

GAHC030006972023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

RSA/8/2023

1. Lalhlimpuii

D/o Lalrinsangi

R/o Electric Veng, Aizawl

2. Lalbiakkimi

D/o Lalrinsangi

R/o Electric Veng, Aizawl

.....Appellants

-Versus-

1. Sh. C. Lalremliana

S/o Biakchhunga (L)

R/o Bethlehem Vengthlang, Aizawl

.....Respondent

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

Advocate for the appellants: Mr. A. R. Malhotra, Advocate

Advocate for the respondent: Mr. Raymond Lalbiakzama, Adv

Date on which judgment is reserved : 23.03.2026

Date of pronouncement of judgment : 27.03.2026

Whether the pronouncement is of the

Operative part of the judgment? : No

Whether the full judgment has been

Pronounced? : Yes

JUDGEMENT AND ORDER (CAV)

Nelson Sailo, J

Heard Mr. A. R. Malhotra, learned counsel for the appellants and Mr. Raymond Lalbiakzama, learned counsel for the sole respondent.

[2.] This is a second appeal filed by the appellants by invoking Section 100 of the Code of Civil Procedure (CPC) against the decision of the Lower First Appellate Court vide order dated 06.10.2023 passed in RFA No.8 of 2023, wherein, the first appeal preferred by the instant appellants have been dismissed. By filing the first appeal, the appellants had challenged the order dated 23.11.2022 passed by the Code of Senior Civil Judge-III, Aizawl in Probate Case No.24/2022, by which the Will left behind by Sri Biakchhunga, father of the respondent dated 22.10.2019 was probated in favour of the respondent. Therefore, by filing this second appeal, the appellants have challenged both the order passed by the Lower Appellate Court as well as by the Probate Court.

[3.] The dispute between the parties pertains to a certain property covered by LSC No.70/2003 located at Electric Veng, Aizawl with residential building standing thereon. The said property was bought by Sri. Biakchhunga and his third wife Smt. Laldangliani in the year 1999. Sri. Biakchhunga had three wives and the instant respondent is his son born out of his wedlock with the first wife. As per the appellants, they are the nieces of Smt. Laldangliani who is the third

wife of Sri. Biakchhunga. After the death of Sri. Biakchhunga on 21.11.2019, Smt. Laldangliani requested the appellants to come and live with her on the said property and so while they were all living together in the said property, Smt. Laldangliani expired on 03.08.2022. Smt. Laldangliani during her lifetime, had obtained Heirship Certificate No.115 of 2020 for the said property vide order dated 03.02.2020. The Land Settlement Certificate was then mutated in her name on the strength of the Heirship Certificate. However, she expired on 03.08.2022 bequeathing the property to the appellants.

[4.] It is the case of the appellants that the sole respondent served a legal notice to their mother on 15.08.2022 accusing Smt. Laldangliani (late) of illegally and secretly obtaining Heirship Certificate for the property in question while asking the notice receiver to stop the development of the property in question and to vacate the same and also to surrender the LSC to the respondent. After serving the legal notice, the respondent submitted an application for probate of the Will dated 22.10.2019 said to have been left behind by Sri. Biakchhunga (late). Upon filing of the application for probate of the said Will on 31.08.2022, the Court of Senior Civil Judge-III registered the same as Probate Case No.24/2022 and thereafter, fixed 14.10.2022 for the appearance of the applicant i.e., the present respondent. Consequently, vide order dated 23.11.2022, the Will was probated in favour of the respondent. Aggrieved with the same, the present appellants filed the Regular First Appeal before the Lower Appellant Court which however came to be dismissed vide order dated 06.10.2023. Aggrieved, the present second appeal has been filed.

[5.] This Court vide order dated 11.06.2024 admitted the appeal on the following substantial questions of law:

“1. Whether the decision of the First Appellate Court that non-issuance of notice to the

Appellants by the Trial Court in Probate Case No.24/2022 did not prejudice them despite being in possession of the disputed property is perverse and illegal.

2. Whether the First Appellate Court has the jurisdiction to decide the question of title of bequeathment of the disputed property in dispute in a probate case.

3. Whether the decision of the First Appellate Court being perverse is liable to be set aside and quashed.”

[6.] Mr. A. R. Malhotra, learned counsel for the appellants submits that the learned Trial Court as well as the Lower First Appellate Court erred in law in not issuing notice to persons interested in the property sought to be probated on the strength of the Will. He submits that the same has resulted in deprivation of the right to contest the property in question by persons interested including the appellants. He submits that the Lower First Appellate Court while considering this aspect erroneously came to the conclusion that notice need not be served. He submits that the interest of the party concerned howsoever remote it may be, the party must be given a chance to contest the probate case. Therefore, findings of both the Courts below should be interfered with by this Court since the decision taken by them is erroneous. In this connection, the learned counsel relies upon the decision of the Apex Court rendered in ***G. Gopal Vs. C. Baskar & Ors. (2008) 10 SCC 489.***

[7.] The learned counsel further submits that the Lower Appellate Court committed error in law by travelling beyond its jurisdiction. All that was required was to be decided was as to whether the Will in question had rightly been probated by the Trial Court but instead the learned Lower Appellate Court proceeded to decide the title over the suit land in question. The same is not permissible in law when it comes to a decision to be taken by a Probate Court or a Court dealing with Succession case. Therefore, even on this count, the

impugned orders passed by the Courts below should be interfered with by this Court. In this connection the learned counsel relies upon the case of ***Chiranjilal Shrilal Goenka Vs. Jasjit Singh & Ors. (1993) 2 SCC 507*** and a Division Bench Judgment of this Court rendered in ***Keshab Prasad Shah Vs. Ram Pujan Shah & Ors. (2001) 3 GLT 436.***

[8.] Mr. A. R. Malhotra, learned counsel for the appellants thus submits that under the facts and circumstances of the case, the impugned orders passed by the learned Courts below should be set aside and the matter remanded back for consideration afresh by issuing notice to the parties interested including the appellants.

[9.] Per-contra, Mr. Raymond Lalbiakzama, learned counsel for the respondent by referring to Section 31 of the Mizo Marriage, Divorce and Inheritance of Property Act, 2014 submits that the question of resorting to other means will come only if there is no Will left behind by the testator. Whereas, in the instant case, Shri Biakchhunga (late) had left behind a Will in favour of the respondent and therefore, there was no requirement for the Probate Court to issue notice. He submits that the appellants have not contributed into the acquisition of the property in question in any manner and that they have come to reside with Smt. Laldangliani (late) during her lifetime on her request after the death of Shri. Biakchhunga. Therefore, the appellants are only strangers to the property in question and cannot have any claim whatsoever. He also submits that the Will has come into operation on the death of the testator and therefore, there is no requirement of issuance of any notice. Even if notice is issued, the same will not serve any purpose. He therefore submits that the appeal has no merit and the same should be dismissed.

[10.] I have heard the submissions made by the learned counsels for the

rival parties and I have perused the materials available on record.

[11.] This being a second appeal, the case is being considered on the three substantial questions of law formulated as reflected in paragraph No.5 of this order. Shri. Biakchhunga (late) and Smt. Laldangliani (late) during their lifetime acquired the property in question in the year 1999. Shri. Biakchhunga (late) predeceased his wife Smt. Laldangliani on 21.11.2019 and after his death, she applied for Heirship Certificate for the property in question through Heirship Certificate application No.115/2020. Her application was accordingly granted vide order dated 03.02.2020 and thereafter, the property was mutated in her name.

[12.] On the demise of Shri. Biakchhunga, Smt. Laldangliani requested the appellants who are her nieces to come and live with her and the appellants did so. Smt. Laldangliani later expired on 03.08.2022 bequeathing the land to the appellants. As already stated, the respondent on 15.08.2022 through his counsel gave a legal notice to the mother of the appellants alleging that Smt. Laldangliani (late) had secretly and illegally obtained Heirship Certificate and therefore, they have no right to remain in the property. The respondent being the natural and legal heir of his father Shri. Biakchhunga (late), he was the rightful heir and therefore they should stop all the on-going developments and vacate the landed property by surrendering the LSC to the respondent. Issuance of the notice would go to show that the respondent was aware of the fact that Smt. Ladangliani had obtained Heirship Certificate and through which the LSC was mutated in her name. She having expired on 03.08.2022, bequeath the land to the appellants who stayed with her ever since the death of Shri. Biakchhunga. They are also admittedly residing in the property in question till date. Therefore the learned Probate Court ought to have given them an

opportunity to contest the probate application irrespective of whether they have a better claim or otherwise. The Apex Court in **G. Gopal (Supra)** in the given facts of that case held that the parties interested in the estate of the testator, even it be a slight interest in the estate of the testator will be entitled to file caveat and contest the ground of probate of the Will of the testator.

[13.] Further, the learned Lower Appellate Court in considering the appeal filed by the appellants against the probate granted to the respondent also appears to have travelled beyond the jurisdiction of the Probate Court by coming to a finding that the appellants have no right to the ownership and title ship of the property in question. In this connection it may be mentioned that the Apex Court in **Chiranjilal Shrilal Goenka (Supra)** in the given facts of that case held that the Court of Probate has exclusive jurisdiction in granting probate but a Probate Court does not decide any question of title. Similarly, a Division Bench of this Court in **Keshab Prasad Shah (Supra)** by placing reliance upon the case of **Chiranjilal Shrilal Goenka (Supra)** amongst others held that a Probate Court can only go into the genuineness and the due execution of the Will and nothing beyond that.

[14.] In the given facts and circumstances of the case, this Court is of the considered view that the Courts below have committed error in granting probate of the Will without hearing the party/parties interested and also in dismissing the appeal filed against the grant of probate. Accordingly, the impugned order dated 23.11.2022 passed in Probate Case No.24/2022 and the order dated 06.10.2023 passed in RFA/8/2023 are hereby set aside and the matter remanded back to the Probate Court for fresh consideration. The substantial questions of law stands answered accordingly.

[15.] Since both the parties are represented before this Court, they are

directed to appear before the Court of Civil Judge Senior Division-III, Aizawl on 20.04.2026, whereafter, the learned Court below shall proceed with the matter and decide the probate application in accordance with law after giving reasonable opportunity to the parties to contest the matter.

[16.] With the above observations and direction, the appeal stands disposed of.

JUDGE

Comparing Assistant