A SMT. KAITHUAMI [L] THROUGH L.RS.

v.

SMT. RALLIANI AND OTHERS

(Civil Appeal Nos. 7159-7160 of 2008)

B APRIL 26, 2022

[L. NAGESWARA RAO AND B. R. GAVAI, JJ.]

Mizo Customary Law – Inheritance – Right of divorced C *daughter/Unmarried Granddaughter – District Council Court upon considering the factual matrix, particularly s. 109(3) and s. 109(10) of the Mizo Customary Law, observed that though as per the Mizo Customary Law, it is the youngest son, who would be entitled to inherit the property of his father; there is an ample* D *scope for distribution of the property in a fair and reasonable manner – The District Council Court further found that under the Mizo Customary Law, inheritance also depends upon the responsibilities carried out by the legal heir – It was found that the son was looking after his widowed mother – However, after his death, appellant No.4 (divorced daughter) came back to her* E *original home to look after her aged mother – The provision of Mizo Customary Law relating to 'divorced' (Hringkir) in the matter of inheritance would apply to her and her right to inheritance of her father's properties subsists by virtue of her being divorced (Hringkir) and coming back to the original family for looking* F *after the mother – Appellant No.4 looked after her mother till her death and also discharged the responsibility of erecting ceremonial tombstone for her mother – District Council Court found that since appellant No.4 had discharged her responsibility of looking after her mother till her death and was occupying the main bed and reassuming her father's clan title 'Hahu', her right to inherit her* G *father's properties could not be defeated – It further found that on the other hand respondent No.3 though a female, was grand-daughter from the male lineal descent of deceased – She was unmarried and purely a 'Hahu' in the line of P.S. Dahrawka – It found that her right to inheritance in the instant dispute was* H *safeguarded by the Customary Law in the absence of descendants*

having a better right for the purpose – The District Council Court therefore found that taking into consideration the principle of Mizo Customary Law of Inheritance and the spirit of equity, which is paramount to Mizo Customary Law, it was appropriate that the property be divided between appellant No.4 and respondent No.3 – The view taken by the District Council Court, on second remand, was based on the consideration of equity and the responsibility of a legal heir to look after the elders in the family – High Court was not justified in reversing the order of District Council Court.

Allowing the appeals, the Court

HELD: 1. The District Council Court, Aizawl, on second remand, upon considering the factual matrix, particularly Section 109(3) and Section 109(10) of the Mizo Customary Law, observed that though as per the Mizo Customary Law, it is the youngest son, who would be entitled to inherit the property of his father; there is an ample scope for distribution of the property in a fair and reasonable manner. The District Council Court, Aizawl has found that in case of a rich father, the property can be divided proportionately amongst the sons. The District Council Court further found that insofar as the female members of the family, who are already married and living in separate households are concerned, they are not entitled to any share. The District Council Court further found that under the Mizo Customary Law, inheritance also depends upon the responsibilities carried out by the legal heir. It has been found that till his death, Thanhnuna was looking after his mother. However, after his death, Thansangi Huha (appellant No.4) came back to her original home to look after her aged mother Kaithuami. It was found that the provision of Mizo Customary Law relating to 'divorced' (Hringkir) in the matter of inheritance would apply to her and her right to inheritance of her father's properties subsists by virtue of her being divorced (Hringkir) and coming back to the original family for looking after the mother. The District Council Court found that Thansangi Huha looked after her mother till her death and also discharged the responsibility of erecting ceremonial tombstone for her mother. The District Council

Court also found that after exclusion of the daughters of deceased P.S. Dahrawka and Kaithuami, who were married and living in separate households and one daughter of Thanhnuna, i.e., Laldinpuii, who was also married into a different clan, the contest was between Thansangi Huha (appellant No.4), the youngest daughter of deceased P.S. Dahrawka and Kaithuami, who after divorce came back to her house and was looking after her mother on one hand and Lalmuanpuii (respondent No.3), the other daughter of deceased Thanhnuna. [Paras 15 and 16][986-D-H; 987-A-C]

2. The District Council Court found that since Thansangi Huha (appellant No.4 herein) had discharged her responsibility of looking after her mother till her death and was occupying the main bed and reassuming her father's clan title 'Hahu', her right to inherit her father's properties could not be defeated. It further found that on the other hand Lalmuanpuii (respondent No.3), though a female, was grand-daughter from the male lineal descent of deceased P.S. Dahrawka. She was unmarried and purely a 'Hahu' in the line of P.S. Dahrawka. It found that her right to inheritance in the instant dispute was safeguarded by the Customary Law in the absence of descendants having a better right for the purpose. The District Council Court therefore found that taking into consideration the principle of Mizo Customary Law of Inheritance and the spirit of equity, which is paramount to Mizo Customary Law, it was appropriate that the property be divided between Thansangi Huha (appellant No.4) and Lalmuanpuii (respondent No.3). [Para 17][987-C-F]

3. The view taken by the District Council Court, Aizawl, on second remand, is based on the consideration of equity and the responsibility of a legal heir to look after the elders in the family. [Para 19][988-A-B]

Thansiami v. Lalruatkima and Ors. **(2012) 2 Gauhati Law Reports 309 – approved.**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7159-7160 of 2008.

From the Judgment and Order dated 07.11.2007 of the High Court of Gauhati, Aizwal Bench in RSA No.12 of 2006 and Cross Objection No.04 of 2006.

Robin Ratnakar David, Munawwar Naseem, Dhiraj Abraham Philip, Febin V. Mathew, Samuel David, Advs. for the Appellants.

Pragyan Pradeep Sharma, Neeraj Kumar Gupta, Kartikay Dutia, Ranjit Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Application for substitution to bring on record legal representatives of the deceased appellant No.3-Thanzami is allowed, subject to all just exceptions.

2. The present appeals challenge the common judgment and order of the Gauhati High Court, Aizawl Bench, dated 7th November, 2007, passed in RSA No.12 of 2006 with Cross Objection No.4 of 2006, vide which, the learned single judge of the High Court has allowed the said Second Appeal filed by the respondents herein and dismissed the cross-objection preferred by the appellants herein.

3. For appreciating the controversy in question, it will be appropriate to reproduce the family chart*, which is as under:

* Ed. Note: The family chart is on next page.


SMT. KAITHUAMI (L) THR. LR's & ORS. vs. SMT. RALLIANI & ORS.
CIVIL APPEAL NO. 7159-7160/ 2008
FAMILY CHART
PS Dahrawka (d. 5-3-1978)
Married 28-1-1927
Kaithuami (Petitioner through LR's, d. 6-1-1999)
Thansiami (P-1, d.12-4-2017)
T. Sailo
Thankhumi (P-2)
Thanzami(P-3)
D. Purkayashtha
Thansangi Huha (P-4)
Ramdiniliani(P-3A)
Lalchhanhimi (P-3B)
Lalsangliana Sailo (P-1A)
Lalhmangaiha Sailo (P-1B)
Laldingliani Sailo (P-1C)
Dr. Lalriniiana Sailo (P-1D)
Thanhnuna (d. 30-4-1996)
Ralliani (R-1)
Laldinpuii (R-2)
Lalmuanpuii (R-3)

4. P.S. Dahrawka and Kaithuami, through whom the parties herein are claiming inheritance, were married to each other on 28th January, 1927. Ten children were born out of the said wedlock, i.e., two sons and eight daughters. Out of the said ten children, one son died at the age of one and half year in the year 1940 and one daughter died a week after her birth.

5. Though in the judgment, the High Court has referred that the property in dispute was purchased by P.S. Dahrawka in the year 1972 by virtue of LSC No. AZL 56 of 1972, it is the contention of the appellants herein that the said property was jointly purchased by P.S. Dahrawka and Kaithuami in the year 1945. P.S. Dahrawka died on 5th March, 1978. At the time of his death, he was survived by his wife Kaithuami, only son Thanhnuna and seven daughters. All the daughters were married and living with their respective families. After his death, his youngest daughter, Thansangi Huha (appellant No.4 herein), was divorced and came to live with her mother Kaithuami in January, 1997. The son Thanhnuna, who died in the year 1996, was survived by his widow Ralliani and two daughters, namely, Laldinpuii and Lalmuanpuii, who are the respondents herein.

6. After the death of P.S. Dahrawka, the son Thanhnuna applied for the heirship certificate in his name in respect of the properties covered by LSC No. AZL 56 of 1972 left by his father, i.e., P.S. Dahrawka. His claim was based on the Mizo Customary Law of Inheritance, which provides that a son shall inherit the properties of a Mizo and if the deceased is survived by more than one son, the youngest son shall inherit the property. However, before his application for heirship certificate could be decided, Thanhnuna died on 28th April, 1996. After his death, his mother Kaithuami submitted an objection on 31st May, 1996. The Subordinate District Council Court, Aizawl dismissed the application of Thanhnuna for heirship certificate on 11th June, 1996 due to his death. His widow Ralliani (respondent No.1 herein) filed an application for restoration of application for heirship certificate filed by her husband-deceased Thanhnuna. The same was dismissed by the Subordinate District Council Court, Aizawl vide order dated 3rd July, 1996.

7. In the meantime, mother Kaithuami also filed an application being H.C. No.1275 of 1996 claiming heirship certificate in respect of the properties of her husband deceased P.S. Dahrawka. The said

A application was objected to by Ralliani and her two daughters. As such, the dispute came to be converted into a civil suit being Civil Suit No.13 of 1996 in the Court of Subordinate District Council Court, Aizawl. Vide judgment and order dated 7th August, 1997, the said suit came to be decreed in favour of the mother Kaithuami and she was declared the legal heir of her deceased husband P.S. Dahrawka in respect of the B disputed properties.

8. The respondents herein filed an appeal being C.A. No. 12 of 1997 before the District Council Court, Aizawl. The Appellate Court vide order dated 9th July, 2001 directed that the disputed property to be divided between four daughters of Kaithuami, i.e., respondents therein C (i.e. appellants herein) on one hand and three appellants therein (i.e. respondents herein) being legal heirs of Thanhnuna on the other hand.

9. The said judgment and order of the Appellate Court was assailed by the appellants herein before the High Court in RSA No.3 of 2001. The High Court vide judgment and order dated 13th May, 2003, observed D that there was no meaningful discussion on the legal entitlements of either of the parties in the changed situation following the death of the predecessors-in-interest of both the parties, and as such, remitted the matter to the First Appellate Court, Aizawl, i.e., District Council Court, Aizawl for deciding the appeal afresh.

E 10. On remand, the District Council Court, Aizawl disposed of the appeal vide judgment and order dated 10th July, 2003. As per the said judgment, only the appellants herein were held to be entitled to the property of deceased P.S. Dahrawka to the exclusion of the widow and daughters of deceased Thanhnuna (respondents herein). Being aggrieved thereby, F the respondents herein preferred RSA No. 9 of 2003 before the High Court. The High Court vide judgment and order dated 9th March, 2005 again remanded the case to the First Appellate Court, i.e., District Council Court, Aizawl to decide the matter afresh upon hearing the parties. The District Council Court, Aizawl, on remand, vide judgment and order dated 28th February, 2006, partly allowed the appeal in the following terms:

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"1) That Respondent No. (d) namely Smt. Thansangi Huha shall inherit.

(a) The main house named "AHIMSA" and

(b) the Assam type building on the roadside above H 'AHIMSA' adjacent in the south to RCC building on the

roadside including the land they are standing on covered by LSC AZL No.54/72.

2. The Appellant No.3 namely Smt. Lalmuanpuii Huha shall inherit:-

(a) RCC building on the roadside adjacent in the north to the Assam type building stated at (I) (b) above and

(b) Assam type building on the roadside adjacent in the north to the building stated at 2(a) above including the land they are standing on covered by LSC AZL No.54/72."

11. Being aggrieved, the respondents herein preferred Second Appeal being RSA No.12 of 2006 before the High Court and the appellants herein preferred Cross-Objection No. 4 of 2006. By the impugned judgment and order dated 7th November, 2007, the High Court has allowed the said Second Appeal and dismissed the Cross-Objection, thereby holding that it is only the respondent Nos. 2 and 3 herein being legal heirs of Thanhnuna, who were entitled to the rights in the property to the exclusion of the appellants herein. Being aggrieved, the present appeals by way of special leave.

12. We have heard Mr. Robin Ratnakar David, learned counsel appearing on behalf of the appellants and Mr. Pragyan Pradeep Sharma, learned counsel appearing on behalf of the respondents.

13. Mr. Robin Ratnakar David, learned counsel appearing on behalf of the appellants, would submit that the High Court failed to take into consideration that under the Mizo Customary Law it is not only the rights which are inherited, but it is also the responsibilities which are inherited. It is submitted that the inheritance depends upon the responsibilities discharged by a legal heir towards his/her parents in their old age. It is submitted that the deceased Thanhnuna was residing separately and it was only the appellant No.4-Thansangi Huha, the youngest daughter of the deceased P.S. Dahrawka and Kaithuami, who was taking care of her aged mother Kaithuami. It is further submitted that the deceased P.S. Dahrawka and Kaithuami had entered into an agreement dated 28th January, 1927 and agreed that they would inherit each other's property, and as such, on the death of her husband P.S. Dahrawka, his property was inherited by Kaithuami, and on her death, by their daughters. It is submitted that since Thanhnuna had not looked after his mother or the family members, he or his legal heirs were not entitled to any rights in

A the property. As such, the High Court had grossly erred in allowing the Second Appeal and dismissing the Cross-Objection.

14. Shri Pragyan Pradeep Sharma, learned counsel appearing on behalf of the respondents, on the contrary, would submit that the High Court has rightly allowed the Second Appeal filed by the respondents
B herein and dismissed the Cross-Objection filed by the appellants herein. It is submitted that the property in question was not covered by the agreement dated 28th January, 1927 and is guided by the Mizo Customary Law. It is submitted that the suit property being LSC No. AZL 56 of 1972 was purchased only by P.S. Dahrawka and deceased Kaithuami had no contribution in the purchase of the said property. It is submitted
C that according to Mizo Customary Law, Thanhnuna being the only son was the only legal heir of his late father P.S. Dahrawka. It is submitted that Thansangi Huha (appellant No.4 herein) was divorced on 20th June, 1980. She however chose not to stay with her mother for 17 long years. It is submitted that she came to live with her mother Kaithuami only
D after the death of Thanhnuna. It is therefore submitted that the present appeals deserve to be dismissed.

15. We have considered the rival submissions. We find that the District Council Court, Aizawl, on second remand, upon considering the factual matrix, particularly Section 109(3) and Section 109(10) of the
E Mizo Customary Law, observed that though as per the Mizo Customary Law, it is the youngest son, who would be entitled to inherit the property of his father; there is an ample scope for distribution of the property in a fair and reasonable manner. The District Council Court, Aizawl has found that in case of a rich father, the property can be divided proportionately amongst the sons.

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16. The District Council Court further found that insofar as the female members of the family, who are already married and living in separate households are concerned, they are not entitled to any share. The District Council Court further found that under the Mizo Customary Law, inheritance also depends upon the responsibilities carried out by
G the legal heir. It has been found that till his death, Thanhnuna was looking after his mother. However, after his death, Thansangi Huha (appellant No.4 herein) came back to her original home to look after her aged mother Kaithuami. It was found that the provision of Mizo Customary Law relating to 'divorced' (Hringkir) in the matter of inheritance would
H apply to her and her right to inheritance of her father's properties subsists

by virtue of her being divorced (Hringkir) and coming back to the original family for looking after the mother. The District Council Court found that Thansangi Huha looked after her mother till her death and also discharged the responsibility of erecting ceremonial tombstone for her mother. The District Council Court also found that after exclusion of the daughters of deceased P.S. Dahrawka and Kaithuami, who were married and living in separate households and one daughter of Thanhnuna, i.e., Laldinpuii, who was also married into a different clan, the contest was between Thansangi Huha (appellant No.4 herein), the youngest daughter of deceased P.S. Dahrawka and Kaithuami, who after divorce came back to her house and was looking after her mother on one hand and Lalmuanpuii (respondent No.3 herein), the other daughter of deceased Thanhnuna.

17. The District Council Court found that since Thansangi Huha (appellant No.4 herein) had discharged her responsibility of looking after her mother till her death and was occupying the main bed and reassuming her father's clan title 'Hahu', her right to inherit her father's properties could not be defeated. It further found that on the other hand Lalmuanpuii (respondent No.3 herein), though a female, was grand-daughter from the male lineal descent of deceased P.S. Dahrawka. She was unmarried and purely a 'Hahu' in the line of P.S. Dahrawka. It found that her right to inheritance in the instant dispute was safeguarded by the Customary Law in the absence of descendants having a better right for the purpose. The District Council Court therefore found that taking into consideration the principle of Mizo Customary Law of Inheritance and the spirit of equity, which is paramount to Mizo Customary Law, it was appropriate that the property be divided between Thansangi Huha (appellant No.4 herein) and Lalmuanpuii (respondent No.3 herein).

18. The Gauhati High Court, Aizawl Bench, speaking through Madan B. Lokur, C.J. (as he then was), in the case of ***Thansiami vs. Lalruatkima and ors.***[1] has also held that the inheritance depends upon the question as to whether a person supports the deceased in his old age or not. It has been held that even if a natural heir does not support his parents, he would not be entitled to inheritance. It has further been held that even if there is a natural heir, a person who supports the person until his death could inherit the properties of that person.

[1] (2012) 2 Gauhati Law Reports 309

A 19. We therefore find that the view taken by the District Council Court, Aizawl, on second remand, is based on the consideration of equity and the responsibility of a legal heir to look after the elders in the family. The said view is also supported by the judgment of the Gauhati High Court, Aizawl Bench in the case of ***Thansiami vs. Lalruatkima and ors.*** (supra). We respectfully agree with the said view.

B 20. We are therefore of the considered view that the High Court was not justified in reversing the well-reasoned and equitable judgment and order passed by the District Council Court dated 28th February, 2006 in C.A. No.12 of 1997.

C 21. In the result, we pass the following order:

A. The appeals are allowed.

B. The judgment and order of the Gauhati High Court, Aizawl Bench dated 7th November, 2007 in RSA No.12 of 2006 and Cross Objection No.4 of 2006, is quashed and set aside.

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C. The judgment and order of the District Council Court, Aizawl dated 28th February, 2006 in C.A. No.12 of 1997, is affirmed.

22. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

Devika Gujral Appeals allowed.