

**IN THE COURT OF ADDL.DISTRICT JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL**

RFA No.14/2014

A/o DS 1/2004

Dr.B.Thangdailova	:	Appellant
	Vrs	
State of Mizoram & Ors	:	Respondent

BEFORE

Vanlalmawia

Addl.District & Sessions Judge-I

PRESENT

For the Appellant	:	W,.Sam Joseph
For the Respondent	:	R.Lalremruata, Addl.PP Date
of Hearing	:	27.5.2015
Date of order	:	18.6.2015

ORDER

From the judgment and decree dated 30.12.2013 of Shri Thomas Lalrammawia, Civil Judge at Aizawl, passed in Declaratory Suit No.1 of 2004.

J U D G M E N T & O R D E R

1. This Appeal is directed against the judgment and decree dated 30/12/2013 passed by Mr. Thomas Lalrammawia, Civil Judge, at Aizawl in Declaratory Suit No. 1 of 2004 whereby learned court decreed the case and

2. passed the decree that "In view of the discussions in issue no.4 and issue no.5, the suit is liable to be dismissed. Therefore, the Plaintiff is not entitled to the relief claimed. Accordingly, the suit is dismissed. Parties shall bear their own cost."

3. On being aggrieved and dissatisfied with the aforesaid judgment and decree, the plaintiff in the aforesaid Declaratory Suit No. 1 of 2004 took shelter of this appellate court and assailed the impugned Judgment and decree on various grounds that the learned lower court erred in law and fact, passed the impugned judgment and decree without hearing the counsels for the appellant and made his reasoning in the judgement and order without giving any reliance to the evidence adduced by the appellant also the statement made by the appellant and the learned court committed illegality in not setting aside the orders passed by the Revenue authorities dt. 27.11.01 and the Eviction Order communicated vide letter No.F.14011/107/2001-DC(A) 283 dt.28.1.04 even through the respondent/defendant no.5 did not make any objection to the road measuring 5m x 18.30m and also the house with the iron gate within his own land covered under LSC no.103 of 1986. For that the learned lower court the reasons given are not cogent and the he arrived at the decision on the basis of the extraneous consideration. In deciding the issue no.4 he had relied on the Judgement and Order passed by the Gauhati High Court Aizawl Bench in RFA No.25 of 2011 & 34 of 2011 which was not relevant to the present case as the sale deed was executed before the Registration Act 1908 and the Indian Stamp Act, 1899 was applied to Mizoram. In other words, the case law which has been applied by the Id. Trial court in deciding the Declaratory Suit before it was wrongly applied and the same had let the Ld. Trial Court to come to wrong conclusion. And as such the impugned Judgment dt.30/12/13 is liable to be set aside and quashed. Trial court While passing the Impugned Judgment, the Id. Trial Court had failed to take the evidence of the parties in to consideration and the same had resulted in miscarriage of justice.

4. On the other hand the Addl. Government Advocate submitted written objection on behalf of the respondents nos.1 to 3 and stated that as per verification conducted, the construction of the petitioner obstructed the footpath of some people and he obstructed the foot path and prayed the court to dismiss the appeal out right with cost.

5. I have perused the evidence on record and found that during the trial the respondents/defendants nos. 1 to 4 had examined one Shri Rinzamlova, Assistant Director of Survey, Directorate of LR & S Department, Aizawl. He stated during cross examination by the appellant's counsel that there is/was never any complaint from the respondent no.5 owner of the adjoining land against the appellant regarding encroachment of his LSC by the appellant. He further stated that there was no private land between the approached road used by the CRPF and the Land of Vailutthanga. He also did not have any knowledge as to whether the said approached road is being used by Pi. Nguri and others or their approached road for their respective houses. He further stated clearly that since the main concern of the verifying team at the time of spot verification conducted on 14.3.2006 was the dispute between the plaintiff and Pi Thanchhungnungi on the Northern/Eastern side, I was not very particular about whether his building had encroachment upon any public/private land on the southern side and I was not certain about the same. He further stated clearly that as per Ext D-1 the defendant no.5 did not make any complaint against the plaintiff as having obstructed his approach road for his land under L.S.C. No.726/86 by the plaintiff.

6. On going through the evidence on record, I feel that the learned lower court did not properly appreciate the evidence.

7. On this appeal, I have heard arguments, of the learned Counsels for the parties and gone through the impugned judgment and decree and the evidence on record. I have also gone oral and documentary evidence on record. After oral argument, the counsels for the appellant and the Additional

Government Advocate visited the spot and verified as to whether the plaintiff has encroached upon land of defendant/respondent no.5 or land of any other person. On going through the LSC of the plaintiff/appellant and verifying with the actual land the appellant had constructed building within his entire land and adjacent to the land of the appellant at the northern side there is a road leading to the lands beyond the land of the appellant and from the evidence on record also there is no complaint from anybody of encroachment by the plaintiff/appellant.

8. Points for Decision or Determination:-

After minute perusal of the memorandum of appeal and the written objection filed by the Addl. Government Advocate I find the main crux of the dispute lies on the points as to:-

- (i) Whether the Plaintiff has encroached upon any public land on the side of the proposed road between his land and the land of Smt.Nguri and that his RCC building and the iron gate in front side of his said building block the approach road of any person including that of the Defendant no.5.***
- (ii) Whether the Order dated 27.11.01 and the Eviction order communicated vide letter no.F.14011/107/2001-DC(A)/283 dt. 28.1.04 are illegal, without authority and null and void or not.***

9. In the light of the material at hand and the spot verification conducted by the counsels for the appellant and the respondents nos.1 to 4 and also the photographs taken in the presence of the counsels of both the parties it is clear that the plaintiff/ appellant has not encroached upon the land of any person and the building constructed by him has been standing since a long time and the building is constructed within the LSC of the appellant and his construction has not obstructed approach of any other person's land beyond his

land, hence I am compelled to hold that the plaintiff has not encroached upon any public land on the side of the Proposed Road between his land and the land of Smt. Nguri and that his RCC building and the iron gate in the front side of his said building does not in any way block the approach road of any person including that of the defendant/respondent no.5. As the appellant/plaintiff has not encroached the land of any person including the defendant/respondent no.5 I find the order issued vide Memo No.C-13016/N-11/97-DISP/DTE(REV)/390 Dt.27/11/01 exhibited as Ext-P-7 has no merit and is liable to be quashed and set aside. On setting aside the said order, the Eviction Order issued vide No.F.14011/107/2001-DC (A)/283 dt. 28/1/04 becomes redundant. Both the orders are to be set aside.

10. It is hereby declared that the appellant/plaintiff has not encroached upon anybody's land including the land of the respondent/defendant no.5. The orders issued by the Respondents/ defendants nos.1 to 4 vide no. C-13016/N-11/97-DISP/DTE(REV)/390 Dt.27/11/01 & exhibited as Ext-P-7 and the Eviction Order issued vide No.F.14011/107/2001-DC (A)/283 dt. 28/1/04 exhibited as Ext-P-12 are set aside and quashed.

11. In the result, the appeal is allowed and the judgment and order passed by the learned lower court dated 30.12.2013 in Declaratory Suit No.1 of 2004 is set aside.

12. Parties shall bear their own costs

13. Let a decree be prepared accordingly.

14. Let a copy of this judgment be furnished to the court below.

15. Lower Case record be returned forthwith.
16. Given under the hand and seal of this court on this 18th of June, 2015.

Sd/-VANLALMAWIA
Addl.District Judge
Aizawl Judicial District,Aizawl

Memo No ____/ADJ-I(A)/2015 : Dated Aizawl the, 18th June 2015

Copy to :-

1. District Judge.
2. Thomas Lalrammawia Civil Judge, Aizawl District Aizawl with case record of M.S No.1/2004.
3. Dr.B,Thangdailova S/o B.Pukhuma (L) Khatla C/o W.Sam Joseph,Advocate.
4. GA,AGA.
5. State of Mizoram & represented by C.S Govt. of Mizoram.
6. Secretary, Government of Mizoram Revenue Department.
7. Deputy Commissioner, Aizawl District, Aizawl.
8. Vailutthanga, Ramthar Tlang veng, Aizawl.
9. Judicial Section
10. Case record.
11. Guard

PESHKAR