

# THE HIGH COURT OF MEGHALAYA

## **CR (P) No. 19/2015**

Smti./Ka Banteinam Syngai,  
D/o Late Ka Tipsngi Syngai and  
Late U Jrosingh Khiewtam,  
R/o Mawiong Mawlai,  
East Khasi Hills District, Meghalaya. : Petitioner

-Vs-

1. Smti./Ka Syrpaimon Khiewtam  
D/o Late Ka Saihat Khiewtam and  
Late u Thabir Khongkhlad,  
R/o Umniuh Tmar, Pynursla,  
East Khas Hills District, Meghalaya.

2. Shri./U Pynshai Khiewtam,  
S/o Ka Syrpaimon Khiewtam,  
R/o Umniuh Tmar, Pynursla,  
East Khas Hills District, Meghalaya. : Respondents

### **BEFORE THE HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the petitioner : Mr. MF Qureshi, Adv  
For the respondents : Mr. GS Massar, Sr. Adv,  
Mr. R Kharsyad, Adv  
Date of hearing : **23.09.2015**  
Date of judgment and order : **23.09.2015**

### **JUDGMENT AND ORDER (ORAL)**

Heard Mr. MF Qureshi, learned counsel for the petitioner as well as Mr. GS Massar, learned senior counsel assisted by Mr. R Kharsyad, learned counsel appearing for the respondents.

2. This revision petition is directed against the judgment and order dated 28.07.2015 passed by the Judge, District Council Court, Khasi Hills, Shillong in Misc. Civil Appeal No.22 of 2012.

**3.** The fact of the case leading to the filing of the revision petition is briefly noted. The respondents in the present revision petition filed a Title Suit No.4 of 2007 before the subordinate District Council Court against the mother of the present petitioner Late Ka Tipsngi Sngai for declaration with consequential relief and permanent injunction that the respondent No.1/plaintiff Smti./Ka Syrpaimon Khiewtam and her family are the rightful owners of the suit land and house and also that the suit land and house as described in the Schedule are ancestral properties as those are acquired through the income arising out of the ancestral property as per law and custom and also that the order dated 30.03.2007 and notice dated 26.04.2007 passed and issued by the proforma defendant No.3 are against the principle of natural justice, perverse, bias and one-sided. The present petitioner had contested the suit before the trial court by filing the written statement. A misc. application being Misc. Case No.5 of 2007 was filed in Title Suit No.4 of 2007 for appointment of a receiver of the suit properties. The trial court vide judgment and order dated 04.07.2012 rejected the Misc. Case No.5 of 2007. Being aggrieved by the said judgment and order dated 04.07.2012 passed by the trial court for rejecting the Misc. Case No.5 of 2007 for appointment of a receiver; the present respondents filed a Misc. Civil Appeal No.22 of 2012 in the Court of the Judge, District Council, Khasi Hills, Shillong. It is clear from the submission of the learned counsel appearing for the present petitioner that the mother of the petitioner Late Ka Tipsngi Syngai had expired on 20.12.2011 before the said appeal was filed.

**4.** The learned counsel appearing for the petitioner contended that the present respondents of the present revision petition had filed the said appeal against the petitioner's mother who had already expired on 20.12.2011. It is the fact that the Misc. Civil appeal No.22 of 2012 had been filed against a dead person i.e. the petitioner's mother. The learned senior

counsel appearing for the respondents contended that the said Misc. Civil Appeal No.22 of 2012 had been filed against two persons. No doubt one of the respondents is admittedly the petitioner's mother. It is fairly well settled law that an order against the dead person is a nullity. Therefore, the impugned judgment and order dated 28.07.2015 passed in Misc. Appeal No.22 of 2012 is a nullity so far as the dead person i.e. the petitioner's mother is concerned. It is also clear that the said appeal was disposed of in the absence of the petitioner's mother. One of the grounds for allowing the Misc. Civil Appeal No.22 of 2012 by the learned Appellate Court is that the respondents were not contesting the appeal. Since the appeal was filed against the dead person, even though one of the respondents was surviving at the time of filing the appeal, there was no question of contesting the appeal by a dead person. Now, the question is as to whether a dead person can be arrayed as respondent in the appeal? This Court is not giving any opinion regarding this issue; it is to be decided by the Judge, District Council Court. For enabling the Judge, District Council Court to decide the above issue as well as other issues raised by the parties in Misc. Civil Appeal No.22 of 2012, the impugned judgment and order dated 28.07.2015 is hereby set aside and quashed. The record of the said appeal is remitted back to the Court of the Judge, District Council, Shillong for deciding the Misc. Civil Appeal No.22 of 2012 afresh.

**5.** Mr. GS Massar, learned senior counsel appearing for the respondents fairly submits that since the parties appeared before this Court, this Court may direct the parties to appear before the Judge, District Council Court, Shillong on the date fixed by this Court so as to enable the Judge, District Council Court, Shillong to dispose of the said appeal as expeditiously as possible. The Registry is directed to send the record of the Misc. Civil Appeal No.22 of 2012 immediately to Judge, District Council Court, Shillong,

if already received. The parties are to appear before the Judge, District Council Court, Shillong on **08.10.2015**.

**6.** The revision petition is allowed to the extent indicated above.

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**JUDGE**