

**IN THE COURT OF THE CIVIL JUDGE AIZAWL DISTRICT**  
**AIZAWL,MIZORAM**

**Divorce Suit No. 1613 of 2015**

Smt Nghakrengi : Petitioner  
W/o Ex Ser No.GS1390304  
Sepoy Thankima (L)  
R/o Seling Village

Versus

Smt Roluti : Opposite Party  
R/o Upper Republic  
C/o Lawmthanga Colney  
R/o Upper Republic, Aizawl, Mizoram

BEFORE

H. LALDUHSANGA, Civil Judge

Counsel for the Petitioner : Shri. R Lalhmingmawia, Advocate  
Counsel for the Respondent : Shri Johny L Tochwawng, Advocate

**ORDER**

**Dated: 20.06.2016**

INTRODUCTION OF THE CASE

1. A suit for Divorce accepted and registered as Divorce Suit No 1613 of 2015 was filed by Smt Nghakrengi W/o Ex Ser No.GS139030 Sepoy Thankima (L) R/o Seling Village (hereinafter called Plaintiff) for passing a Decree in her favour declaring that the Defendant and the said deceased Shri Thankima had divorced each other and to issue Divorce Certificate accordingly against Smt Roluti R/o Upper Republic C/o Lawmthanga Colney R/o Upper Republic, Aizawl, Mizoram (hereinafter called Defendant) on 27.08.2015. In the meanwhile, the Opposite Defendant filed a counter claim for a Decree in favour of the Opposite Party and against the Petitioner by declaring the Opposite Party for peaceful enjoyment of her deceased husband family pension i.e EXGS-139030H PNR LATE THANKIMA, PPO NO.C/GREF/623/1992 and for a Decree declaring the Opposite

Party as the Legal and rightful heir of deceased Thankima. However, both the Complaint and the Counter Claim are rejected under Order VII Rule 11 of CPC. Now, for more detail below.

## PLEADINGS

### PLAINT

2. The Plaintiff submitted **inter alia** that one Shri Thankima had got married to the Defendant in the year 1975 and had three offspring during their wedlock. Whilst living a happy life at Phulmawi village the Defendant had a boyfriend residing at Khumtung village. As such, the Defendant voluntarily left the said Shri Thankima on 9<sup>th</sup> September, 1991. This led to the divorce between them by way of mutual consent (Inthathen). Thereafter, the deceased got married to the Plaintiff on 17<sup>th</sup> November, 1992 and one Zoramthanga was born on 17<sup>th</sup> August, 1995 between them during their lawful wedlock.
  
3. That during his lifetime the said Thankima was serving as Pioneer under GREF, Service No Gs139030H, posted at 24 BRTF, GREFF, PIONEER, Seling until his retirement from his Service on 31.01.1993. The said Thangkima left all his pension benefits to his second wife Nghakrengi (Plaintiff in the present case). During his lifetime the said Thankima had intended to delete name of his first and ex-wife Smt Roluti from his service record book and submitted a petition to the Officer Commanding 1647 Pioneer Company (GREF) C/o 99 APO (Head Office). His petition was received by the concerned authority on 04.02.1999 and checked by the CO-III, Officer Commanding, 167 PNR COY (GREF). Again, on 26<sup>th</sup> March, 2015, the Commanding Officer informed the Smt Nghakrengi that all pension benefits were still in the name of the Defendant. Accordingly, the Record Office informed the Plaintiff to submit Divorce Certificate in her favour to ascertain that the Defendant and the said Thankima had divorced each other. Further, the said Thankima had also submitted a petition for replacement order of the Defendant but the Defendant obstructed the same. The Defendant stated that if she could not receive the pension benefits, she would never give her signature on the service record book. Hence, the said deceased husband Shri Thankima was during his lifetime not succeeded in deleting the name of his first wife from his Service record book. After the death of the said Thankima on 20.12.2013, when the Plaintiff was seeking for her husband's pension benefits from the concerned authority, she realised that name of the Defendant was still recorded as his N.O.K. Due to the same reason, the Plaintiff was unable to enjoy the said pension benefits till date. The concerned authority had also advised the Plaintiff to make it clear that the said deceased Thankima had already divorced the Defendant prior to solemnization of their marriage. After dissolving the marriage between the said deceased and the Defendant, the Plaintiff and the said deceased were married on 17<sup>th</sup> November, 1992. Hence, prayed the Court to pass a

Decree in favour of the Plaintiff declaring that the Defendant and the said deceased Shri Thankima had divorced each other and to issue Divorce Certificate accordingly.

4. The Ld Counsel for the Defendant on the other hand vehemently argued **inter alia** that, the present suit is not maintainable in its present form and style. No cause of action arose and the suit was liable to be dismissed. The Plaintiff had no Locus Standi and so the Plaint is rejectable. In fact, the Defendant strongly denied that she had a boyfriend while living together as husband and wife with deceased Shri Thankima and left the said deceased voluntarily also. Rather, the deceased left the Defendant. The deceased left everything for his legal wife who was the Defendant in the present case. The Defendant denied that deceased Shri Thankima married with the Plaintiff as per Law, they merely stayed together under the same roof as husband and wife and there was no formal marriage. There was also no mutual consent for divorce between the Defendant and deceased Shri Thankima. But, the deceased had a girlfriend and voluntarily left the Defendant and children way back in the year 1991. The Defendant also denied that the Plaintiff had a child namely Zoramthanga with the deceased. In fact, the said child was the son of the Plaintiff and there was no blood relationship between the deceased and the said child. There was no divorce between the Defendant and the deceased and name of the Defendant was still recorded in the deceased's Service book. Neither name of the Plaintiff nor the said child Zoramthanga was found nowhere in the Service book. Further, the Family pension had been sanctioned in favour of the Defendant (vide CCDA (Pension), Allahabad Pension Payment Order No. C/GREF/623/1992 Dt 14.08.1992 but, the Plaintiff unnecessary interfered and disturbed the Defendant from enjoying the Pension benefits of her legal deceased husband Shri Thankima.

#### COUNTER CLAIM

5. Therefore, the Defendant submitted her Counter claim for a Decree in favour of the Defendant and against the Plaintiff by declaring the Opposite Party for peaceful enjoyment of her deceased husband family pension (EXGS-139030H PNR LATE THANKIMA, PPO NO.C/GREF/623/1992) and for a Decree declaring the Opposite Party as the Legal and rightful heir of deceased Thankima. The Defendant submitted that even though the existing Rules (CCS Pension Rules, 1972) including all the relevant documents i.e Service book of the said deceased were in favour of the Defendant and the Commanding, 1647 PNR Coy (GREF) in his Letter Dt. 26.03.2015 clearly mentioned that the Family Pension could not be given to the Plaintiff due to which the same was sanctioned in favour of the Defendant but, the Plaintiff had been disturbing the Defendant till date by approaching the Court of Law unnecessarily.

6. The Ld. Counsel for the Plaintiff objected the Counter claim on the grounds **inter alia** that it is obvious from the submission of the Ld Counsel for the Counter claimant that the said Smt Roluti had a boyfriend; as such their relationship was deteriorated day by day. Therefore, Smt Roluti left the deceased wilfully on 09.09.1991 and they were divorced each other by way of mutual consent (Inthathen). This clearly showed that there was no relationship between the Defendant (Counter claimant) and the deceased as husband and wife. Furthermore, it could be presumed that the Defendant (Counter claimant) and the deceased could not be treated as husband and wife as they had lived separately for three consecutive years as per the Mizo Customary Law and Practices. For all these reasons, the Counter claimant had nothing to say. Further, the Counter claimant was not in a position of filing the present petition. She had no **Locus Standi** to file the Counter claim.

### DECISION AND REASONS THEREOF

#### PLAINT

7. Having heard the Ld Counsels for both the parties and repeatedly gone through all the documents submitted, it is found that Smt Nghakrengi (Plaintiff in the present case) seemed to be the second wife of deceased Thankima. Smt Roluti (Defendant in the present case) seemed to be the first wife of deceased Thankima. Deceased Thankima was a Government servant who had died on 20.12.2013 leaving behind his Pension benefits. The Plaintiff therefore prayed the Court to pass a Decree in her favour declaring that the Defendant and the said deceased Shri Thankima had divorced each other and also to issue Divorce Certificate accordingly.
8. It is considered that the **cause of action** seemed to have arisen when the said deceased Shri Thankima and the Defendant got divorced on 9<sup>th</sup> September 1991. However, the said Thankima had already died on 20.12.2013. The cause of action in the present case is a personal cause of action. It is well known that the cause of action dies with the deceased i.e **Actio personalis moritur cum persona** (a personal cause of action dies with the person). No plaint or petition for decree of divorce had been filed either by the first wife (Defendant) or the second wife (Plaintiff) prior to the death of the deceased husband. In fact, today, the man against whom the decree of divorce is being applied by the Plaintiff had already died. The marriage had no longer existed to be dissolved by any Decree of divorce. The marriage tie had stood dissolved by the death of the said deceased Shri Thankima on 20.12.2013. No sufficient reason (s) is found to proceed further with this non-existing marriage tie. Hence, the Plaint in the present case stands rejected for want of cause of action.

## COUNTER CLAIM

9. Regarding a Counter claim, the Defendant filed a Counter claim for a Decree in favour of the Defendant and against the Plaintiff by declaring the Opposite Party for peaceful enjoyment of her deceased husband family pension (EXGS-139030H PNR LATE THANKIMA, PPO NO.C/GREF/623/1992) and for a Decree declaring the Opposite Party as the Legal and rightful heir of deceased Thankima. However, having considered in respect of the Plaint that the said deceased Shri Thankima had already died and the ***cause of action*** seemed to have arisen when the said deceased Shri Thankima and the Defendant got divorced on 9<sup>th</sup> September 1991. It had no doubt been considered that the personal cause of action died in case of the Plaint with the death of deceased Thankima but, all the rest of action which had impact on proprietary rights and legal status of the portion could not be said to have died with the death of deceased Thankima. The Counter claimant as per Order VIII Rule 6A (1) of CPC can claim for any relief not confined to the Decree of divorce or Divorce Certificate in the present case but subject to the condition that the claim shall be in respect of any rights arising from a cause of action accrued to the Defendant against the Plaintiff either before or after filing of the suit, but before the time limited for delivering his defence was expired.
10. In respect of Plaint in the present case, having considered that the cause of action seemed to have arisen when the said deceased Shri Thankima and the Defendant got divorced on 9<sup>th</sup> September 1991, however, the cause of action disclosed by the Plaintiff in the Plaint did not fall same with the cause of action expected to be disclosed by the Counter claimant in her Counter Claim. In absence of such specific plea, the Counter claim raised by the Defendant cannot be countenanced. When the cause of action in the Counter claim seemed to have arisen when the said Thankima died, the Counter claimant had not specifically disclosed the date on which the said Shri Thankima had died in her Counter Claim. Despite the Plaintiff in her Plaint had already disclosed the date on which the deceased passed away, the Counter claimant is technically expected to disclose the cause of action in her Counter claim as a Counter claim is to be treated as Plaint as per Order VIII Rule 6A (4) of CPC. Therefore, it is well known that the Plaint can be rejected for not disclosing a cause of action under Order VII Rule 11 of CPC. The Counter claim is therefore technically rejectable. The legal maxim says, "*dura lex sed lex*" (*the law is hard but it is the law*).

### **CPC Order VIII Rule 6A Counter claim by defendant**

(4) "The Counter Claim shall be treated as a plaint and governed by the rules applicable to plaints".

### **CPC Order VII Rule 11 Rejection of plaint**

The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action.

11. Furthermore, it is considered that the Counter claim in the present case is declaratory in nature when a suit originally filed in this Court is a Divorce suit. For all these reasons, the Counter claim in the present case also stands rejected for want of cause of action. The Counter Claimant however may in a competent Court file a suit afresh for all her claims.

12. With this Order, the present case is hereby rejected.

13. With the above Order, this Divorce Suit No. 1613 of 2015 stands disposed of.

14. Give copy of this Order to all concerned.

**(H. LALDUHSANGA)**

Civil Judge - II,  
Aizawl, Mizoram

Memo No.....

Dated Aizawl, the 20<sup>th</sup> June, 2016

Copy to:-

1. Smt Nghakrengi W/o Ex Ser No.GS1390304 Sepoy Thankima (L) R/o Seling Village.
2. Smt Roluti R/o Upper Republic C/o Lawmthanga Colney R/o Upper Republic, Aizawl.
3. The District Judge, Aizawl.
4. Shri. R Lalhmingmawia, Advocate.
5. Shri Johnny L Tochwawng, Advocate.
6. i/c Judicial Section.
7. Case record.
8. Guard file.

**PESHKAR**

