondent to be the guardian of their minor daughter, Rebek B.Lalrinsangi. Being aggrieved, the appellant has filed the instant appeal.

3. Heard the led. Counsels.

Mr. R. Laltanpuia, Id. Counsel for the appellant submitted that keeping in mind the interest of the minor child and out of love and affection for the said child, they would limit their grievance only to one issue though, legally there were many infirmities in the impugned order which they have raised in their memorandum of appeal. The limited prayer of the appellant is for modification of the impugned Order to the extent that he and the respondent be declared Joint Guardian of their minor daughter. In support of his prayer, the Id. Counsel submitted that there is no dispute that the appellant is the father of the minor child. Referring to the evidence adduced before the Ld. Trial Court, the Ld. Counsel submitted that the respondent in her cross-examination stated-*“It is not a fact that me and the respondent are not fit to be declared as joint legal guardian”*, she also stated, *“During our marriage, the respondent looked after the minor daughter with love and care”*. LP Vanlalhruii, mother of the respondent stated –*“It is a fact that the OP loves the minor daughter and he looked after the minor daughter with love and care”*. The Ld. Counsel further submitted that they are willing to comply with the other directions passed by the Ld. Trial Court and that even if they are declared Joint Guardian, they will not disturb the custody of the child as ordered by the Ld. Trial Court. The Ld. Counsel argued that there is no material to show that the appellant is not fit to be the guardian of his minor daughter and as such pray that the appellant and respondent be declared joint guardian of minor Rebek B.Lalrinsangi.

Mr. Lalbiaknunga Hnamte, Ld. Counsel for the respondent submitted that if the appellant is declared joint guardian of minor Rebek B.Lalrinsangi, they apprehend that he will create problem in looking after their said minor daughter which can adversely affect the welfare of the said child. Referring to the impugned Judgment & Order at paragraph 22, the Ld. Counsel submitted that the Ld. Trial court had rightly concluded that working mother are not unfit to be guardian of their children and that in the instant case, the respondent/petitioner had the means for providing decent upbringing of her minor daughter. The Ld. Counsel further submitted that the respondent is living with her widowed mother (hmeithai) they apprehend that the appellant will create problem for them if he is also declared guardian of the minor girl.

4. Upon hearing the parties and on perusal of the record including the impugned Judgment & Order, it is noticed that the Ld. Trial Court while deciding on the issue of guardianship has placed reliance on many decisions of the hon’ble Apex Court. It is noticed that such decisions pertain to custody of the child. There is an appreciable difference between Guardianship and custody. Guardianship is certainly a more comprehensive and valuable right than mere custody.

5. In the case at hand, both the parties are employed with decent salary so as to afford a comfortable living for the minor daughter. The appellant here is claiming joint guardianship. While dealing with the case of this nature, the paramount consideration is the welfare of the child. Here the appellant is not claiming custody of the child and is also willing to comply with the other directions passed by the impugned Order.

6. Though it is not clear as to whether the Guardianship certificate case was filed and proceeded in terms of the Guardians and Wards Act (hereinafter referred to as the Act), it would not be improper if the spirit of the said Act is used to determine the rights of the parties even if the said Act is not followed in letter. A conjoint reading of sections 17 & 19 of the Act shows that a father could be deprived of his natural right of guardianship if only he is found unfit for the purpose and the court considers that his appointment as guardian is not in the interest of the minor.

7. In the case at hand, appreciation of the evidence and materials on record does not indicate that the appellant is found unfit to be the guardian. The personal/customary law with regard to position of father is not different. There is no allegation of the appellant treating the child cruelly or creating an unhealthy environment for the child. In fact, like many other Indian families, the respondent in her re-examination stated that the reason why she separated from her husband was because she was not happy with the treatment she received from her in-laws. She also stated in her cross-examination that after the minor child is stopped breast feeding, she and the respondent/appellant are entitled to be declared as joint legal guardian.

8. Considering the evidences on record and the position of a father in the Mizo society and personal practices, I find the application reasonable. As stated earlier, I would like to reiterate that guardianship and custody are all together a different matter. I am also of the view that declaring the father and mother as joint guardian of minor Rebek B.Lalrinsangi with all the other directions passed by the Ld. Trial Court remaining intact will be for the welfare of the said minor. I am also of the considered opinion that the said arrangement would offer the most congenial upbringing for the child if her parents continue to live separately. It is expected that the appellant, being the father of the minor Rebek B.Lalrinsangi will not act or behave in any manner so as to disturb the normal and healthy upbringing of his daughter.

9. Accordingly, the impugned Judgment & Order dt.29.4.13 is modified to the extend that David B.Lalhruaitluanga and Vanlalmangaihzuoli shall be declared Joint Guardian of minor Rebek B.Lalrinsangi.

10. Parties shall appear before Pu.Laldinpuia Tlau, Civil Judge, Aizawl on 16.5.2014. Respondent Vanlalmangaihi shall surrender the Guardianship Certificate issued to her and thereafter, the Ld. Trial Court shall issue a fresh Guardianship Certificate in the name of both the parties.
11. Send back the case record to the Court of Pu.Laldinpuia Tlau, Civil Judge, Aizawl.
12. With the above Order, appeal stands disposed off.

**Sd/- HELEN DAWNGLIANI**  
Addl. District & Sessions Judge  
Aizawl Judicial District : Aizawl

**Memo No.:...../AD&SJ(A)/2014 : Dated Aizawl, the 6<sup>th</sup> May, 2014**  
**Copy to: -**

1. David B. Lalhruitluanga through Counsel Mr. R. Laltanpuia, Advocate.
2. Vanlalmangaihi through Counsel Mr. Lalbiaknunga Hnamte, Advocate.
3. Pu Laldinpuia Tlau, Civil Judge, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.
7. Calendar Judgment

**P E S H K A R**