

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

Divorce Suit No 857 of 2015

Shri B.G Lalnunfela  
S/o H. Lalbiakliana  
R/o Ratu, Aizawl District,  
P/A Zuangtui Chhim Veng, Aizawl  
Aizawl District ..... Plaintiff

Versus

Smt Lalbiakpari  
D/o Kawlzingi  
R/o College Veng, Aizawl  
Aizawl District .... Defendant

BEFORE  
H LALDUHSANGA  
Civil Judge – II Aizawl

Counsel for Plaintiff	: Shri C Zoramchhana, Advocate
Counsel for Defendant	: Shri W Sam Joseph, Advocate
Judgment pronounced on	: 14.08.2017
Judgment & Order delivered on	: 14.08.2017

**No of Total Pages of Judgment & Order: 14 (Fourteen)**

## APPENDIX

### Plaintiff's Witnesses

- (1) *Shri. BG Lalnunfela*
- (2) *Shri. Lalengmawia*
- (3) *Shri. Lalbiakmawia Zote*
- (4) *Shri. Zoremsiama*

### Plaintiff's Annexures

- 1) *Marriage Certificate*
- 2) *Letter by President, Village Council Court, Ratu*
- 3) *Hriatpuina*
- 4) *Copy of FIR submitted to Commanding Officer, 3<sup>rd</sup> Assam Rifles against Plaintiff by Defendant.*
- 5) *Copy of Order Dt. 13<sup>th</sup> March, 2015 passed by Civil Judge, Aizawl.*

### Defendant's Witnesses

- (1) *Smt. Lalbiakpari*
- (2) *Shri. Lalvulluaia*

### Defendant's Annexures

- 1) *Medical Certificate*
- 2) *Birth Certificate of Rebecca Lalnunsangi*
- 3) *Birth Certificate of Oliver Lalchhanhimi*

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## JUDGMENT & ORDER

**14.08.2017**

1. This is a Divorce Suit No 857 of 2015 filed by Shri B.G Lalnunfela S/o H. Lalbiakliana R/o Ratu, Aizawl District against Smt. Lalbiakpari D/o Kawlzingi R/o College Veng, Aizawl, Aizawl District on 30.03.2015. The plaintiff prays for declaring that the Defendant divorced the Plaintiff by desertion (Peksachang) and the Defendant is not entitled to any maintenance from the Plaintiff.
2. The Plaintiff submitted *inter alia* that he was having his parental home at Ratu village, Aizawl District, Mizoram at the time of incident and the whole family had now shifted to Zuangtui Chhim Veng, Aizawl. The Plaintiff and the Defendant were married as per the Mizo Custom and Practice by paying bride price. The marriage was solemnized by an ordained Pastor of the United Pentecostal Church (NEI) at Ratu Melkawn on 01.05.2009. However, the Plaintiff as being a simple villager lived with simple lifestyle whereas the Defendant was an urban woman getting used to all the amenities and enjoyments of a city life. Hence, the Defendant could not adapt herself to a life in the village. Further, the Plaintiff being in the service of the Indian Army was posted outside Mizoram, the Defendant did not feel like to stay in the Plaintiff's parental home at Ratu in absence of

her husband. She then left the Plaintiff's parental house on her own soon after the Plaintiff went for a duty in January 2010 by making excuses one after another and stayed away with her biological mother at College Veng, Aizawl. Despite repeated requests by the Plaintiff to go home to Ratu from Aizawl, the Defendant took all her marital properties from the matrimonial home on 06.07.2010. Thereafter, the Defendant's brother told through telephone the Plaintiff's father that they had divorced the Plaintiff by way of 'Sumchhuah'. But, the Defendant divorced the Plaintiff by way of "Desertion" (Peksachang). Thereafter, the Plaintiff stayed unmarried for quite sometime. He submitted his applications to the Record Office of his service for rectifications in his service nominations including his divorce and deletion of the Defendant as his wife from his service record book. The Defendant suddenly appeared out of the blue and to the utter shock and surprise of the Plaintiff, she submitted an 'F.I.R' against the Plaintiff to the Commanding Officer, 3<sup>rd</sup> Assam Rifles, C/o 99 APO claiming herself to be the subsisting 'legal wife' of the Plaintiff and also claimed maintenance for her child. The Defendant stated that they were only living separately without making any formal documents of divorce and wrongly alleged that the Plaintiff was having an affair with another woman. In fact, the Defendant first initiated and divorced the Plaintiff by way of "Peksachang" (Desertion) by taking back all her marriage properties from the Plaintiff's house in his absence. So, there could not be any formal documents of divorce as per Mizo custom and practices. For all these reasons, the Plaintiff could not proceed further to rectify his service records and nomination and so filed the present suit for a divorce decree in this Court praying *inter alia* to declare that the Defendant divorced the Plaintiff by desertion (Peksachang) and also to declare that the Defendant is not entitled to any maintenance from the Plaintiff.

3. On the other hand, the Defendant submitted Written Statement stating that the case is not maintainable in its present form and style. The application is not under any law for the time being in force and be dismissed with cost. After marriage, the Plaintiff and the Defendant started living in the Plaintiff's house at Ratu. The Plaintiff is serving in the Assam Rifles and posted outside Mizoram. After one month of the marriage, the Plaintiff left for his duty and the Defendant continued to live in the Plaintiff's parental house at Ratu and helped the Plaintiffs' parents in all the possible ways. In November 2009, the Plaintiff came home on leave and spent Christmas. During the stay of the Plaintiff from November 2009 to January 2010, the Defendant conceived a child of the Plaintiff. Due to ever changing his place of posting, staying together was impossible. The Defendant

developed complication during her pregnancy and as there was no proper medical facility to take care of herself during her pregnancy, she went to Aizawl and lived with the Plaintiff's sister at Bawngkawn, Aizawl with the permission of the Plaintiff and the parent-in-law. The Doctors also advised her for bed rest. At that time, the Plaintiff also came on short leave, discussed about the medical problem and they visited the Doctor together. As the Defendant was not in a position to travel to stay with the Plaintiff's parents at Ratu, the Plaintiff permitted her to stay at Aizawl. Hence, the Plaintiff went back to his place of posting on the expiry of his short leave. Whilst staying at Bawngkawn, Aizawl, the Plaintiffs' parents and his (Plaintiff) sister forced the Defendant to go to Ratu. However, due to her medical condition she could not travel there. As the Defendant's health condition did not permit her to travel to Ratu, with the Plaintiff's permission, the Defendant went and stayed with her biological mother at College Veng, Aizawl. Whilst staying in the house of her mother due to her health condition and pregnancy, the Plaintiff came to Mizoram on leave but he did not inform the Defendant and did not bother to call on her. After some time, the Defendant contacted the Plaintiff over telephone and he directed her to go to Ratu and stay at the matrimonial home. The Defendant intended to go to Ratu but her father-in-law disallowed her to go to their house in absence of the Plaintiff. As such, the Defendant could not go and live in the house of the Plaintiff's parents. The Plaintiff and the Defendant have not divorced under the custom and practice of the Mizos. As per law, the Plaintiff and the Defendant are husband and wife till date and the Defendant has no intention of divorcing the Plaintiff and wants restitution of conjugal rights. Rebecca Lalmuansangi was born to the Plaintiff and the Defendant on 10.9.2010 and the said child is also being looked after by the Defendant. The Defendant was not divorced by 'Peksachang' (Desertion) as alleged by the Plaintiff in his petition. The Defendant and the Plaintiff are still husband and wife. Hence, the question of issuing the Divorce Certificate did not arise at all.

4. The predecessor Court had framed the following issues on 15.07.2015

- (1) *Whether the application is maintainable as per Section 14 of the Mizo Marriage Divorce and Inheritance of Property Act, 2014.*
- (2) *Whether the Defendant deserted and divorced the Plaintiff on "Peksachang" (Desertion).*
- (3) *Whether the Defendant took back all her personal/matrimonial properties from the Plaintiff's house after divorce.*
- (4) *Whether the Defendant was not allowed to stay in the matrimonial house by the Plaintiff's parents.*
- (5) *Whether the Plaintiff is entitled prayer.*

## EVIDENCE FOR THE PLAINTIFF

5. **PW 1 Shri BG Lalnunfela** (Plaintiff) in his examination-in-chief deposed that he was having his parental home at Ratu village, Aizawl District at the time of incident and they had now shifted to Zuangtui Chhim Veng, Aizawl. The parties were married as per the Mizo Custom and Practice and the marriage was solemnised at United Pentecostal Church (NEI), Ratu Melkawn on 01.05.2009. However, the Defendant could not adapt herself to a life in the village. As being in the service of the Indian Army, he was posted outside Mizoram and he could not stay in his parental home at Ratu. When he left for his post in January 2010, the Defendant was staying with his (Plaintiff) sister at Bawngkawn, Aizawl. After three months, he told the Defendant to go back to Ratu but instead of doing that, she left his (Plaintiff) sister and went back to her biological mother's house at College Veng, Aizawl without his consent and knowledge and also took all material documents including Marriage Certificate. Thereafter, in June 2010, despite his repeated requests to go home to Ratu, the Defendant's brother namely Vula told his father through telephone that they were getting divorce by way of 'Sumchhuah'. Soon after that, the Defendant along with her relatives went to Ratu on 06.07.2010 and took back all her personal belongings and marriage properties from their house without his consent. Hence, the Defendant divorced him by way of 'Peksachang' (Desertion). On his cross-examination, he deposed that the Defendant conceived his baby during the period December 2009 to January 2010 and the baby was born on 10.09.2010. He admitted that there was no medical officer at that time in Ratu. After leaving for his place of posting in January 2010, he went home only in the month of August 2010. Whilst at his place of posting, he did inform the Defendant to go back to Ratu and never allowed the Defendant to stay with her mother at Aizawl. He also admitted that when he came home on leave in August 2010, he did not visit the Defendant. He also admitted that he got one daughter namely Oliver Lalchhanhimi on 16.12.2013 through Smt Lalhlimpuii outside marriage.
6. **PW 2 Shri Lalengmawia** deposed that the Defendant with her relatives came to Ratu village on 06.07.2010 and took back all her marriage properties from the Plaintiff's house. Therefore, the Defendant formally deserted the Plaintiff. On cross-examination, he deposed that he did not visit the said matrimonial house on 06.07.2010 and did not know what properties were taken out.

7. **PW 3 Shri Zoremsiama** in his examination-in-chief deposed that he had known the Plaintiff since his childhood as they were neighbours. When the Parties were married, they stayed at Ratu only for a short period. As he was physically ill-health, unable to work in the field, he usually stayed at home and used to visit and step over in the Plaintiff's house a number of times even in a single day. The Defendant with her relatives came to Ratu on 06.07.2010 and he was staying at home on that day. He looked out of the window and saw the Defendant and her relatives taking out her marriage properties from the Plaintiff's house including mattress, blankets, dressing table, suitcase, metal-box, mosquito-net and '*Em & Hnam*' (Mizo traditional basket), loading the said items on the two vehicles brought by them and leaving it. He immediately went to the Plaintiff's house and saw that all the marriage properties of the Defendant were gone and the Plaintiff was not present at home on that day. On cross-examination, he deposed that he had no blood relationship with the Plaintiff. He knew that the Defendant took out her properties on 06.07.2017 which was an MHIP Day. However, he and the Plaintiff were not there inside the house whilst taking out the marital properties. On that day, the Defendant and parties came with one Gypsy and a Taxi. One that day, Lalbiakthara Zote and three others went to the Plaintiff's house. However, he did not know as to whether the Defendant could not go to Ratu due to her pregnancy or not. He did not admit that after feeling alright, the Defendant intended to go back to Ratu but refused by the Plaintiff's father.
8. **PW 4 Shri Lalbiakmawia Zote** deposed in his examination-in-chief that his late father was the Defendant's '*Pazawn*'. When the Defendant got married to the Plaintiff, she was staying at his father's house and eventually attended the marriage ceremony out of his father's house. He with his family visited Ratu during July 2010 and stayed at his father's home. Whilst staying there, the Defendant and some other persons on 06.07.2010 visited his father and asked him to help in taking out the marriage properties from the Plaintiff's house as the Defendant was not willing to stay with the Plaintiff's family. As directed by his father, he and some other persons went to the Plaintiff's house by his father's Gypsy and a Taxi that had been brought by the Defendant from Aizawl. He himself drove the Gypsy and took out the marriage properties including mattress, suitcase which contains some clothing, dressing table, blanket, metal-box, mosquito-net and '*Em and Hnam*' (Mizo traditional basket) from the Plaintiff's house. The Defendant's properties were kept in the said Gypsy and went back to his father's house. The same were kept there for sometime. On his cross-examination, he deposed that he had no

blood relationship with the Plaintiff and did not know personally any misunderstanding between the Parties. He did not admit that the Defendant took out from the matrimonial house only the properties necessary for immediate use. He admitted that he did not know the Defendant's intention whilst taking out her marriage properties from the Plaintiff's house on that day.

#### EVIDENCE FOR THE DEFENDANT

9. **DW 1 Smt Lalbiakpari** deposed that after the marriage, she started living in the matrimonial house at Ratu. Even when the Plaintiff left the village for his place of posting, she was at home. In the month of November 2009, the Plaintiff came home for Christmas and spent the time together. During his period of stay, she conceived a child of the Plaintiff. As she developed complication during her pregnancy and no proper medical facility available at Ratu, she with the permission of the Plaintiff and his parents (parent-in-law) went to Aizawl and stayed with the Plaintiff's sister at Bawngkawn, Aizawl. The Doctor also advised her for bed rest. During that period, the Plaintiff also came home on leave and they consulted the Doctor together. At that time, she was not in a position to go back to Ratu to stay with the Plaintiff's parents at her matrimonial home. Thereafter, the Plaintiff went back to his place of posting and so her parent-in-law and the Plaintiff's sister forced her to go back to Ratu but with the permission of her Plaintiff husband she stayed at Aizawl at her mother's house. Whilst staying there, the Plaintiff came home on leave without informing her. The Plaintiff did not even visit her. She then talked to the Plaintiff through telephone and the Plaintiff told her to move back to her matrimonial home. Despite attempt, her father-in-law disallowed her to stay there in absence of her husband. She did not intend to divorce the Plaintiff and desired restitution of conjugal rights. However, as instructed by her Plaintiff husband, she took out some of her belongings as she needed it urgently. She did not take back all her belongings and did not divorce the Plaintiff by way of "Peksachang" (Desertion). She did not return the bride price also. Rebecca Lalmuansangi was born to the Plaintiff and herself on 10.09.2010 and she has been looking after the minor since then. The Plaintiff had been living in adultery and due to his newfound love, he had falsely alleged her to have divorced him. In fact, due to committing adultery, the Plaintiff had a child from Smt. Lalhlimpuii. On her cross-examination, she deposed that she brought into the matrimonial house Mosquito net, folding wardrobe, clothes (Mo puan), iron box and two chicken (Lawi ar) at the time of marriage. As far as she knew, she and other five

relatives went to Ratu on 06.07.2010 but the intention was not to return the bride price. She did not take back all her marriage properties at that time. She denied that her brother (DW 2) told the Plaintiff's father that they were going to return bride price. She denied that despite repeated request by the Plaintiff, she refused to go home. She also denied that she had not been living together with the Plaintiff as husband and wife since 06.07.2010.

10. **DW 2 Shri Lalvulluaia** deposed that he was a Defendant's brother. The Defendant with the permission of her husband came to Aizawl in the year 2010 for better medical treatment and stayed with the Plaintiff's sister at Bawngkawn, Aizawl. When the Plaintiff was in his place of posting, the Plaintiff's father informed the Defendant that he did not allow her to stay at Ratu in absence of the Plaintiff. Whenever he and the Defendant called through telephone, the Plaintiff never explained the above reasons. The Plaintiff never bothered the Defendant and he visited her only after delivering a child. The Defendant never thought about divorce and still wanted to live as husband and wife with the Plaintiff. On his cross-examination, he deposed that he did not have any personal knowledge about the alleged consent of the Plaintiff to let her live at College Veng, Aizawl except what he had heard from the Defendant. He admitted that as he was visually impaired he could not read or see. He also admitted that the Plaintiff's father did not tell the Defendant through telephone that she was not allowed to go back to her matrimonial home. He did not know the marital properties brought in by the Defendant at the time of her marriage and did not know as to whether the Defendant took back all her marriage properties from the Plaintiff's house or not. He did not know the date and time when the Plaintiff visited the Defendant and he also did not know the exact date when the Defendant came home to her mother's house at College Veng, Aizawl. He did not know when the Plaintiff was alleged to have a baby with another girl and he did not know when the Plaintiff told the Defendant to go home to Ratu. He also did not know whether the Defendant went to Ratu or not on 06.07.2010. He admitted that he was blind man and he practically and personally did not know what was happening and what was not happening. He admitted that what he had stated were what he had heard from the Defendant. He denied to have told the Plaintiff's father through telephone that they were going to return bride price.



## Issue No 1

*Whether the application is maintainable as per Section 14 of the Mizo Marriage Divorce and Inheritance Act, 2014*

11. The predecessor Court has maintained the suit. No further journey would be made.

## Issue No 2

*Whether the Defendant deserted and divorced the Plaintiff on "Peksachang" (Desertion).*

12. The Ld. Counsel for the Defendant rightly pointed out that nowhere the word 'Peksachang' is found under the Mizo Marriage, Divorce and Inheritance of Property Act, 2014. However, it is found that the conceptualization 'Peksachang' incorporated in Sec 3 (f) of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014 (*for short, hereinafter referred the Act.*) is synonym to "desertion". Hence, the same would not be taken to have affected merit of the whole case. Section 3 (f) of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014 says, "*Desertion means abandonment against the will of person charging it*". As per Section 13 (ix) of the same Act,

### **"Grounds for dissolution of marriage:**

- (1) Any marriage before or after the commencement of this Act, may, on petition presented to the Court either by the husband or the wife, be dissolved and a divorce decree be granted on the following grounds:
  - (i).....
  - (ix) the respondent has deserted the petitioner for at least two years immediately preceeding the presentation of the petition.

13. In ***Savitri Pandey v. Prem Chandra Pandey*** reported in 2002 AIR SCW 182: [2002 (2) GLR 1369 (SC)], the Hon'ble Supreme Court in Para 7A on page 187 has observed as under:

*"Desertion" for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that others consent and without reasonable cause. In other words, it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of thing. Desertion, therefore, means withdrawing from the matrimonial obligation, i.e not permitting or allowing and facilitating the cohabitation between the parties..."*

14. First of all, in the present case, it appeared from the evidence that there was *factum deserdendi*. The Defendant had left the matrimonial home in the year 2010. The same

was not denied by the Defendant as well. There was a fact of separation. There was physical separation of the Parties.

15. Secondly, regarding *animus deserendi*, from the evidence, it is apparent that the Defendant had taken back her matrimonial properties on 06.07.2010 from the matrimonial home. The Defendant also admitted that on 06.07.2010 she and other five relatives went to Ratu and took some of her properties from her matrimonial home. There were also two ocular witnesses seeing the marital properties taking out from the matrimonial home. *PW 4 Lalbiakmawia Zote* deposed that his late father was the Defendant's 'Pazawn'. When the Defendant got married to the Plaintiff, she was staying at his father's house and eventually attended the marriage ceremony out of his father's house. He with his family visited Ratu during July 2010 and stayed at his father's home. Whilst staying there, the Defendant and some other persons on 06.07.2010 visited his father and asked him to help in taking out the marriage properties from the Plaintiff's house as the Defendant was not willing to stay with the Plaintiff's family. As directed by his father, he and some other persons went to the Plaintiff's house by his father's Gypsy and a Taxi which had been brought by the Defendant from Aizawl. He himself drove the Gypsy and took out the marriage properties including mattress, suitcase which contains some clothing, dressing table, blanket, metal-box, mosquito-net and 'Em and Hnam' (Mizo traditional basket) from the Plaintiff's house. The Defendant's properties were kept in the said Gypsy and went back to his father's house. The same were kept there for sometime. On his cross-examination, he admitted that he did not know the Defendant's intention whilst taking out her marriage properties from the Plaintiff's house on that day. However, he denied that the Defendant took out from the matrimonial house only the properties necessary for immediate use. *PW 3 Shri Zoremsiama* also deposed that as he was physically ill health, unable to work in the field, he usually stayed at home and used to visit and step over in the Plaintiff's house a number of times even in a single day. The Defendant with her relatives came to Ratu on 06.07.2010 and he was staying at home on that day. He looked out of the window and saw the Defendant and her relatives taking out her marriage properties from the house of the Plaintiff including mattress, blankets, dressing table, suitcase, metal-box, mosquito-net and 'Em & Hnam' (Mizo traditional basket), loading the said items on the two vehicles brought by them and leaving it. He immediately went to the Plaintiff's house and saw that all the marriage properties of the Defendant were gone and the Plaintiff was not present at home on that day. On that day, the Defendant, Lalbiakthara Zote and other three

persons went to the Plaintiff's house by one Gypsy and a Taxi. Hence, it is a crystal clear that the Defendant on 06.07.2010 took out *all* or *some* of the marital properties from her matrimonial house. However, the point to be considered is *animus deserendi* (the Defendant's intention of desertion). In ***Lachman v. Meena AIR 1964 SC 40***, the Supreme Court interpreted that *desertion in its very essence means the intentional permanent abandonment by one spouse of the other without that other's consent and without reasonable or just cause or justification*.

16. The Defendant strongly argued that she had no intention of deserting and divorcing the Plaintiff rather wanted restitution of conjugal rights. Her lone brother witness (DW 2) backed the Defendant. No doubt, living away in order to get medical treatment may not be a ground of desertion. In the meanwhile, the Defendant deposed that when the Plaintiff told her to go back to Ratu from Aizawl, she could not go as she was carrying pregnancy. However, soon after that before she gave birth a child, she went to Ratu village and collected the matrimonial properties on 06.07.2010. This showed that she was physically fit to go back to the matrimonial home. In fact, the child was born only on 10.09.2010. No doubt, no intention, attempt, or measures taken to rejoin the matrimonial home were found on the part of the Defendant. Rather, the wife without informing her husband took away her matrimonial properties from the matrimonial home on 06.07.2010 and left for Aizawl. It was considered to be a case of desertion by the wife. It was found in ***Chintala Venkata Satyanarayana Rao v. Chintala Shyamla AIR 2003 AP 322*** that the wife left the marital home with intention to permanently forsake the marital ties. The Court found husband entitled to get divorce based on wife's desertion.

17. The Defendant in her examination-in-chief deposed that whilst staying with her biological mother at College Veng, Aizawl, she talked to the Plaintiff through telephone and the Plaintiff told her to move back to her matrimonial home. However, the Defendant on 06.07.2010 took out her matrimonial properties including mattress, blankets, suitcase which contains some clothing, dressing table, blanket, metal-box, mosquito-net and 'Em and Hnam' (Mizo traditional basket) in absence of her Plaintiff husband. In fact, from the evidence, it appeared that none forced the Defendant to take out her marriage properties. Again, it appeared that when the plaintiff directed the Defendant to go back to the matrimonial home from his (Plaintiff) sister rented house, the Defendant refused it and instead joined her mother and took out important documents including *Marriage certificate*. This also depicted the Defendant's intention to

desert the Plaintiff. Further, when the Defendant went back to Ratu on 06.07.2010, she did not go direct to her matrimonial home but seek help first from her "Pazawn" to take out the marriage properties. The matrimonial properties, which had been taken back by the Defendant, were not considered the basic requirements or needs for daily living now a days in the Mizo society. It included Em and Hnam (Mizo Traditional Basket). Hence, the Defendant's *conduct* clearly depicts her intention to desert the Plaintiff. All these reveal the intention of the Defendant leaving her matrimonial house permanently. Hence, there was coexistence of the *factum* and *animus* in the present case.

18. Thirdly, on reading carefully the entire evidence, no sufficient cause for leaving the matrimonial home was found. The Defendant deposed that as instructed by her husband, she took out some of her belongings as she needed it urgently. However, this was supported or corroborated by none. Again, the Defendant deposed that despite attempt, her father-in-law disallowed her to stay at her matrimonial home in absence of her husband. However, the Defendant's lone witness who is also her brother during his cross-examination deposed that it was a fact that the Plaintiff's father did not tell the Defendant through telephone that she was not allowed to go back to her matrimonial home. Again, the lone Defendant's witness during his cross-examination admitted that he was a blind man and what he had stated were what he had heard from the Defendant. Apart from this, neither ill-treatment nor cruelty was found on the part of the Plaintiff and his family. Hence, after giving anxious consideration, no sufficient cause for leaving the matrimonial home is found.

19. Fourthly, it also appeared that the Defendant obtained no consent of the Plaintiff before leaving her matrimonial house and taking out the marriage properties. The Defendant simply deposed that as instructed by her Plaintiff husband, she took out some of her belongings as she needed it urgently. The same was totally denied by the Plaintiff. However, the Defendant in order to strengthen her stand produced neither witness nor documentary evidence. The Defendant on her examination-in-chief deposed that whilst staying at College Veng, Aizawl with her biological mother, her Plaintiff husband told her to move back to her matrimonial home. Hence, it is clear that the Plaintiff gave no consent to the Defendant.

20. Furthermore, no *willful neglect* was found on the part of the Plaintiff to have caused leaving the matrimonial home or desertion. The husband was not found to have

intentionally ignored or willfully did not take care of the wife before the wife took back her matrimonial properties. The Defendant deposed that whilst staying with her mother at College Veng, Aizawl, the Plaintiff came home on leave without informing her. The Plaintiff did not even visit her. The Plaintiff also admitted during his cross-examination that he came home on leave in August 2010, he did not visit the Defendant. However, it appeared that when the Plaintiff came home on leave in the month of August 2010, the Defendant had already taken out the marriage properties from the matrimonial home on 06.07.2010. Hence, the reason for not paying visit was acceptable. Apart from the above, it is found that the Defendant has deserted for more than a continuous period of two years. The Defendant was found living apart from her husband since the year 2010.

### **Issue No 3**

*Whether the Defendant took back all her personal/matrimonial properties from the Plaintiff's house after divorce.*

21. From evidence, it appeared that before taking out the matrimonial properties from the matrimonial house by the Defendant, no formal dissolution of marriage was found. Hence, it could not be said that the Defendant had taken back all her personal/matrimonial properties from the Plaintiff's house after divorce.

### **Issue No 4**

*Whether the Defendant was not allowed to stay in the matrimonial house by the Plaintiff's parents.*

22. The defendant deposed that she was not allowed by her father-in-law to go back to her matrimonial home in absence of the Plaintiff. She then talked to the Plaintiff through a telephone from Aizawl and the Plaintiff told her to move back to her matrimonial home. Despite attempt, her father-in-law disallowed her to stay there in absence of her husband. However, the only Defendant witness Shri Lalvulluaia (brother of Defendant) deposed on his cross-examination that it was a fact that the Plaintiff's father did not tell the Defendant through telephone that she was not allowed to go back to her matrimonial home. Hence, the Defendant's statement was neither corroborated nor backed. The Defendant simply deposed that her father-in-law disallowed her to stay in the matrimonial house in absence of her husband. In fact, no intention, attempt, or measures taken by the Defendant to go back to the matrimonial home were found on the part of the Defendant.

## **Issue No 5**

*Whether the Plaintiff is entitled prayer.*

23. In the light of the above discussion and observation, the Plaintiff is entitled to the relief claim for declaring that the Defendant divorced the Plaintiff by desertion (Peksachang). However, with regard to the claim for declaring that the Defendant is not entitled to any maintenance from the Plaintiff, this Court opined that the present case is a divorce suit being registered as Divorce Suit No 857 of 2015. The Plaintiff prayed for divorce basing desertion as a ground. Therefore, as to whether the Defendant is not entitled to any maintenance from the Plaintiff is considered to be an issue outside the present suit.

## **ORDER**

24. In the light of the above discussion and observation, it is hereby declared that Defendant Smt. Lalbiakpari D/o Kawlzingi R/o College Veng, Aizawl, Aizawl District has divorced Plaintiff Shri B.G Lalnunfela S/o H. Lalbiakliana R/o Ratu, Aizawl District P/A Zuangtui Chhim Veng, Aizawl by way of 'Desertion' (Peksachang) on 06.07.2010.

25. Accordingly, issue Divorce Certificate to the Plaintiff on the ground of desertion.

26. The Parties shall bear their own costs

27. With the above order, the present case stands disposed of.

**Given under my hand and seal of this Court on this day of the 14<sup>th</sup> August, 2017 Anno Domini.**

Sd/- H LALDUHSANGA  
Civil Judge - II  
Aizawl, Mizoram

Memo No.....:

Dated Aizawl, 14<sup>th</sup> August, 2017

Copy to:-

1. Shri B.G Lalnunfela S/o H. Lalbiakliana R/o Ratu, Aizawl District P/A Zuangtui Chhim Veng, Aizawl through Counsel Shri C Zoramchhana, Advocate.
2. Smt. Lalbiakpari D/o Kawlzingi R/o College Veng, Aizawl, Aizawl District through Counsel Shri W Sam Joseph, Advocate.
3. Judicial Section.
4. Case record.
5. Guard file.

**PESHKAR**