

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM**

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

**Regular First Appeal No. 32 of 2014
arising out of H.C. No. 1341 f 2013**

Shri Lalvela
S/o Thanghrima (L),
R/o Dinthar-II, Aizawl. Appellant

-Versus-

Smt Roziki
R/o Dinthar, Aizawl Respondent

APPEARANCE

For the appellant : Shri Saurabh Pradhan, Advocate.

For the respondent : Shri C. Lalrinchhunga, Advocate.

Hearing : 9.2.2015
Order delivered on : 16.2.2015

ORDER

1. This is a memorandum of appeal filed under Section 17 of the Mizoram Civil Court for setting aside and quashing the impugned the Order dated 27.8.2013 passed by the learned Civil Judge, Aizawl in Heirship Certificate Case No. 1341 of 2013 whereby the respondent was declared as legal heiress of late Thanghrima in respect of the land covered by LSC No. 452 of 1982 situated at Dinthar, Aizawl and for declaring him as legal heir being the youngest son of late Thanghrima for the landed property stated above in accordance with the law.

2. The appellant's case briefly stated is thus:

The appellant is the youngest son of late Thanghrima who left behind the landed property covered by LSC No. 452 of 1982 situated at Dinthar Veng, Aizawl with the Assam type building standing thereon. Smt. Hrangluti is his mother. The survived sons and daughters of his parents are as follows; (a) Chawnghluna, (b) Zaithanpuui, (c) Lalvela (all residents of Dinthar, Aizawl), (d) Thangrotluangi (resident of Bawngkawn, Aizawl) and (e) Rebecca Lalrinchhani (resident of Dinthar, Aizawl). Thereafter, with the respondent the late Thanghrima has two daughters, namely, (a) Zonunmawii and (b) Lalchhandami. Late Thanghrima came to live separately since both his wives had separated him. As a result, the appellant maintained his father late Thanghrima till his death. The appellant being the youngest son of his father applied for Heirship Certificate in respect of the land covered by L.S.C. No. 452 of 1982 and the Heirship Certificate case No. 1637 of 2013 was issued in his favour by the learned Senior Civil Judge Aizawl on 4.11.2013. After obtaining the Heirship Certificate, the appellant attempted to mutate the land in question sometime in the month of September, 2014. But, on coming to know that the Heirship Certificate had already been issued in favour of the respondent without his knowledge on 27.8.2013 by suppressing the material facts which is against the principles of natural justice, the principles of equity and contrary to the Mizo Customary law. Hence, the appellant preferred this appeal petition on the following inter alia grounds:-

a) For that the application for Heirship Certificate was made by the respondent knowingly and intentionally suppressing the material fact that the appellant is the youngest son of late Thanghrima which he has entitlement to be declared as legal heir of his father late Thanghrima according to the Mizo Customary

law. The appellant admitted that he had signed No Objection Certificate for application of succession certificate to be submitted by the respondent in respect of the service benefits of late Thanghrima keeping in view that she would not claim the landed property in question.

b) For that the Order dated 27.8.2013 for issuing the Heirship Certificate No. 1341 of 2013 was passed without notice to the appellant causing serious injustice and prejudice to him.

c) For that the Order dated 27.8.2013 for issuing the Heirship Certificate No. 1341 of 2013 was passed contrary to the mizo custom inasmuch as the respondent cannot be legal heir on the basis of No Objection held from her two daughters.

d) For that there was no valid marriage between the respondent and late Thanghrima in the eye of law, as a result, she has no loco standi to apply heirship in respect of the landed property in question.

e) For that the Order dated 27.8.2013 is not sustainable in law inasmuch the application for heirship was neither verified nor supported by affidavit of the respondent to substantiate her claim.

3. In view of law and facts stated above, according to the appellant, the Order dated passed by the learned Civil Judge is liable to be set aside and quashed, and made a prayer to cancel the Heirship Certificate No. 1341 of 2013 issued in favor of the respondent. However, it is also the prayer of the petitioner that he may be declared as legal heir of his father late Thanghrima in respect of the landed property in question.

4. I heard the learned Counsel Shri Saurabh Pradhan appearing for the appellant and learned Counsel Shri C. Lalrinchhunga for the respondent.

5. The first question that arises for consideration in this appeal is whether the appellant has a loco standi to file appeal. It appears from the provision of Section 96 of CPC, a person who is not a party to a decree or order may with the leave of the Court can prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. In the case before the learned trial Court, the appellant was not made as a party in H.C. No. 1341 of 2013. As a result, by the order passed by the learned Civil Judge, the appellant is prejudicially affected inasmuch as Heirship Certificate was obtained by the respondent for the landed property in question covered by L.S.C. No. 452 of 1982. Hence, the appellant has a loca standi to file appeal in view of the position of law.

6. The second question put before me for consideration is that whether the order dated 27.8.2013 passed by the learned Civil Judge is sustainable in the eye of law. The Order 27.8.2013 passed by the learned Lower Court for issuing Heirship Certificate in favor of the respondent was without notice to the appellant. It is admitted fact the appellant was not a party in Heirship Case No. 1341, which according to me is, against the principles of natural justice. Hence, the order passed by the learned Lower Court is not sustainable.

7. The third question for consideration is whether the order dated 4.11.2013 passed by the learned Civil Judge in H.C. No. 1637 of 2013 is barred by the principles of Resjudicata. Since the Order under challenge passed by the learned Senior Civil Judge had been passed before the

order dated 4.11.2013 in H.C. No. 1341, the latter order has no force of law in view of the principles of Resjudicata.

8. In the result, I find that there is merit in the appeal. Accordingly, the appeal is allowed. The Order dated 27.8.2013 in H.C. No. 1341 of 2013 and the Order dated 4.11.2013 in No. 1637 of 2013 are set aside and quashed. However, the Heirship Certificate Case No. 1341 of 2013 is remanded back to the trial Court with a direction to give sufficient opportunity to the appellant to present written objection and thereafter decide the application in accordance with the law which was also the consensus prayers of the rival parties. It is needless to say that that on presentation of written objection by the opposite party, if facts alleged by the applicant are controverted, then 'facts in issue' may arise before the Court to answer them on the basis of evidence adduced by the parties.

9. Parties are directed to appear before trial Court within 30 days from today. The opposite party shall present his written objection within one week of his appearance before trial Court.

10. With the observations and directions, this appeal stands disposed off.

11. No order as to cost.

Order is pronounced and delivered in open court on this 16th day of February, 2015 under my hand and seal of this court.

Sd/- VANLALENMAWIA

Addl. District Judge,
Aizawl Judicial District,
Aizawl, Mizoram

Memo No.____/ADJ(A)/2015 : Dated Aizawl, the 16th February, 2015

Copy to: -

1. Lalvela through Counsel Mr. Saurabh Pradhan, Advocate
2. Roziki through Counsel Mr. C. Lalrinchunga, Advocate.
3. District Judge, Aizawl Judicial District, Aizawl.
4. Sh. Thomas Lalrammawia, Civil Judge, Aizawl.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R