

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
AIZWAL BENCH

RSA No. 1 of 2013
with
C.M. Appeal No. 2 of 2013

Tlanghmingthangi
W/o Ramnghinglova (L)
R/o Khat,a Aizawl.

.....Appellant

-Versus-

1. Master Lalringngheta
S/o Ramnghinglova (L),
2. Miss Lallawmsangi
D/o Ramnghinglova (L) both Minors
Through their Mother Smt. Lalmuanpuii
R/o Zotlang, Aizawl

.....Respondent

3. Ms.Zothanpuii Ralte,
D/o Ramnghinglova (L),
Upper Republic, Aizawl.

B E F O R E
THE HON'BLE MR.JUSTICE P.K. SAIKIA

For the Appellant	Mr. C. Lalramzauva, Sr. Adv. Mr. A.R. Malhotra, Mr. K. Laldiniana, Mr. Zoramchhana, Ms.Lalramsangzuali, Ms.Lalhruaitluangi Chhangte,Adv.
For the respondent	Mr. B. Lalramenga, Adv.
Date of hearing	13.06.2013
&		
Date of judgment	13.06.2013

J U D G M E N T A N D O R D E R (Oral)

1. Heard Mr A.R. Malhotra. learned counsel for the appellant. Also heard Mr. B. Lalramenga, , learned counsel appearing for the respondents. This court by its sorder dated 31.01.13 has formulated the following question of law in this appeal. The question of law so formulate is under :-

“Whether an appeal in the form of Regular First appeal would lie before the District Judge, Aizawl from the judgment and order dated 16.04.2012 passed by the learned Senior Civil Judge-I, Aizawl in RFA NO.30/2009.”

2. The brief facts necessary for disposal of the present appeal are that appellant herein, being the petitioner, had applied for Heir-ship certificate in respect of debt and security left by her husband, since deceased, by the way of filing a proceeding in the Sub-District Council Court, Aizawl. Said proceeding was registered as H.C. No. 125/2007.

3. On being summoned, the opposite parties therein (who are respondents in this appeal) entered appearance through their mother, their natural guardian and contested the proceeding. The Sub-District Council Court, Aizawl disposed of the proceeding declaring both the petitioner and the opposite parties in HC No.125/2007 as being the legal heirs in respect of the petitioners left by the deceased husband of the petitioner and such properties were apportioned between them as shown in the operative part of the judgment, vide judgment and order dated 08.09.2009 passed by the Sub-District Council Court, Aizawl in HC No. 125/2007.

4. Being dissatisfied with the judgment and order dated 8.09.09 rendered by the Sub-District Council Court, Aizawl, the opposite parties (respondents herein) preferred an appeal before the District Council Court, Aizawl. During the pendency of the said appeal, an administrative decision was taken by this High Court whereby the cases/suits pending in the District Council Court were ordered to be transferred to the court of Sr. Civil Judge.

5. Accordingly, the appeal pending before the District Council Court was transferred to the Sr.Civil Judge. Aizawl which was re-registered in the court of Sr.Civil Judge, Aizawl as RFA No.31/2009. While disposing of such appeal, the Sr.Civil Judge, Aizawl declared both the parties as legal heirs in respect of the properties left by the deceased husband of the petitioner in HC No.125/2007 but with some modifications as to the extent of interest of the heirs of the aforesaid deceased in the properties left by him.

6. The respondents in RFA No.31/09 still being dissatisfied with the order passed by Sr.Civil Judge Division in RFA No.31/09 on 16.04.12, preferred an appeal before the Addl. District Judge, Aizawl u/s 17(2) & u/s 10(2) of the Mizoram Civil Courts Act, 2005, read with section 151 Civil Procedure Code (in short CPC. Said appeal was registered as RFA No.12/2012. The appellant herein also contested the appeal which was registered as RFA No.12/2012.

7. Said appeal was finally heard and disposed of by the learned Addl. District Judge, Aizawl vide its judgment dated 08.11.12 whereby the learned Addl. District Judge, Aizawl reversed the earlier judgment passed by Sr. Civil Judge, Aizawl in RFA No.31/09 on 16.04.12.

8. Being highly aggrieved by the aforesaid judgment, rendered by Addl. District Judge, Aizawl in RFA No.12/12 on 08.11.12, the appellant (who was the

petitioner in HC No.125/2007) has preferred this appeal and on hearing the parties, this court framed aforesaid question of law.

9. It may be stated that the question which has been framed by this court in this proceeding had also come up for consideration in CRP (Art 227) No.12/2012. This court after threadbare discussion of the relevant provisions of law including section 17(2) as well as section 10(2) of the Mizoram Civil Court Act, 2005 has concluded that under the law, a second appeal can be filed only before the High Court and High Court alone, and that too, on question of law only, vide judgment and order dated 23.05.2013 passed in CRP (Art 227) No.12/2012. Therefore, District/Addl. District Judge cannot entertain an appeal against an order/judgment, passed by Sr. Civil Judge exercising appellate jurisdiction.

10. The relevant part of the judgment is reproduced below :-

“Carefully perusing the entire facts and circumstance of this case, it is found that the learned Addl. District Judge committed jurisdictional error by entertaining a first appeal against the judgment and order in a first appeal i.e. RFA No.20/2012. By entertaining RFA No.21/2012 against the judgment and order passed in RFA No.20/2012, the learned Addl. District Judge, Aizawl has violated the provision of section 17(2) of the Mizoram Civil Courts Act, 2005”.

11. Since it has already been held that District Judge/Addl. District Judge cannot entertain an appeal preferred against the judgment and order, passed by the Sr. Civil Judge Division exercising appellate jurisdiction, the learned Addl. District Judge entertaining RFA No.12/12 (which is, in fact, a second appeal) committed a jurisdictional error which makes the entire proceeding illegal and unsustainable in law.

12. Consequently, in answering the question framed by this court in negative, this court set aside the judgment rendered by Addl. District Judge in RFA No. 12/12 on 8.11.12.

13. It is needless to say that the aggrieved party, if so advised, may approach the appropriate forum against the judgment and order passed by Sr. Civil Judge in RFA No.31/2009 on processing such prayer in accordance with law.

14. In the result, the appeal is allowed. However, parties are left to bear their own cost.

JUDGE

Kevi