

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT,
AIZAWL MIZORAM
Declaratory Suit No.2/2003**

Zirliani,
D/o Lalhluna
Ramhlun South, Aizawl.Plaintiff.

-Versus-

1. The State of Mizoram,
(Through the Chief Secretary to the
Govt. of Mizoram)
2. The Commissioner/Secretary
Govt. of Mizoram,
Land Revenue & Settlement, Aizawl.
3. The Director,
Land Revenue & Settlement
Mizoram, Aizawl.
4. The Asst. Settlement Officer,
Land Revenue & Settlement
Mizoram, Aizawl.
5. Pu.P.B.Sangthanga
S/o Khuanga (L)
Ramhlun Sport Complex, Aizawl.
6. Pu P.C.Thangrikhuma
Ramhlun Sport Complex, Aizawl.Defendant.

**BEFORE
R.VANLALENA, Senior Civil Judge-2**

For the Plaintiff : Shri C.Zoramchhana and Lalhriatpuia,
Advocates.
For the Defendants: 1. Asst. Govt. Advocates for Def.No.1-4
2. Shri H.Laltanpuia, Advocate
2. Shri C.Lalrinchhunga, Advocate for
Def.No.6

Date of Judgement: 29.3.2012.

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JUDGEMENT AND ORDER

29.3.2012

The facts of the case leading to the filing of the present suit as reflected in the plaint may be briefly stated as follows:

That the plaintiff is a citizen of India belonging to Scheduled Tribe and is residing at Ramhlun South, Aizawl, Mizoram while the defendants No.1-4 are the Departments/Authorities under the Government of Mizoram and the defendants No.5&6 are private persons residing at Ramhlun Sport Complex, Aizawl.

The plaintiff purchased a plot of land located at Ramhlun Veng, Aizawl in the year 1982 and the said land has its House Pass No.150/1989. The said land was thereafter converted into LSC No.AZL-1831 of 1991 with an area of 1435 Sq.m and the area, boundary and sketch map of it are clearly described in the said LSC. While the plaintiff enjoyed rightful possession and ownership of the land, Shri Khuanga (L) father of the defendant No.5 wrongly and illegally interfered by constructing Assam Type house within the said land. Consequent upon this, the plaintiff submitted complaint to the concerned authority i.e. defendant No.4 on dt.20.07.1992. The plaintiff, while legitimately expected favourable action from the concerned authority, defendant No.4 issued an order dated 30.01.1997 detailing Shri P.C.Lahmangaiha, Surveyor-III to verify/redemarcate and to bifurcate the plaintiff's LSC so as to allot land to Shri Khuanga (father of defendant No.5) within the plaintiff's land vide Order Memo No.R.21011/51/92-DC(A0/90-91 dt.30.01.1997. The said order was made on the alleged ground that the plaintiff had agreed to issue LSC to Shri Khuanga within her area covered by her LSC No.1831 of 1991 but which is false, whimsical baseless and concocted. The plaintiff again submitted complaint to the competent authority requesting to dismantle the said illegal construction of Assam Type house (30x18) of defendant No.5. However, to the utter shock and surprise of the plaintiff, the defendant No.4 issued an order dated 02.04.2003 directing the plaintiff to submit her LSC No.183 of 1991 on order before 10.04.2003 to the defendant No.4 on the ground that defendants No.5&6 had also purchased their respective lands from the

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original owner and the Government was to issue House Pass to them by slicing out some portion of the plaintiff's land. The plaintiff stated that she has been illegally deprived of her legal and constitutional rights by all defendants for illegally encroaching upon her land and subsequent slicing out of some portion of it for the defendants No.5&6 without giving any compensation to her. Above this, the defendant No.1-4 incidentally decided to issue passes to the defendants No.5&6 without following procedure of law. As such, the plaintiff has no other option but to approach this court for the protection of her rights. This suit is filed bona fide and for the ends of justice.

The plaintiff claims the following reliefs :

- a) For decree in favour of the plaintiff and against the defendants declaring that the plaintiff is the rightful owner/possessor of the suit land covered by LSC No.1831 of 1991.
- b) For a decree directing the Defendants to pay Rs.50,000/- to the plaintiff due to mental agony, inconveniences suffered by the plaintiff and on account of Land Rent.
- c) For a decree in favour of the plaintiff and against the defendants that the illegal constructed house be dismantled and defendant No.5 be evicted from the plaintiffs land.

Or

- d) For a decree in favour of the plaintiff so that the defendants Government may acquire some portion of the plaintiff's land by giving compensation of Rs.7 lakhs to the plaintiff.
- e) For cost of the suit.
- f) For any other relief as the Hon'ble Court deems fit and proper.

On the other hand, the defendants No.1-6 contested against the instant suit by filing written statements challenging amongst others that there is not cause of action against the defendants, the suit is barred by limitation, laches, acquiescence and the suit is bad for non-joinder of necessary parties and mis-joinder of parties and that the suit is not maintainable in its present form and style. Defendant No.1-4 submitted that Shri Khuanga (L) father of defendant No. 5 also purchased a plot of land from Shri K.Zomawia the owner of Garden Periodic Patta No.1128/76 in the early part of 1987 for residential purpose. Thereafter, on 20.03.1987 a certificate given by Shri K.Zomawia for issue of House Pass to Shri

Khuangchungnunga for slicing out a portion of the area covered by Garden Periodic Patta No.1128/76 conclusively proved that Shri Khuanga (Khuangchungnunga) had purchased a plot of land. As such, Shri Khuanga, father of P.B.Sangthanga has legal right to start construction of residential building on the land purchased by him. Defendants No.1-4 further submitted that the original area of House Pass No.150/89 with its subsequent conversion into LSC No.1831 of 1991 do not cover and include the area of land belonging to the defendant No.5 and added that there can be no land disputes between the parties if the plaintiff do not claim the areas not covered by her LSC. Defendants No.1-4 submitted that the Assam type building of defendant No.5 had already existed before LSC No.1831/1991 is given to the plaintiff. As such, eviction or demolition of the house of defendant No.5 is not necessary.

Defendant No.5 submitted that the plaintiff had purchased a plot of land from Shir V.P.Vuana of Ramhlun Venglai for Rs.4,000/- in the year 1984 and thereafter she resold the said plot of land to Shri Sikalkhama and Shri Ramdingliana. Subsequently, Shri Saikalkhama had sold a portion of his plot of land to Shri Lalrawngbawla. Hence it is clear that the plaintiff had sold all her lands to other person and thus the question of encroachment of her land by the defendant No.5 did not arise at all. Defendant No.5 added that after the plaintiff sold her land to Shri Saikalkhama and Shri Ramdingliana, the area of her LSC No.1831 of 1991 was re-demarcated by defendants No.1-4. However, the defendants at the time of re-demarcation, committed mistake by wrongly including the area of land belonging to defendant No.5 to the area covered by LSC No.1831 of 1991 of the plaintiff, thereby appearing the land of defendant No.5 to be overlapping the area of the plaintiff's land.

Defendant No.6 contested the instant suit by filing his written statement in which he submitted that the instant suit is liable to be dismissed as the plaintiff did not follow the mandatory provision of section 80 Code of Civil Procedure 1908 to serve Notice upon the State Government as the same is the main party. He submitted that after he purchased his plot of land from Shri K.Zomawia S/o R.Buchhawna (L) covering an area of 40 ft x 65 ft (Approx) he constructed a building over the land in the year 1990 and the plaintiff at that time did not raise any objection to it. He added that the plaintiff is in possession of a land

adjacent to the land of defendant No.6 which was clearly seen from the reading of the Sketch Map of the plaintiff's land, hence there is not cause of action against him as his land and the plaintiff's land are not encroaching upon or overlapping each other.

On the basis of the pleadings of the parties, this court framed the following issues:

1. Whether the suit is maintainable or not ?
2. Whether the suit is liable to be dismissed for non payment of sufficient court fees?
3. Whether the suit is barred by the principle of estopped, acquiescence and limitation.
4. Whether the plaintiff is the rightful owner of the land covered by LSC No.1831 of 1991 ?
5. Whether the defendants No.5&6 encroached upon the land of the plaintiff or the plaintiff encroached upon the land of the said defendants ?
6. Whether the plaintiff is entitled to the relief claimed, if so to what extent ?

The plaintiff produced three witness namely Smt. Zirliani, Shri Saidinga Sailo and Shri V.L.Hnuna while defendants examined four witnesses.

Issue No.1 whether the suit is maintainable or not ? The defendants insisted the issue of jurisdiction which were mentioned in their written statements. The plaintiff filed the instant suit for declaration of rights of use and ownership/possession over the land covered by LSC No.1831 of 1991 as the same belonged to her and to set aside and quashed the impugned order No.R.21011/51/92-DC(A)/297-298 dt.2.4.2003 and any other reliefs. First of all, the land covered by LSC No.1931 of 1991 is located at Aizawl which is within the territorial jurisdiction of this court. All the defendants are also residents of Aizawl District, which is within the territorial jurisdiction of this court. Besides this, court of Senior Civil Judge has unlimited pecuniary jurisdiction as

per the Mizoram Civil Courts Act, 2006. In such a situation, I am of the considered view that this court has pecuniary and territorial jurisdiction to entertain and try the instant suit. Hence issue No.1 is decided in favour of the plaintiff.

Issue No.2 : Whether the suit is liable to be dismissed for non payment of necessary court fees ? : The plaintiff deposited a court fee of Rs.5,000/- into the court. Being a number of Scheduled Tribe, deposition of Rs.5,000/- as court fee is sufficient amount in the instant sui. Hence, issue No.2 is decided in favour of the plaintiff.

Issue No.3: As per the para No. 11 of the plaint, the plaintiff stated that the cause of action arose in the year 1992 and continues till the filing of the instant suit. The instant suit being for possession of immoveable property of land covered by LSC No.1831 of 1991, the plaintiff brought the instant suit to this court within a period of eleven years which is within a period of permissible time allowed by Article 65 of the Limitation Act 1963. Hence the issue is decided in favour of the plaintiff.

Issue No.4 : Whether the plaintiff is the rightful owner of the land covered by LSC No.1831 of 1991 ? : The plaintiff in her plaint stated that her LSC No.1831 of 1991 was converted from House Pass No.150/1989 and the area covered by the said House Pass was 1435 Sq.m with clear description of boundaries as seen from Para No.2 of plaint. However, the defendant No. 1-4 in their written statement Para No.8 stated that the area of the plaintiff's House Pass No.150/1989 is 1830 Sq.m. which means that the plaintiff has an area of land larger than she thought to be or she did not know the exact area of her land. Defendants No.5&6 in their written statement did not reflect any-point contest on the matter of area of land nor ownership of the land covered by the LSC No.1831 of 1991. Defendant No.1-4 too did not made any contest on the issue of ownership of the land covered by LSC No.1831 of 1991. However they stated that the area of land covered by plaintiff's House Pass No.150/1989 is 1930 Sq.m while the plaintiff stated that her land area is 1435 Sq.m. Therefore, from evidence of both plaintiff and defendants, it appeared to me that the land covered by LSC No.1831 of 1991 rightfully belonged to the plaintiff. Hence issue No.4 is decided in favour of the plaintiff.

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Issue No.5 : Whether the defendants No.5&6 encroached upon the land of the plaintiff or the plaintiff encroached upon the land of the defendants : Evidence of the plaintiff stated that while plaintiff enjoys the rightful possession and ownership of the disputed land, the defendant No.5 illegally constructed an Assam Type building within the area of the plaintiff. In order to remove the illegal construction of the said house, the plaintiff approached defendants No.1-4 (i.e. Revenue Department). However, the Land, Revenue Department biasly acted and tried to slice out some portion of the plaintiff's land to allot the defendant No.5 informing the plaintiff that the dispute had been settled and thus the plaintiff is directed to submit her LSC to defendants No.1-4 on or before 4.4.2003 vide No.R.21011/51/92-DC(A)/293-294 dt.28.3.2003. As such was the action taken by the Land Revenue & Settlement Department, the plaintiff in order to get relief, approached this court. In her cross examination, the plaintiff stated that she had made the complaint to the Land, Revenue & Settlement Department (defendants No.1-4) on 20.7.1992 requesting the said authority to evict the defendant No.5 who according to her was constructing an Assam Type building within her area of land covered by LSC No.1831 of 1991. In her cross examination the plaintiff further stated that the defendant No.6 had already constructed a building in his possession at the time she was issued LSC No.1831 of 1991, i.e. in the year 1991. She added that she did not made any complaint against the defendant No.6. In her cross examination by learned counsel for defendant No.1-4, the plaintiff stated that she purchased the disputed land from Shri V.P.Vuana in the year 1982 and she was issued House Pass No.150/1989 in the year 1989 which was then converted into LSC No.1831 of 1991. Thereafter the defendant No.5 constructed the said Assam typed building within her land. The plaintiff added that the land she purchased from Shri V.P.Vuana was demarcated by surveyor Shri Ngunliansanga. On the other hand, the defendant No.5 in his written statement stated that as the plaintiff had sold portions of her land to Shri Saikalkhama and Shri Ramdingliana before filing the instant suit, there is no question of encroachment upon the plaintiff's land because the plaintiff had sold larger area than she actually purchased from Shri V.P.Vuana. Defendant No.5 however, admitted the fact that the plaintiff purchased the land from Shri V.P.Vuana. Defendant No.5 stated that his father had purchased a land measuring 100x80 ft. in the year 1987 from Shri K.Zomawia. Thereafter his father constructed the

said Assam type building in the year 1991. Defendant No.5 added that after the plaintiff sold two portions of her land to two persons- Shri Saikalkhama and Sh.Ramdingliana, the plaintiff's land was re-demarcated by the authority i.e. defendant No.1-4. However, the said authority committed mistake in re-demarcating the plaintiff's land because the area of land belonging to the defendant No.5 had been included in the area of land belonging to the plaintiff which resulted into overlapping and encroachment upon the plaintiff's land by defendant's No.5. From the evidence of defendant No.5, it was not seen as to whether the defendant No.5 possessed any House Pass or LSC for his claimed land. The suit though contested by the defendants No.1-4, no evidence whatsoever has been adduced by them. In view of this, it cannot be held that the defendants No.1-4 have nothing to say in the suit. From the evidence on record, it appeared to this court that the defendant No.5 has neither House Pass nor Land Settlement Certificate for his land which resulted that he was not in a position to clearly mention the area and extent of his land since he has nothing on record as per law in connection with his land. Therefore, the submission of the plaintiff that her land was encroached upon by the defendant No.5 by constructing the Assam type building became apparently clear and true. From the evidence aforementioned, issue No.5 is decided in favour of the plaintiff.

The plaintiff exhibited the following documents without any objection.

- Ex-P-I is copy of LSC No.Az1-1831 of 1991.
- Ex-P-2 is copy of Order dt.30.1.1997
- Ex-P-3 is copy of New LSC No.1831 of 1991.
- Ex-P-4 is copy of letter dt.28.3.2003.
- Ex-P-5 is copy of Order/letter dt. 2.4.2003.

On the other hand the defendant No.5 exhibited the following documents Ex-D-I is the sale letter of land by Shri V.P.Vuana to the plaintiff.

Defendant No.6 exhibited the following documents:

- 1) Ex-D(6) I is his written statement.
- 2) Ex-D(6) II is his signature.

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3)Ex-D(6) 2 is letter No.R.21011/51/92-DC(A) dated 11th April,2003.

4)Ex-D(6) 3 is illegible.

5)Ex-D(6) 4 is RAM INPEKNA

6)Ex-D(6) 4 @ is signature of the Donor of land.

Issue No.6 : Whether the plaintiff is entitled to the relief claimed. This issue does not seem to pose any obstacle in view of the fact that all other issues have been decided in favour of the plaintiff.

The plaintiff in this suit thus prayed the reliefs which were as aforementioned. The reliefs claimed are confined to those mentioned at serial No.(a) to (d) above while court is of the view that parties are to bear their own costs. This issue is thus decided in favour of the plaintiff. The suit is thus finally decided and decreed as follows:

1. The plaintiff is the rightful owner/possessor of the suit land covered by LSC No.1831 of 1991.
2. The illegal constructed Assam type building of defendant No.5 be dismantled and the said defendant No.5 be evicted from the land of the plaintiff within a period of 5five months.

The suit having been decreed as above is hereby disposed of accordingly.

Pronounced in the open Court in the presence of the parties today the 29th day of March, 2012.

Sd/-R.VANLALENA
Senior Civil Judge – II
Aizawl District : Aizawl.

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the, 29th March, 2012.
Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.

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2. Zirliani, D/o Lalhluna, Ramhlun South, Aizawl.
3. The State of Mizoram, (Through the Chief Secretary to the Govt. of Mizoram) through Asst. Govt. Advocates.
4. The Commissioner/Secretary to the Govt. of Mizoram, Land Revenue & Settlement, Aizawl through Asst. Advocates.
5. The Director, Land Revenue & Settlement Department, Mizoram, Aizawl through Asst. Advocates.
6. The Asst. Settlement Officer, Land Revenue & Settlement Department, Mizoram, Aizawl through Asst. Advocates
7. Pu.P.B.Sangthanga S/o Khuanga (L) Ramhlun Sport Complex, Aizawl.
8. Pu P.C.Thangrikhuma, Ramhlun Sport Complex, Aizawl.
9. Shri C.Zoramchhana & Ors., Advocate concerned.
- 10.Shri C.Lalrinchhunga, Advocate concerned.
- 11.Registry Section.
- 12.Case record.

