

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL
MIZORAM**

Eviction Suit No.2/2010

R.Remthanga,
S/o Rochhuma,
Zalen Veng, Vairengte,
Kolasib District, Mizoram.

.....Plaintiff.

-Versus-

1. The State of Mizoram,
Represented by the Chief Secretary to the
Govt. of Mizoram, Aizawl.
2. The Secretary,
School Education Department,
Govt. of Mizoram,
Aizawl, Mizoram
3. The Director,
School Education Department,
Govt. of Mizoram,
Aizawl, Mizoram
4. District Education Officer,
Kolasib District, Mizoram, Aizawl.
5. The Headmaster,
Govt. Middle School (UPS-SSA)
IOC Veng, Vairengte,
Kolasib District, Mizoram.
6. The President,
Village Council –II,
Vairengte, Kolasib District, Mizoram.
7. The President,
Young Mizo Association,
Vairengte IOC Branch-II, Vairengte,
Kolasib District, Mizoram.
8. The Chairman,
Aganwadi Centre,
IOC Veng, Vairengte,
Kolasib District, Mizoram.

9. Lungawia,
 S/o Thanthuama,
 IOC Veng, Vairengte,
 Kolasib District, Mizoram & 12 others. Defendants.

BEFORE

R.VANLALENA, Senior Civil Judge-2

For the Plaintiff : Shri C.Zoramchhana, Advocate.
 For the Defendants
 No.1-4 : Shri R.K.Malsawmkima and Joseph Lalfakawma
 Asst. Govt. Advocates.
 For the Defendants
 No.5-21 : Shri W.Sam Joseph & Ors, Advocates.
 Date of Hearing : 3.9.2012.
 Date of Judgement: 13.9.2012.

Judgement and order

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

The Plaintiff is a bonafide citizen of India belonging to Mizo community and is residing at Zalen veng, Vairengte, Kolasib District Mizoram. He has landed properties covered by Periodic Pattas No.110 of 1980 and No.7 of 1982 both located at IOC veng, Vairengte. The said Periodic Patta No.110 of 1980 had been issued to him by the competent authority for Fish Pond while the Periodic Patta No.7 of 1982 was issued to him by the competent authority for fruits garden. He had been paying requisite revenue taxes for both the lands. He developed the said lands purposefully by planting various cash crops like betelnuts, Hatkora, Oranges, Teaks etc. However, while the Plaintiff was enjoying peaceful possession of the said two lands, Defendant No.21 namely Shri Kailiana wrongfully and illegally constructed houses within the land of the Plaintiff covered by Periodic Patta No.110 of 1980 without obtaining his consent thereby causing encroachment over the lands. As a result of this, the Plaintiff submitted a complaint to the Administrative Officer, Vairengte on 23.02.1999 stating that the said Defendant had started construction of house building within the land covered by Periodic Patta No.110 of 1980 which was full of plantation of fruits and other cash crops like teak, betelnut, Oranges etc. However, the Defendant No.21 stated that he had a pass issued by the Village Council and House Pass in

respect of the land over which he started construction of his house. Consequent upon this, the Administrative Officer, Vairengte Centre issued Notice to the said Defendant vide Memo No.B.16011/4/97-AO (VRT)/2 dated 24.02.1999 directing the Defendant to stop the on-going construction and not to continue it until the matter is finally settled. However, the said Defendant did not comply with the order of the Administrative Officer but resumed his illegal construction. On 26.02.1999, the Plaintiff again submitted another complaint to the Administrative Officer, Vairengte requesting the authority to take necessary action against the defiant Defendant no.21. The Administrative Officer vide its Notice Memo No.A.45011/1/97-AO(VRT)/12 dated 30.04.1999 informed both the Plaintiff and Defendant no.21 to be present at the disputed site with their respective land passes on 01.05.1999 at 10:00AM for spot verification with presence of the Village Council Members.

In the meantime, the Defendants No.1-5 without having and obtaining any permission constructed a School building under Sarva Siksha Abhyan (SSA) mission within the land of the Plaintiff covered by Periodic Parra No.110 of 1980. Defendant no.7 too wrongfully and illegally constructed YMA In (YMA House) in the year 2000 without the consent of the Plaintiff within the land covered by Periodic Patta No.110 of 1980. The Defendant no.8 also constructed illegally Aganwadi Centre without the consent of the Plaintiff No.110 of 1980. All other private Defendants without the consent of the Plaintiff had constructed illegally houses within the land of the Plaintiff covered by Periodic Patta No.110 of 1980 in the year 2000. Due to political turmoil in the neighbouring State of Manipur, some Hmar Refugees left their homestead and thus influxed into Vairengte and were accommodated by the Village Council-II Vairengte inside the land area of the Plaintiff covered by Periodic Patta Nos. 110 of 1980 and No.7 of 1982 which caused destruction and depletion of the plantations of teaks, betelnuts etc. As a result of this, the Plaintiff submitted a representation to the Chief Minister of Mizoram on 19.04.2005 praying for ejection of the Hmar Refugees and reasonable compensation for destruction of such plantations amounting to Rs.4,60,000/-, but the Government turned down the representation. The Plaintiff submitted again complaint to the President, Village Council-II, Vairengte on 15.03.2007 stating and requesting to evict the wrongful encroachers namely – Mr.Thangsanglura and Mr.Raldovela Defendants no.15&12 respectively who illegally constructed houses within the land covered by Periodic Patta No.110 of 1980 and No.7 of 1982. On 9.5.2007, the Plaintiff submitted a representation to the concerned authority of Land Revenue & Settlement Department, Kolasib

praying to clarify and re-demarcate the exact boundary line of Periodic Patta's No.110 of 1980 and No.7 of 1982 and also at the same time to evict the unauthorized occupants of the lands of the Plaintiff. However, this representation yielded no results.

The cause of action arose in the year 1999 onwards and continue till date. This court has both territorial and pecuniary jurisdiction. Requisite court fees of Rs.5000/- as per the Mizoram court fees (Amendment) Act is duly deposited and the suit is valued at Rs.10,00,000/-.

The suit is filed for the ends of justice. The Plaintiff therefore prays the following reliefs:-

- a) Let a decree be passed declaring that the Plaintiff is the legal and rightful holder of Periodic Patta No.110 of 1980 and interest, title and possession of the land covered by the said pass.
- b) A decree for eviction of the Defendants from the suit land with immediate effect.
- c) Permanent and mandatory injunction to restrain the Defendants from making any interference with the suit land and from dispossessing the Plaintiff of the suit land and Plaintiff be allowed to enjoy peaceful possession of the suit land and further to restrain the Defendants from doing any detrimental to the interest of the Plaintiff.
- d) Let the cost of the suit be decreed in favour of the Plaintiff and against the Defendants.
- e) Any other reliefs to which the Plaintiff is entitled according to Justice, Equity and Good conscience.

The instant suit had been instituted on 15.01.2010 by the Plaintiff through his Id. counsel. During the course of suit, the Defendants no.1-21 had been summoned for times. Defendants no.1-5 being the State of Mizoram, are represented by the Asst. Government Advocate. While Defendants no.6-21 are private Defendants and Village Councils, they had engaged lawyers and executed vakalatnama in favour of Shri W.Sam Joseph & 5 others Advocates. Vakalatnama had been filed in the court on 17.05.2010. All the Defendants failed to submit their written statements in spite of sufficient time given to them, the court had closed the chance for submission of written statement for all the Defendants on 11.10.2010 i.e after 8 (eight) months from the date of institution of the suit and after more than 4 (four)

months of the filing of the vakalatnama by the Defendants no.6-21. Subsequently the case had been proceeded ex-parte of all the Defendants. All the Defendants did not assigned any reason for failure to submit written statements during those days.

On the basis of the pleading of the Plaintiff, the court framed the following points for determination :-

- 1) Whether the present suit is maintainable in its present form and style ?
- 2) Whether the suit is barred by law of limitation ?
- 3) Whether the Plaintiff is entitled to the relief claimed ? If so to what extent ?

The Plaintiff examined three witnesses including himself while the Defendants examined none nor cross examined the Plaintiff witnesses.

Issue No.1 : Whether the present suit is maintainable in its present form and style ? The instant suit has been filed by the Plaintiff by presenting plaints with copy for all Defendants. It has been accompanied by an Affidavit and is duly verified by the Plaintiff. It has been accompanied by a requisite court fees stamps of Rs.5000/- duly deposited and with necessary documents for Annexures. No fatal defects found in the plaint. Hence the issue no.1 is decided in favour of the Plaintiff.

Issue No.2: Whether the suit is barred by limitation ? The instant suit had been filed in the year 15.01.2010 by the Plaintiff while the cause of action alleged to have arisen in the year 1999. The instant suit was filed after 12 years from the date of the cause of action had arisen. As per the Limitation Act 1963, any suit for recovery of immovable property has to be filed within the period of twelve years. However, as the applicability of the Law of Limitation Act 1963 had been barred by the Notification No. TAD/61/12/64 dated 14th March 1966, delay in filing the instant suit is neglected and overseen. The said Notification runs as follows :-
In exercise of the powers conferred by clause (b) of sub-paragraph (1) and sub-paragraph (2) of paragraph 12 of the Sixth Schedule to the Constitution of India, the Governor of Assam is pleased to direct that the Limitation Act 1963 (No.63 of 1963) shall not apply to the Tribal Areas of Assam specified in the table appended to paragraph 20 of the Sixth Schedule to the Constitution of India with effect from the 1st January

1964. In the case of RSA No.11 of 2003 in Ramthlengliana Vs. The State of Mizoram, Revenue Department, the Hon'ble Gauhati High Court has held that the Limitation Act 1963 is barred in Mizoram. Hence the issue no.2 is decided in favour of the Plaintiff.

Issue No.3: Whether the Plaintiff is entitled to the relief claimed, if so to what extent ? The Defendants no.1-21 did not submit their respective written statements nor cross examined the Plaintiff witness. The only available materials on record for basing the discussion as to whether the Plaintiff is entitled to the relief claimed is the depositions of the Plaintiff and his witnesses. However merely due to absence of evidence of all the Defendants, this court is not bound to accept all the depositions of the Plaintiff and his witnesses.

The Plaintiff deposed before the court that he is the legal and rightful owner of the land covered by Periodic Patta No.110 of 1980 located at IOC veng, Vairengte, and he had been paying requisite revenue taxes ever since the land was allotted to him till date. The Plaintiff, in his deposition before this court repeated the statements what he had stated in his plaint and thus all the statements are repetition of the same statements. He prayed for the following reliefs :-

- a) A decree for declaring that he is the legal and rightful holder of the Periodic Parra No.110 of 1980 and he has title, interest and possession of the said land.
- b) A decree for eviction of the Defendants from the suit land to vacate the lands.
- c) Permanent and mandatory injunction for restraining all the Defendants from making any interference in the suit land, dispossession of the Plaintiff of the suit land and further restraining the Defendants from doing any detrimental to the interest of the Plaintiff and to allow the Plaintiff to enjoy peaceful possession of the suit land.
- d) Any other relief to which the Plaintiff is entitled according to Justice, Equity and Good conscience. The Plaintiff exhibited the following documents :-

Ex-P-I is the plaint.

Ex-P-I (a) is his signature.

Ex-P—II is a copy of Periodic Patta No.110 of 1980.

Ex-P-III is a copy of tax receipt dt.8.8.2007 in respect of Periodic Patta No.110 of 1980.

Ex-P-IV is a copy of tax receipt dt.19.3.2009 in respect of Periodic Patta No.110 of 1980.

Ex-P-V is a copy of letter dt.23.2.1999 submitted by the Plaintiff to the Administrative Officer, Vairengte.

Ex-P-VI is a copy of letter dt.24.2.1999 (Stay order) issued to Pu K.Kailiana by the Administrative Officer, Vairengte.

Ex-P-VII is a copy of letter dt.26.2.1999 submitted by the Plaintiff to the Administrative Officer, Vairengte.

Ex-P-VIII is a copy of order dt.30.4.1999 issued by the Administrative Officer, Vairengte to Pu K.Kailiana.

Ex-P-IX is a copy of letter (FIR) dt.27.6.2003 submitted by the Plaintiff to the Officer in-charge, Vairengte Police Station.

Ex-P-X is a copy of order dt.1.4.2004 issued by the SDM Vairengte sub-division.

Ex-P-XI is a copy of letter submitted by the Plaintiff to the Asstt. Settlement Officer-II, Kolasib.

Ex-P-XII is a copy of letter submitted by the Plaintiff to the Hon'ble Chief Minister of Mizoram.

Ex-P-XIII is a copy of representation dt.29.3.2006 submitted to the SDO, Vairengte by the Plaintiff.

Ex-P-XIV is a copy of letter dt.15.3.2007 submitted by the Plaintiff to the Village Council-II, Vairengte.

Ex-P-XV is a copy of stay order dt.16.03.2007 issued by the Village Council-II Vairengte.

Ex-P-XVI is a copy of judgment & order dt.17.04.2007 passed by the Village Council –II, Vairengte.

Ex-P- XVII is a copy of letter dt.9.5.2007 submitted by the Plaintiff to the Asst. Settlement Officer-II, Kolasib.

PW 2 namely Shri H.Zosangliana, resident of Vairengte Venghlun deposed that he knew the Plaintiff is the legal and rightful owner of the land covered by Periodic Patta No.110 of 1980 located at IOC veng, Vairengte. On the land, the Plaintiff planted various cash crops liked betelnuts, Hatkora, Orange, teak etc. The Plaintiff being a farmer, he had a fish pond inside the land and reared fishes in the pond. He stated that he had often been engaged as a daily labourer in the land of the Plaintiff since 1987 and the said land was full of fruit trees and other cash crops. However since 1999, the Defendants like Sh.K.Kailiana resident of Zalen veng, Vairengte and other Defendants encroached upon the land by constructing house building without the consent of the Plaintiff for which the Plaintiff had time and again approached concerned authorities to evict the encroachers but all in vain. By taking undue advantage of the poverty of Plaintiff, the private Defendants defiantly continued their illegal occupation in the land covered by Periodic Patta No.110 of 1980.

PW3 namely P.C.Parmawia, resident of Venglai, Vairengte deposed that he know the Plaintiff is the legal and rightful owner of the land covered by Periodic Patta No.110 of 1980 located at IOC veng, Vairengte. He has a fish pond within the land and reared fishes in the pond productively. However, due to political ethnic turmoil in the neighboring State of Manipur between Hmar and Dimasa, large number of Hmar people migrated to Mizoram especially at Vairengte which had caused influx of the refugees. As many homeless refugees occupied the land covered by Periodic Patta No.110 of 1980 the plantation of the garden suffered the most resulting into depletion of the garden and unauthorized construction of houses.

On careful perusal of all the evidences on record, it is revealed that the lands covered by Periodic Patta No.110 of 1980 and Periodic Patta No.7 of 1982 had been illegally occupied, utilized and depleted by the Defendants. Hence issue no.3 is decided in favour of the Plaintiff.

Having finally decided as above, the suit is decreed as follow :__

- a) The Plaintiff is the legal and rightful holder of the land covered by Periodic Patta No.110 of 1980.

- b) The Defendants No.1-21 are hereby directed to vacate the suit land belonging to the Plaintiff within a period of three months.
- c) The Defendants No.1-21 are further directed not to interfere with the peaceful possession of the said land by the Plaintiff and are restrained from doing any harm/detrimental to the interest of the Plaintiff.

Parties shall bear their own costs.

Having decreed as above, the suit is accordingly disposed of.

Pronounce in open court in presence of parties.

Sd/-R.VANLALENA

Senior Civil Judge – II
Aizawl District : Aizawl.

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the, 13th September 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. R.Remthanga, S/o Rochhuma, , Zalen Veng Vairengte, Kolasib District, Mizoram through his Counsel Shri C.Zoramchhana.
3. The State of Mizoram, Represented by the Chief Secretary to the Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
4. The Secretary, School Education Department, Govt. of Mizoram, Aizawl, Mizoram through Asst. Govt. Advocates.
5. The Director, School Education Department, Govt. of Mizoram, Aizawl, Mizoram through Asst. Govt. Advocates.
6. District Education Officer, Kolasib District, Mizoram, Aizawl through Asst. Govt. Advocates.
7. The Headmaster, Govt. Middle School (UPS-SSA) IOC Veng, Vairengte, Kolasib District, Mizoram through Asst. Govt. Advocates.
8. The President, Village Council –II, Vairengte, Kolasib District, Mizoram.

9. The President, Young Mizo Association, Vairengte IOC Branch-II, Vairengte, Kolasib District, Mizoram.
10. The Chairman, Aganwadi Centre, IOC Veng, Vairengte, Kolasib District, Mizoram.
11. Lungawia, S/o Thanthuama, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
12. Sanga S/o Thangthlurha, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
13. Lalthangvunga S/o Sumneihhrawnga, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
14. Raldivela, S/o Tea IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
15. Ramthara, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
16. Hnemi D/o Dangvela(L) IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
17. Thangsanglura, S/o T.Ruma, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
18. Lungawia, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
19. Lalhminghlua, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
20. Lalramzauva S/o Hrilkunga, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
21. Biakzami, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
22. K.Lalnunhluna S/o K.Kailiana, IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
23. K.Kailiana, S/o Dengzika (L) IOC Veng, Vairengte, Kolasib District, Mizoram through Counsel Shri W.Sam Joseph & Others.
24. Registry Section.
25. Case record.