

(2011) 03 GAU CK 0011

Gauhati High Court (Aizawl Bench)**Case No:** Regular Second Appeal No. 10 of 2007

Smt. Thansiami

APPELLANT

Vs

Lalruatkima and Others

RESPONDENT

Date of Decision: March 9, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 - Rule 10, 109(10), 109(5), 6, 7

Citation: AIR 2011 Guw 97**Hon'ble Judges:** Madan B. Lokur, C.J**Bench:** Single Bench**Advocate:** C. Lalramzauva, A.R. Malhotra, Haulianthanga and J. Lalfakawma, for the Appellant; Ricky Gurung and H. Laltanpuia, for the Respondent

Judgement

Madan Lokur, C.J.

Under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 Village Courts have been created (Rule 6), Subordinate District Council Courts have been created (Rule 7) and one (now two) District Council Court has been created (Rule 10).

2. A person aggrieved by an order passed by the Village Court may file an appeal to the Subordinate District Council Court and a person aggrieved by a decision of the Subordinate District Council Court may file an appeal to the District Council Court.

3. Against the decision of the District Council Court, an appeal lies to the Gauhati High Court under Clause 3 of the Assam High Court (Jurisdiction Over District Council Courts) Order, 1954 provided that the valuation of the suit is Rs. 1000/- or more.

4. Clause 3 of the aforesaid Order does not require the framing of a question of law or any substantial question of law as provided in Section 100 of the Code of Civil Procedure. Notwithstanding with the above, the following substantial question of law is framed for consideration:

Whether the Appellant is entitled to inherit the properties of her deceased parents under Mizo Customary law and if so, whether that entitlement is taken away by the Chawmhlum Rokhawm?

5. It is necessary to state that reliance has been placed by learned Counsel for the Appellant on the Mizo Customary Law "codified" and translated in English sometime in April, 1957 by the Secretary, Mizoram District Council. The document relied on by learned Counsel for the Appellant was amended in 1960 and reliance is placed on Rule 109(10) dealing with the Mizo Customary Law of inheritance. The provision relied upon by learned Counsel reads as follows:

10. Ordinarily woman cannot inherit properties; however, if a person has daughters but not son, his daughters may inherit his properties. In the case of more than one daughter the youngest daughter will be given first preference as in the case of sons.

6. In the present case, the Subordinate District Council Court as well as the District Council Court came to the conclusion that the issue is governed by the Chawmhlum Rokhawm which is incorporated in Rule 109(5) of the document, This Rule reads as follows:

5. CHAWMHLUM ROKHAWM: (Inheritance of a person who was supported till death by the person who supported him). A person who has no natural heir and who is unable to support himself may invite one as his supporter and heir. The person so taken in will inherit his properties if he supported him till his death. For example, "A"s close relative refuses to support "A" and if "B" comes to stay at "A"s house and support him, then "B" will inherit "A"s properties. "B" will pay the balance of the marriage price of "A"s wife if any, and he will also support "A"s wife whether she is residing with him or in a separate house.

7. The Appellant was the original Plaintiff and filed a suit in the Subordinate District Council Court on the allegation that her father Darthangpuia died on 26-6-1999 and her mother Germantawni died on 17-6-2000. The parents of the Appellant had 3 sons and 3 daughters and Appellant is the only surviving child of her parents." According to the Appellant she was entitled to inherit the properties of her parents to the exclusion of the children of her deceased brothers and sisters. The claim of the Appellant was contested by Respondent No. 3 only who is the son of the Appellant"s sister. In other words, Respondent No. 3 is the grand son of the Appellant"s parents and her nephew.

8. The following issues were framed by the Subordinate District Council Court on 7-10-2004:

(i) Whether there is any cause of action in favour of the Plaintiff and against the Defendants.

(ii) Whether the Petitioner of the Defendants is entitled to be declared the legal heir of Sh. Darthangpuia (L) and Smt. Germantawni (L) in respect of the land and building covered by LSC No. 722/73 which is located at Zarkawt.

9. After recording evidence, the Subordinate District Council Court came to the conclusion that no case was made out by the Appellant and the claim of Respondent No. 3 to inherit the property of his grand parents was fully justified and that Respondent No. 3 was entitled to remain in possession of the landed properties of his grand parents.

10. The Subordinate District Council Court took note of the testimony of the parties including the submission of the Appellant that a verbal Will was executed in her favour by her father, and the submission of Respondent No. 3 that there was a Will in his favour by his grand father. The Subordinate District Council Court did not accept the execution of any oral or written Will and fell back on Mizo Customary Law to decide the claims of the contesting parties.

11. The Subordinate District Council Court took note of the testimony of the Appellant in her examination-in-chief that she had looked after her parents during their lifetime, particularly her mother. However, in the cross-examination) the Appellant stated that she got married in the year 1964 and never returned to her parental home nor had she been divorced."According to learned Counsel for the Appellant what this means is that the Appellant did not return to her parental house due to any matrimonial dispute. It does not mean that the Appellant left her parental home, never to return.

12. Be that as it may, in the subsequent part of her cross-examination, the Appellant stated that her mother (Germantawni) died at the ripe age of 83 years and she was looked after by the Defendants who stayed with her. Before the Defendants stayed with her mother, Respondent No. 3 had looked her mother as much as he could. It is also further stated in the cross-examination that Respondent No. 3 stayed with Germantawni till her death and that he stayed with her with the knowledge and permission of the Appellant.

13. Rule 109(5) of the Mizo Customary Law dealing with inheritance makes it clear that a person who has no natural heir and who is unable to support himself may invite one as his supporter and heir. There is no dispute that Respondent No. 3 being a grand child of Darthangpuia and Germantawni was a natural heir of his grandparents but learned Counsel for the Appellant submits that his client, being the only surviving daughter of Darthangpuia and Germantawni, has a better claim to inherit the properties of her parents.

14. Rule 109(5) goes not to state that if a person has no natural heir, then the person he takes in to support him will inherit his properties. In the present case, even though the Appellant was a natural heir, she did nothing to support her parents. In that sense, Darthangpuia and Germantawni had no natural heir, other than Respondent No. 3 to support them. Rule 109(5) postulates that a natural heir will support his/her parents and if the natural heir does not do so, the person supporting the deceased will inherit his property.

15. There is nothing to suggest that the Appellant was with her parents, particularly her mother till her death. on the other hand, on the statement of the Appellant in cross-examination, it is clear that Respondent No. 3 Was with his grand parents, particularly the grand mother till her death. The illustration in Rule 109(5) of the Mizo Customary Law makes it clear that even if there is a natural heir, a person who supports the person until his death would inherit the properties of that person. The illustration given in Rule 109(5) brings out that if a close relative refuses to support a person, then the person who supports the deceased will inherit the properties of the deceased. In this case, although there is no explicit refusal by the Appellant to support her parents, particularly her mother, it is implicit in her conduct and is evident from her testimony that she did not look after her mother until her death and instead it is Respondent No. 3 who looked after his grand parents till their death. As such, Respondent No. 3 alone is entitled to inherit the properties of his grand parents under Chawmhlum Rokhawm.

16. I do not find any other possible interpretation of Mizo Customary Law from the evidence on record so as to overrule the view taken by the Subordinate District Council Court which has been upheld by the District Council Court.

17. Reliance placed by learned Counsel for the Appellant on Clause 109(10) does not advance his case any further since it only clarifies that ordinarily a daughter could inherit property if a person does not have any son. There is no dispute that the Appellant may claim inheritance of the properties of her parents, but on the facts of this case, both the Courts below have concurrently come to the conclusion that the Appellant does not satisfy the conditions laid down by Mizo Customary Law. Rather, it is Respondent No. 3 who satisfies the conditions laid down by Mizo Customary Law particularly Chawmhlum Rokhawm and therefore, it is Respondent No. 3 alone who is entitled to inherit the properties of his grand parents.

18. The substantial question of law is answered accordingly and the appeal is dismissed.

19. The Trial Court Records be sent back immediately.