

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL  
DISTRICT, AIZAWL MIZORAM  
Declaratory Suit No.17/2007**

1. Smt. Lalromawii  
D/o Lalduha  
Zemabawk, Aizawl.
2. Lianhela,  
S/o sawithanga  
Sairang, Venglai. ....Plaintiff.

-Versus-

1. The State of Mizoram  
(Through the Chief Secretary to the Govt. of Mizoram)
2. The Commissioner/Secretary,  
i/e Forest Deptt. Govt. of Mizoram,  
Govt. of Mizoram.
3. Principal Chief Conservation of Forest,  
Govt. of Mizoram.
4. Divisional Forest Officer,  
Sairang Forest Division,  
Govt. of Mizoram.
5. Range Officer,  
Sairang Forest Range.
6. R.Thangluaia  
S/o Laikunga,  
Sairang, Mizoram.
7. Lallawmthangi W/o Chhuanawma,  
Sairang, Mizoram. ....Defendant.

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

For the Plaintiff : Shri H.Lalmuankima & ors,  
Advocates.

For the Defendants: Shri B.Lalramenga & ors., Advocates.

Date of Judgement : 30.3.2012.

## **JUDGEMENT**

**30.1.2012**

The facts of the case leading to the filing of the instant Declaratory suit No.17 of 2007 as reflected in the plaint may be briefly stated as follows :-

That the plaintiff No.1 namely Smt. Lalromawii is a resident of Zemabawk, Aizawl and plaintiff No.2 namely Shri Lianhela is a resident of Sairang Venglai, Sairang village, Aizawl District, Mizoram while the Defendants No.1-8 are Authorities/Departments under the Government of Mizoram and Defendants No.9 & 10 are residents of Sairang village, Aizawl District, Mizoram.

The plaintiffs have plots of lands at Kangtek Tlangdung within Sairang Village Council area which were allotted to them by Sairang Village Council. Plaintiff No.1 obtained Huan Permit No.137 of 1997 while plaintiff No.2 obtained Huan Permit No.7 of 1994 and the said lands were bounded each other as they are adjacent to each other. The said Huan Pass (Garden Pass) No. 137 of 1997 was then converted into Periodic Patta No.103401/10/264 of 2005 vide Government letter No.K.53011/64/96-REV/VOL-I dated 13.05.2004 and Huan Pass No.7 of 1994 of Plaintiff No.2 was converted into Periodic patta No.103401/10/561 of 2006 vide Government letter No.K.53011/218/99-REV dt.29.7.2005. The plaintiffs maintained their respective garden land and planted a number of permanent cash crops like Hatkora, Mango etc. and are the main source of their income. However, the defendant No.9 namely Shri R.Thangluaia when he became the Secretary of Sairang Village Council claimed the whole garden lands covered by the said Periodic Patta of both the plaintiffs. The Land , Revenue & Settlement Department without verifying the lands issues Periodic Patta No.103401/10/336 of 2005 unlawfully to the said R.Thangbuaia defendant No.9, vide Government letter No.K.53011/66/03-REV/VOL-I dated 3.5.2005. Thereafter the said defendant sold the lands to Defendants No.5 (Range Office, Sairang Forest Range) at a price of Rs.35,000/- (Rupees thirty five thousand) only. The said lands were thus transferred to the Village Forest Development Committee (VFDC) and the said VFDC then cut down all the standing trees and bamboos including all the aforementioned cash crops which were burnt down into ashes. The suit is valued at Rs.22,75,500/- (Rupees twenty two lakhs, seventy five thousand and five hundred) only. Being

aggrieved. The plaintiffs approached this court and thus prayed for the following reliefs:

- a) For a decree declaring the plaintiff No.1 and plaintiff No.2 are rightful owner of the land covered by Periodic patta No.103401/10/264 of 2005 and Periodic Patta No.103401/10/561 of 2006 respectively.
- b) For an order directing the defendant No.9 to pay compensation to the tune of Rs.1,00,000/- (Rupees one lakh) each to the plaintiffs as he sold the plaintiffs lands without their consent.
- c) For order directing the Forest & Environment Department, Government of Mizoram to pay compensation for losses suffered by the plaintiffs for damaging the cash crops/plants.
- d) For an order directing the Environment & Forest Department, Govt. of Mizoram to pay compensation to the tune of Rs.1,00,000/- (Rupees one lakh) each to the plaintiffs for damaging alluvium soil and natural beauty of the lands.
- e) For an order directing the Environment & Forest Department, Government of Mizoram to pay rental @ Rs.20,000/- per month to each of the plaintiffs for occupying the said lands without their consent.

On the other hand, the defendants contested the present suit by filing written statements. In their written statement, the defendants No.1,6,7 & 8 contested the instant suit by stating that the present suit is not maintainable in its present form and, there is no cause of action in favour of the plaintiff and against the answering defendants. The suit is barred by law of limitation. The suit is bad for non-joinder of necessary parties, and it is liable to be dismissed outright as the plaintiffs have not served the mandatory Notice under section 80 CPC 1908 and that too the suit has not been properly verified in accordance with law, the defendants No.1,6,7 & 8 added that since the plaintiffs are not settlement Pass holders and thus have no right in the soil beyond the right of user for the period for which they were given, hence the plaintiffs cannot be declared as the rightful owner of the lands covered by their respective Periodic Pattas as per land Laws of Mizoram. They further submitted and contested that they are not responsible to pay any compensation to the plaintiffs as it was beyond their knowledge about the purchase of lands by defendant No.5. Furthermore, the answering defendants contested that as per field verification report, double pattas was not seen and issued over

the suit land and on scrutiny of the sketch-map of the lands, no passes overlapped each other, thus the answering defendants are not liable to pay compensation to the plaintiffs.

Defendant No.10 contested the instant suit by filing written statement in which she stated that she purchased garden land covered by periodic Patta No.103401/10/336 of 2005 from defendant No.9 and the said land is utilized by Sairang Vilalge Forest Development Committee with her consent for plantation area. She is the owner of the said land and is in possession of the Periodic Patta for the said land. The said land is not transferred to the Environment & Forest Department. Defendants No.2,3,4 &5 did not submit written statements.

On the basis of the pleadings, the following issues are framed :-

- 1) Whether the present suit is maintainable in its present form and style ?
- 2) Whether the plaintiffs are entitled to the relief claimed ? If so to what extent and who is liable to pay ?

The plaintiffs produced and examined 5(five) witnesses including plaintiff No.1 while the answering defendants No.1,6,7,8 & 10 examined none for their witnesses.

Issue No.1 : Whether the suit is maintainable in its present form and style ? The answering defendants insisted that the suit is not maintainable in its present form and style. The present suit has been filed for declaration that the plaintiffs are the rightful owner of the suit lands covered by Periodic Patta No.103401/10/264 of 2005 and Periodic Patta No.103401/10/264 of 2006. The parties are within the territorial jurisdiction of this court, the suit lands also located within the territorial jurisdiction of this court. The plaintiffs presented their plaint properly valued, verified and accompanied by an Affidavit with required number of photo copies of plaint for supply to all the defendants with Annexures of relevant documents as Exhibits. It is also accompanied by Schedule of crops planted and destroyed by the defendants. Being the suit is filed against the Government, the plaintiffs followed the mandatory provisions contained u/s 80 CPC 1908 for which they submitted CMA No.103/07 in connection of this suit for grant of leave to institute the instant suit without serving Notice to the Government which had been

granted. The plaintiffs properly deposited required amount of court fees. There is no formed defect in filing the instant suit. Hence, the issue No.1 is decided in favour of the plaintiff.

Issue No.2 : Whether the plaintiffs are entitled to the relief claimed ? If so to what extent and who is to pay ? The plaintiffs in their plaint stated that they were allotted plots of land by Sairang Village Council at Kangtek Tlangdung within Sairang Vilalge area vide Huan permit No.137 of 1997 which were later converted into Periodic Patta No.103401/10/264 of 2005 and Periodic Patta No.103401/10/561 of 2006 but were unlawfully sold by defendant No.9 claiming he has Periodic Patta No. 103401/10/336 of 2005 for the said land. In the examination in chief of plaintiff No.1, she deposed that the land allotted to her and plaintiff No.2 covered by Periodic Patta No. 103401/10/264 of 2005 and Periodic Patta No. 103401/10/561 of 2006 were maintained by planting cash crops like Hatkora, Mango etc. and the said cash crops were the main source of their income. However, all the cash crops within the said lands including all the trees and bamboos were cut down/felled down by Forest & Environment Department, Government of Mizoram without their consent and burnt down all those into ashes for VFDC plantation area. As the actions of the said Department was wrong, illegal and unlawful, the said department is liable to pay compensation to both plaintiffs amounting to Rs.5,67,000/- (Rupees five lakhs, sixty seven thousand) only to Smt. Lalromawii (plaintiff No.1) and Rs.5,68,500/- (Rupees five lakhs, sixty eight thousand, five hundred) only to Shri Lianhela, (plaintiff No.2). In support of her evidence, the plaintiff No.1 produced and examined 4(four) witnesses who were all residents of Sairang village. All the said plaintiffs witnesses stated the same version and deposed that they knew the plaintiff's lands located at Kangtek Tlangdung within Sairang village area and the plaintiffs planted various cash crops like Hatkora, Limbu, Mango etc. which were about 5(five) years old and were fruit bearing crops. They all further stated that all the said crops were cut down and burnt into ashes by Environment & Forest Department, Government of Mizoram for VFDC plantation area.

Plaintiff No.1 exhibited the following documents without objection :-

- a) Exb.P-1 is her plaint.
- b) Exb.P-1(a) are her signatures.

- c) Exb.P-2 is her Previous Pass for the said land.
- d) Exb.P-3 is Huan Pass of plaintiff No.2.
- e) Exb.P-4 is copy of her Periodic Patta.
- f) Exb.P-5 is copy of Periodic Patta of the plaintiff No.2
- g) Exb.P-6 is details of crops damaged in her garden.
- h) Exb.P-7 is details of crops damage of plaintiff No.2.

On the other hand, the answering Defendants No.1,6,7,8 & 10 eventhough contested the instant suit did not produce any witness. Defendants No.2,3,4,5 & 9 even did not file their written statement. Eventhough the said answering defendants did not examined any witness, it can not be held that they have no nothing to say against the suit. On careful examination of the Periodic Patta of both the plaintiffs and of the defendant No.9, it appeared that the Periodic Patta No. 103401/10/336 of 2005 belonged to the plaintiff No.2. where there is an overlapping or encroachment of Periodic Patta occurred, the usual practice adopted by the concerned authority is to declare the Periodic Patta which was issued later in time invalid provided both the periodic Patta were issued by observing relevant procedures of law. On examination of the Periodic Patta of both the plaintiffs and of the Defendant No.9, it appeared that the Periodic Patta No. 103401/10/264 of 2005 of the plaintiff No.1 was issued earliest in time than the Periodic Pattas of both the defendant No.9 and of the plaintiff No.2. Hence it is to be declared valid. Again on examination of Periodic Patta No. 103401/10/336 of 2005 belonged to defendant No.9 and Periodic Patta No. 103401/10/561 of 2006 belonged to plaintiff No.2, it appeared that the Periodic Patta of the defendant No.9 was issued earlier in time than the periodic patta of the plaintiff No.2. Hence, Periodic Patta of the defendant No.9 is to be declared valid in case there was overlapping or encroachment of periodic Pattas occurred. On further examination of the boundaries of each of the Periodic Patta, it appeared that each of the Periodic Patta has it own boundaries with separate description. All the documents of periodic Pattas revealed that there was no overlapping of the lands covered by their respective periodic Pattas of all the parties.

In view of the finding from the issues, I am of my considered opinion that there was no overlapping of Periodic Patta of each of the party i.e. Plaintiff No. 1&2 and Defendant No.9. Hence the suit is liable to be dismissed.

With this order, the instant suit is disposed of accordingly. Parties are to bear their own costs.

Given under my hand and seal of this court on this 30<sup>th</sup> March, 2012.

**Sd/-R.VANLALENA**

Senior Civil Judge – II

Aizawl District : Aizawl

Memo No. /SCJ-II(A)/201 : Dated Aizawl the 30<sup>th</sup> March, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Smt. Lalromawii, D/o Lalduha, Zemabawk, Aizawl.
3. Lianhela, S/o sawithanga, Sairang, Venglai.
4. The State of Mizoram (Through the Chief Secretary to the Govt. of Mizoram) through Shri R.K.Malsawmkima and Shri Joseph Lalfakawma, Asst. Govt. Advocates.
5. The Commissioner/Secretary, i/e Forest Deptt. Govt. of Mizoram,  
Govt. of Mizoram through counsel B.Lalramenga.  
Principal Chief Conservation of Forest, Govt. of Mizoram through counsel B.Lalramenga.
6. Divisional Forest Officer, Sairang Forest Division, Govt. of Mizoram through counsel B.Lalramenga.
7. Range Officer, Sairang Forest Range through counsel B.Lalramenga.
8. R.Thangluaia, S/o Laikunga, Sairang, Mizoram
9. Lallawmthangi W/o Chhuanawma Sairang, Mizoram.
10. Shri H.Lalmuankima, Advocate concerned.
11. Shri B.Lalramenga, Advocate concerned.
12. Registry Section.
13. Case record.

Peshker

