IN THE COURT OF SENIOR CIVIL JUDGE- 2
AIZAWL DISTRICT: AIZAWL, MIZORAM

DECLARATORY SUIT NO. 14 OF 2003

Plaintiff:
Smt. Lalramengmawii
D/o Neihdinga
Mamit, Dinthar Veng

By Advocates : Mr. C. Lalramzauva, Sr. Adv.

Versus

Defendants:
1. The State of Mizoram
   Through the Chief Secretary
   Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
   Land Revenue and Settlement Department
3. The Director
   Land Revenue and Settlement Department
   Govt. of Mizoram
4. The ASO- II
   Aizawl District: Aizawl
5. Smt. Zoramthangi
   D/o Dengthanga (L)
   Armed Veng
   Aizawl- Aizawl District

By Advocates:

For the defendants No. 1-4 : Mr. R. Lalremruata, AGA
For the defendants Nos. 5 : 1. Mr. W. Sam Joseph
2. Mr. Zochhuana

BEFORE
Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

Date of Arguments : 21-04-2011
Date of Judgment & Order : 25-04-2011

JUDGMENT & ORDER

GENESIS OF THE CASE

This is a suit for declaration that the Order under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003 being illegal and bonafide owner of the land covered by LSC No. AZL. 1905/87 located at Zemabawk, Aizawl with all other consequential relief. The plaintiff in her plaint submitted that she is the niece of Mr. Neihchhunga (L) alleged previous owner of the land covered by LSC No. AZL. 1905/87. The said Mr. Neihchhunga had purchased the suit land from Smt. Zoramthari (L) on 1/6/1995 at Rs. 50,000/- and the said LSC was mutated in the name of Mr. Neihchhunga (L) by the Revenue authorities under No. S. 11016/1/97-DTE (REV) Dt. 27/3/1997. After the dead of Mr. Neihchhunga on

31/7/2000, the plaintiff was declared as the legal heir of the said LSC by issuing Heirship Certificate by the Ld. SDCC, Aizawl under Memo No. SDCC/HC- 297/2001/3181-3 Dated Aizawl, the 13.6.2001. The said LSC No. AZL. 1905/87 was mutated in the name of the plaintiff under No. S. 11016/1/2002/LSC -DTE (REV) Dt. 15/1/02 and the plaintiff is a revenue/tax payer for the same. After lapse of eight years from the date of purchase, as submitted grievance to the defendants 1-4 on appearing of concerned parties on 23/9/2003 ordered that since the suit land was wrongly sold, the defendant No. 5 will be entitled to the said LSC No. AZL. 1905/87 under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003 which is challenged in the instant suit to declare it as null and void. The plaint is stamped at Rs. 30/- of court fees. Hence, prayed a decree for cancelling the Order under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003 for declaring the plaintiff is the legal and bonafide owner of the land covered by LSC No. AZL. 1905/87 located at Zemabawk, and further prayed costs of the suit and any other orders or relief as this Court may deem fit and proper.

In the written statements of defendants 1-4, they had submitted that Smt. Tlangthanmawii through Zoramthari sold her house site LSC No. AZL. 1905/87 to Mr. Lalchungnunga S/o Z. Dengthanga, Armed Veng North at the cost of Rs. 3000/- as shown in the mutation form while the actual cost was Rs. 25,000/- as per sale deed. The suit land/LSC was properly mutated in the name of Mr. Lalchungnunga Vide DST. 10/AZL/87/889 of 29-09-1987. After the original and duplicate copies of the said LSC were in the custody of Mr. Lalchungnunga, Smt. Zoramthari cleverly and treacherously informed and cheated Mr. Lalchungnunga's sister namely Smt. Zoramthangi in the disguise of compensation purpose and also for necessary correction. As such, the said Smt. Zoramthangi in good faith handed over the said LSC to Smt. Zoramthari in the early part of 1997. The said Zoramthari fraudulently sold the said LSC to one Mr. Neihchhunga. By committing forged signatures of Mr. Lalchungnunga in the prescribed forms, the said LSC was mutated in the name of Mr. Neihchhunga (L) which was beyond the detect of the Dealing Clerks. On the strength of Heirship Certificate, the same was mutated again in the name of Smt. Lalramengmawii. More so, during the lifetime of Mr. Lalchungnunga, his family were not aware of transfer of LSC No. AZL. 1905/87. Since the existing land and revenue laws does not prohibited, re-transfer and restoration of LSC No. 1905/87 in the name of Mr. Lalchungnunga is a sine quo non for the end of justice. The plaintiff is also required to pay a minimum requisite court fees at Rs. 5000/- instead of Rs. 30/-. Thus, prayed to dismiss the suit and awarded exemplary costs.

The defendant no. 5 in her written statement submitted that Mr. Lalchungnunga was not the son of Smt. Zoramthari (L) and Mr. V.L. Chhuanga as stated in the Sale Deed annexed in the plaint and he is the son of Mr. Z. Dengthanga of Armed Veng. The Sale Deed and 'Hmun Inpekna' Dt. 1.6.1995 was verified as forged signature and seal of President, Village Council, Thuampui. Mr. Lalchungnunga was died on 8th Sept., 1996, the question of the deceased authorizing the deceased Zoramthari to sell the said land does not arise. The sale is void *ab initio*. Transfer of LSC No. 1905/87 to the deceased Mr. Neihchhunga was done by forging the signature of the deceased Mr. Lalchungnunga, which was also void. In fact, the Revenue authorities were cheated through forged signatures etc. The said Mr. Lalchungnunga was also living with his father in the main house till his dead. The plaintiff is also required to pay Rs. 5000/- as court fees. Thus, prayed to dismiss of the suit with costs.

ISSUES

The following issues were framed on 02-08-2005, such as-

1. Whether the suit is maintainable or not
2. Whether the plaintiff has cause of action against the defendants
3. Whether the plaintiff has *locus standi* to file the suit
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties
5. Whether the plaintiff is the rightful owner of LSC No. 1905/87
6. Whether the transfer of LSC from the name of Mr. Lalchungnunga (L) to Mr. Neihchhunga (L) is illegal
7. Whether the Order under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003 promulgated by the defendant No. 3 is legal and proper
8. Whether the plaintiff is entitled to the relief claimed or not. If so to what extent.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff have produced the following witnesses

1. Smt. Lalramengmawii D/o Neihdinga, Dinthar Veng- Mamit (Herein after referred to as PW-1)
2. Mr. Ralliana S/o Kapphunga (L), Electric Veng, Aizawl (Herein after referred to as PW-2)

For the defendant No. 5

1. Smt. Zoramthangi, Armed Veng South, Aizawl (Herein after referred to as Witness No. 1 of defendant no. 5)
2. Smt. Lianmawii D/o Z. Dengthanga (L), Armed Veng, Aizawl (Herein after referred to as Witness No. 2 of defendant no. 5)

The defendants 1-4 does not produced any witnesses during the proceedings.

FINDINGS

Issue No. 1
Maintainability of the suit

No disputes on maintainability of the suit arise till arguments except the quantum of requisite court fees, Mr. C. Lalramzauva, Sr. Counsel for the plaintiff till oral arguments stood that as the suit is purely declaratory in nature, a requisite court fees is at Rs. 30/- as per the existing laws governing court fees in Mizoram. Mr. W. Sam Joseph, Ld. Counsel for the defendant No. 5 vehemently argued that since a consequential relief is prayed, a minimum requisite court fees at Rs. 5000/- is required to make up otherwise, the suit is liable to reject due to failure to pay requisite court fees.

In the crux, Compelling to look into precedents binding force to this court, before India independence and existence of the present Supreme Court of India passing 80 years, In the case of **Radha Krishna vs Ram Narain And Ors**. decided on 19 January, 1931 reported in AIR 1931 All 369, the Allahabad High Court has held that-

> "23. The foregoing review of relevant decisions shows a conflict of judicial opinion without any clear preponderance on one side or the other. We hold that

the Court-fee must be decided on the plaint. The plaintiff asks for a mere declaration. He studiously avoids asking for any consequential relief. The suit as framed therefore is clearly "to obtain a declaratory decree where no consequential relief is prayed." We are not concerned at the present stage with the question whether the suit is of the nature contemplated by Section 42 or whether the Court will refuse to grant a mere declaration on the ground that the plaintiff has omitted to ask for further relief such as an injunction restraining the decree-holder from executing the decree, or whether the plaintiff has applied for stay of execution; or whether a mere declaration, if granted will serve any useful purpose. Fiscal statutes must be strictly construed If the plaintiff chooses to take the risk of asking for a mere declaration without consequential relief he is, in our opinion at liberty to do so under Article 17, (iii) upon payment of a fixed court-fee of Rs. 10. When he has carefully refrained from asking for consequential relief we do not consider that he should nevertheless be deemed to have asked for consequential relief. This would be doing violence to the language of Section 7, (iv) (c). We hold that the plaint, as amended, is sufficiently stamped."

In the case of **Vanlalveni vs Tlanglawma** decided on 15/11/2002 and reported in (2005) 1 GLR 240, the Gauhati High Court has observed that-

"13. Incidentally, it may be noted from contents of the plaint photo copy of which is available in the case record, that the present appellant as plaintiff had confused whether the basic document upon which cause of action for the Suit was traced was a hand-note, or a promissory note or an agreement. Then again the suit was instituted for as a declaratory suit with fixed court fees of Rs. 25/- but the basic documents will show that there was only a pecuniary liability on the part of the deceased Rokima and not the present respondent Tlanglawma. The present respondent was only a witness to the said agreement/hand note. There is nothing to show that the respondent Tlanglawma ever incurred any liability under the said hand note/agreement. It was mentioned in the said agreement ext.p-1 that LSC had been handed over to the lender/ plaintiff but there is nothing in the judgment of trial court to show existence of any such document. Therefore, it will be opined that the judgment of the trial court was under misconception of law and without jurisdiction. It should have been either a Money Suit or Title Suit on mortgage. Therefore, there is a necessity to quash the entire proceedings starting from the original court upto the stage of first appellate court by exercising of the inherent power under Section 151 of C.P.C. for ends of justice. Such misconception of law cannot be allowed to be sustained"

In the case of **State Of M.P. vs Mangilal Sharma** decided on 18 December, 1997 reported in AIR 1998 SC 743, 1998 (1) ALT 11 SC, 1998 (1) CTC 271, the Apex Court has observed that-

"4. It appears to us that the courts below did not go by even the basic principles of law. A suit for mere declaration to any legal character is maintainable under Section 34 of the Specific Relief Act 1963, though it has been held that section is not exhaustive. There is a proviso to the section which bars any such declaration where the plaintiff, being able to seek further relief, omits to do so. Section 34, in relevant part, is as under:

"34. Discretion of court as to declaration of status or right. - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

5. Normally in a case like the present one the plaintiff when seeking relief of declaration that he continues to be in service would also seek consequential reliefs of reinstatement and arrears of salary. This the respondent as plaintiff did not do so as the Government not being a private employer would certainly respect a mere decree of declaration. This in fact the appellant did and the respondent has been reinstated. Moreover, once the Government servant is appointed to his post or office, he acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory Rules which may be framed by the Government. The legal position of a Government servant is more one of status than of contract...

> ...6. A declaratory decree merely declares the right of the decree holder vis-a-vis the judgment debtor and does not in terms direct the judgment debtor to do or refrain from doing any particular act or thing. Since in the present case decree does not direct reinstatement or payment of arrears of salary the executing court could not issue any process for the purpose as that would be going outside or beyond the decree. Respondent as a decree holder was free to seek his remedy for arrears of salary in the suit for declaration. The executing court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not How directly and necessarily from the declaratory decree. It is not that if in a suit for declaration where the plaintiff is able to seek further relief he must seek that relief though he may not be in need of that further relief. In the present suit the plaintiff while seeking relief of declaration would certainly have asked for other reliefs like the reinstatement, arrears of salary and consequential benefits. He was however, satisfied with a relief of declaration knowing that the Government would honour the decree and would reinstate him. We will therefore assume that the suit for mere declaration filed by the respondent-plaintiff was maintainable, as the question of maintainability of the suit is not in issue before us.
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> ...10. We are, therefore, of the opinion that the courts below did not exercise their jurisdiction properly and the respondent could not have sought execution of the declaratory decree when no relief was granted to him towards arrears of salary and other consequential benefits."

In the case of **Parkash Chand Khurana Etc vs Harnam Singh & Ors** decided on 28 March, 1973 and reported in 1973 AIR 2065, 1973 SCR (3) 802, the Supreme Court has held that-

> "The next contention of the appellants is that the award is merely declaratory of the rights of the parties and is therefore inexecutable. This contention is based on the wording of clause 7 of the award which provides that on the happening of certain events the respondents "shall be entitled to take back the possession". We are unable to appreciate how this clause makes the award merely declaratory. It is never a pre-condition of the executability of a decree that it must provide expressly that the party entitled to a relief under it must file an execution application for obtaining that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights to the parties. It is a clear intendment of the award that if the appellants defaulted in discharging their obligations under the award, the respondents would be entitled to apply for and obtain possession of the property."

In **Prakash Chand v. S.S. Grewal and Ors**., reported in [1975] Cr. LJ. 679, (Full Bench) (Punjab and Haryana High Court), the petitioner had a decree in his favour declaring his dismissal from service to be illegal, void and of no effect. The Punjab Government did not reinstate him nor paid him the arrears of salary. He, therefore, filed a writ petition for taking contempt of courts proceedings against certain officials of the State Government. The Court held as under:

> "A declaratory decree, in my opinion, cannot be executed as it only declares the rights of the decree-holder qua the judgment-debtor and does not in terms, direct the judgment- debtor to do or to refrain from doing any particular act or thing. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decree-holder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favour."

In the case of **Laisram Aber Singh vs Smt. Yumnam Ningol Khangembam, Ongbi Tingong Devi** decided on 22/7/1985 reported in AIR 1986 Gau 66, the Gauhati High Court has observed that-

> "18. Applying the above principles to the facts of the instant case, I am inclined to hold that the plaintiff is entitled to a declaration of his right over the suit land as acquired by purchase. Since he also prayed for the relief of injunction his suit is not for a declaration simpliciter, but with further relief of injunction. As the Courts have found the possession to have been with the defendant jointly with her daughter and both possessing through their tenant, the relief of recovery of possession could not have been asked for against the defendant only, and for not asking for recovery of possession the suit would not be hit by the proviso to Section 34 of the Specific Relief Act. For enabling the

> plaintiff to obtain a partition of the suit land a declaration of his title to the suit land would be helpful. The decree of the trial Court declaring title of the plaintiff over the suit land is, therefore, upheld. The defendant is restrained from interfering with the plaintiff's rights and title over the suit land."

In the case of **Chitui Naga v. Onhen Kuki** reported in AIR 1984 Gau 62, Imphal Bench of the Gauhati High Court, it was pointed out that:

> ".....the provision of Section 34 of the Specific Relief Act has its origin in the fact that it was not a practice in England for Courts to make declarations of rights except as introductory to other relief which they proceeded to administer. Mere declaratory decrees were innovations which first obtained authoritative sanction by Section 50 of the Chancery Procedure Act, 1852 which run thus:
>
> "No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the civil Court to make binding declarations of right without granting consequential relief. This section was judicially interpreted to mean that declaratory decree could be granted only in cases where there was some consequential relief which could be had if it had been sought. However, it has been realised that judgments and orders are usually determinations of rights in the actual circumstances of which the Court has cognizance and gives some particular relief capable of being enforced. It is, however, sometimes convenient to obtain a judicial decision upon a state of facts which has not yet arisen, or a declaration of the rights of a party without any reference to their enforcement. Such merely declaratory judgments may in appropriate cases be given, and the Court is authorised to make binding declarations of rights whether any consequential relief is or could be claimed or not. There is a general power to make a declaration whether there be a cause of action or not, and at the instance of any party who is interested in the subject matter of the declaration, and although a claim to consequential relief has not been made, or has been abandoned or refused, but it is essential that some relief should be sought, or that a right to some substantive relief should be established. A person moulds his relief according to his need. The type of further or consequential relief required to be granted will also depend on the facts and circumstances of a case."

The observations in **Vanlalveni vs Tlanglawma (supra.)** is attracted in the instant suit saying that the instant suit should be a Title Suit or a Money Suit. Thus, in this ground the finding is negative for the plaintiff. In a very nutshell, in my opinion, the suit is not maintainable as a Declaratory suit for wholesome further proceedings.

With regards to requisite court fees, the title of the suit itself reads as- *"A suit for declaration that the Order Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003 being illegal is null and void and for a further declaration that the plaintiff is the legal and bonafide owner of the land covered by LSC No. AZL. 1905/87 located at Zemabawk, Aizawl with all other consequential reliefs"*

However, It is therefore attracted the provisions of Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) vis. *'Consequential relief'*. The 42 years old precedent in the case of **Chief Inspector Of Stamps, U.P., Allahabad vs Mahanth Laxmi Narain And Ors**. decided on 29 October, 1969 reported in AIR 1970 All 488, Full Bench of the Allahabad High Court observed in respect of 'Consequential relief' that-

> "18. The words 'consequential relief have not been defined in the Court-Fees Act The meaning, which should be given to a word or expression riot defined in an enactment, should be its ordinary dictionary meaning or a meaning which is necessarily implied by the context in which it is used or by the object of the provisions or by the scheme of the enactment. The ordinary dictionary meaning of the word 'consequential' is "following as a result or inference". This meaning justified the first test laid down in Kalu Ram's case, AIR 1932 All 485 (FB). The Judgment in that case does not disclose or indicate the basis for the second, third and fourth tests. There is nothing in the language of Section 7 or in the context in which the word 'consequential' has been used to support these tests. The objects of the Court-Fees Act are to collect revenue and

> to prevent frivolous suits being filed. Neither from these objects nor from the scheme of the Act can these three tests be necessarily implied...
>
> ...It is well settled that the Court-fees Act is a fiscal measure and is to be strictly construed in favour of the subject. (See Sri Krishna Chandra v. Mahabir Prasad, AIR 1933 All 488 (FB)). If the language of the provision is capable of two interpretations, then that interpretation should be accepted which is in favour of the subject. It must be kept in mind that the declaratory relief and the consequential relief falling under Section 7(iv)(a) in respect of immovable property have to be valued as one relief and that relief is the consequential relief. What has then to be seen is whether the relief, which has been prayed for as a consequential relief, is capable of valuation or not. When the Act itself provides the manner or method of valuation of a particular relief, how can it be said that that relief is incapable of valuation? If the relief, which is prayed for as a consequential relief, is specifically provided for in the Act, then it is capable of valuation and must be valued according to the provision made in respect of it; but, if the relief is one which is not specifically provided for in the Act, then it is not capable of valuation under the Act and must be valued according to the value of the immovable property in respect of which it has been prayed. Simply because an injunction is sought in conjunction with a declaratory relief, thereby becoming a consequential relief, it does not cease to be a relief of injunction. The value of the suit is the value of the consequential relief that is to say the value of the relief of injunction. The method for valuation of a relief of injunction is specifically provided in Sub-section (iv-B). Where the relief, which is prayed for as a consequential relief, is the relief of injunction, it is capable of valuation under Sub-section (iv-B) and must be valued according to the provisions of this subsection.
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> 24. In Suit No. 83 of 1953, out of which the special appeals arise, both the Civil Judge as well as the learned Single Judge in appeal have held that the suit was for a declaratory decree in which the consequential relief of injunction was prayed for and was, therefore, governed by Sub-section (iv) (a). This finding is correct. The consequential relief sought was for an injunction, restraining the defendants from obstructing the plaintiffs from using the hall belonging to the Mandali. The Civil Judge held that the relief of injunction was in respect of immovable property, that it was incapable of valuation and, therefore, must be valued at the market value of the immovable property (hall) which was Rs. 12,000/-. The learned Single Judge held that the relief of injunction was not in respect of any immovable property and that the court-fee was payable on the amount at which the two reliefs were valued in the plaint, i.e., Rs. 5,200/-. Both these views are erroneous. The injunction is clearly in respect of immovable property, i.e., the hall, and this relief is capable of valuation. As held above, the suit has to be valued according to the value of the relief of injunction and the relief of injunction has to be valued in accordance with the provisions of Sub-section (iv-B)."

Very obviously, Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) clearly mentioned that when a consequential relied is sought even in Declaratory suit, court fees at Rs. 30/- is not enough. Bearing mind the above legal notions and principles, Rs. 30/- only as court fees stamp (affixed in the instant suit) is not enough and insufficient in the instant case where consequential relief is prayed for and the requisite court fees in terms of the valuation of suit in the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is required to make up by the plaintiff.

Moreover, no specific valuation of the suit is found in the submissions in the plaint. It is a well settled law that valuation of the suit is not only for the purpose of court fees but also meant to determine the pecuniary jurisdiction of court. In respect of improper valuation of the suit, valuation of the suit is not only for the purpose of paying the Court Fees but it also plays an important role for determining the pecuniary jurisdiction of the Civil Court in the light of S. 15 of the CPC as held in the case of **Ratan Sen alias Ratan Lal Vs. Suraj Bhan & Ors**. AIR 1944 All 1. Furthermore, in **Sri Rathnavarmaraja Vs. Smt. Vimla**, AIR 1961 SC 1299, the Supreme Court held that whether proper court fee has been paid or not, is an issue between the plaintiff and the state and that the defendant has no right to question it in any manner. The said judgment of the Apex Court was re-considered and

approved in **Shamsher Singh Vs. Rajinder Prashad & Ors.** AIR 1973 SC 2384, observing as under:-

> "The ratio of that decision was that no revision on a question of court fee lay where no question of jurisdiction was involved"

In a very nutshell, the issue no. 1 is therefore negative for the plaintiff but affirmative in favour of the defendants.

Issue No. 2
Cause of action in favour of the plaintiff and against the defendants

Before dealing with the crux, legal principles in respect of cause of action may be observed as held in **Swamy Atmananda & Ors.Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was held that-

> "A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

In the case of **I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others**: reported in 1998 (2) SCC 70, their Lordship of Hon'ble Supreme Court went on that-

> "16. The question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

Admittedly in the pleadings and evidences, whether the mode was duly proper and legal or not, the plaintiff was the legal heir of the deceased Mr. Neihchhunga who was the holder of LSC No. 1905/87 appended his name in the said LSC and again mutated in the name of the plaintiff but ordered to return back to the defendant No. 5 as ownership, I find cause of action in the instant suit. It is the state defendants who ordered to return back in the name of the defendant no. 4, I find that the cause of action would be against the defendants.

Issue No. 3
Locus standi of the plaintiff

It is no need to discuss more as per the findings under issue no. 2, I find that the plaintiff has a *locus standi* to file the instant suit in the light of the observations of the Constitution Bench of Hon'ble Supreme Court in the case of **S.P. Gupta Vs. President Of India And Ors**. decided on 30/12/1981 and reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365.

Issue No. 4
Non- joinder and mis-joinder of necessary parties

The well settled principles of law in regards to non-joinder and mis-joinder of necessary parties is that caution should be whether the suit can be fruitfully and effectively adjudicated and realized with parties in the suit.

Reliance may be taken in **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera & Anr**. decided on 16/03/1999 reported in 1999 AIR 1341, 1999 (1) SCR 1097, 1999 (3) SCC 457, 1999 (2) SCALE 108, 1999 (2) JT 250, it was observed that-

> "These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."

Again in **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on 20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, the Apex Court has held that-

> "The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681."

The facts and averments in the pleadings of both parties failed to mention the reasons for allegations of non-joinder and mis-joinder of necessary parties. No issues remains touch till arguments which is also admitted as not barred by PW-1 during her cross examination. I therefore have no reasons to negate the suit on non-joinder and mis-joinder.

Issue No. 5 & 6

Whether the plaintiff is the legal owner of the LSC No. 1905/87 and transfer of ownership of the said LSC from Mr. Lalchungnunga to Mr. Neihchhunga was legally valid or not.

Cogently, the issues numbers 5 and 6 can deal with same footing, the PW- 1 reiterated the story already submitted in the plaint in her examination in chief, in her cross examination by Ld. Counsels for defendant No. 5, she deposed that Mr. Lalchungnunga was died on 8/9/1996 and Smt. Zoramthari was not the mother of Mr. Lalchungnunga and all the times, the LSC No. 1905/87 was put in the name of Smt. Zoramthari and there was no power of attorney given by Mr. Lalchungnunga to Smt. Zoramthari to dispose of LSC No. 1905/87. The husband of Smt. Zoramthari was Mr. V.L. Chhuana. She admitted as a fact that Mr. Lalchungnunga was died before submissions of application for transfer and mutation of LSC No. 1905/87 in the name of Mr. Neihchhunga (L) which were again evident and corroborated during cross examination by Ld. Counsels for defendants 1-4.

The PW- 2 in his examination in chief deposed that he was one of the witness to the Sale Deed/Ram Inleina Dt. 1/6/1995 executed by Smt. Zoramthari and Mr. Neihchhunga (L) and he was the good friend of Mr. Neihchhunga during his lifetime. On 1/6/1995, with his presence, Mr. Neihchhunga drawn Rs. 50,000/- from Mizoram Rural Bank, Zarkawt Branch and he paid the said amount to Smt. Zoramthari for purchasing the land under LSC No. 1905/87. As requested, he appended his signature in the said Sale Deed/Ram Inleina Dt. 1/6/1995 executed by Smt. Zoramthari and Mr. Neihchhunga (L). Smt. Hmingthansiami, he himself, Smt. Zoramthari and Mr. Neihchhunga (L) put a signature in the said Sale Deed at the office of Mizoram Rural Bank, Zarkawt Branch. In his cross examination by Ld. Counsel for defendant No. 5, he deposed that he do not know Mr. Lalchungnunga and only known Smt. Zoramthari through Mr.

Neihchhunga (L). He also do not knows that whether Mr. Lalchungnunga was the son of Smt. Zoramthari or not. Though he saw the said LSC, he did not know that who was the holder of the same. When the sale money was handed over to Smt. Zoramthari, her husband was not present. He do not know that whether Smt. Zoramthari deceived Mr. Neihchhunga or not.

The witness no. 1 of defendant No. 5 in her exam in chief reiterated the written submissions of the defendant no. 5. During cross examination, she deposed that Mr. Lalchungnunga was her younger brother and he have three children with wife namely Smt. Margaret Lalhmangaihi, she denied that the suit land was not actually purchased by Mr. Lalchungnunga from Smt. Zoramthari and also denied that Mr. Lalchungnunga (L) did not have an objection for selling of the suit land by Smt. Zoramthari to Late Mr. Neihchhunga and no Sale Deed was executed in between Mr. Lalchungnunga and Smt. Zoramthari. When she submitted a complaint to the Revenue Department, Smt. Zoramthari was already died. Witness no. 2 of defendant no. 5 deposed in her exam in chief that Mr. Lalchungnunga was her youngest brother and purchase the suit land and was also mutated in the name of Mr. Lalchunnunga. In the later part of 1997, one Smt. Zoramthari came to their house saying that she could proceed for claiming compensation for the suit land, their father Mr. Z. Dengthanga in good faith allowed to take out the said document/LSC by Smt. Zoramthari and were cheated by her. The sale by Smt. Zoramthari to Mr. Neihchhunga became illegal by presenting false and forged signatures in the Revenue Department for transfer of the suit land. The Revenue Department are correct for promulgation of Order under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003. During her cross examination, she deposed that she denied the allegations that all the times, the suit LSC was in the custody of Smt. Zoramthari and also denied that Mr. Lalchungnunga (L) has a share in the sale proceeds of the suit LSC to Mr. Neihchhunga (L) by Smt. Zoramthari. She further denied allegations on taking undue advantage for preferring complaint to Revenue Department for reverting the said LSC into the name of Mr. Lalchungnunga.

By appreciating the above evidence adduced in the court, very cogently, transfer of ownership of the said LSC from Mr. Lalchungnunga to Mr. Neihchhunga could not be held as legally valid by declaring the plaintiff as the legal owner of the land covered under LSC No. 1905/87.

Pertinently, as argued by Mr. C. Lalramzauva, Sr. Advocate for the plaintiff making reliance in the decisions of Hon'ble Supreme Court (2003) 8 SCC 740 under para 17 and (1993) Suppl. (4) SCC 46 under para 9, I find no relevancy of the said precedent in the instant case as no need to rely in the written statements of the defendants 1-4. In short, without evidence adduced by defendants 1-4, the evidences of the plaintiff and defendant no. 5 corroboratively elicited the truth on false selling of the suit land by Smt. Zoramthari without any authority at all by executing a Sale Deed with Mr. Neihchhunga (L). More so, I find that Smt. Zoramthari cheated the family of Mr. Lalchungnunga (L) for manipulation of the said LSC.

Issue No. 7
Order under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dt. 24.09.2003 promulgated by the defendant No. 3 is legal and proper or not

The order marked as Ext. P- 8 itself is firstly reads as under-

"DIRECTORATE OF LAND REVENUE AND SETTLEMENT

MIZORAM: AIZAWL

ORDER

Dated Aizawl, the 24th Sept., 2003

Pi Zoramthangi D/o Dengthanga (L) Armed Veng Aizawl chuan an nau Pu Lalchungnunga S/o Dengthanga (L) hminga an LSC No. 1905/87 chu an leina Pi Zoramthari, Thuampui chuan engemaw chhuanlama siamin ala chhuak leh a, Pu Neihchhunga hnenah ahralh leh tak chu a rawn report a. Tin, Pu Neihchhunga alo boral hnu in a unaupa fanu Lalramengmawii of Mamit hmingin he LSC hi a awm tawh ani tih hriat ani bawk a.

Hemi chungchang sawiho tur hian Office ad vawi engemaw zat koh anni hnuah Pi Zoramthangi A.P. veng leh Pi Lalramengmawii, Mamit te chu dt. 23.09.2003 ah an rawn lang v eve ta a. Pi Zoramthangi leh Pi Lalramengmawii te thusawi ngaihthlak ve ve anih hnu ah he LSC No. 1905/87 hi diklo taka Pu Neihchhunga hnena hralh anih avangin, a neitu pangngai Pu Lalchungnunga S/o Dengthanga hminga dah leh nghal tura tih ani a, tuna kawl mektu Pi Lalramengmawii hian dt. 24.09.2003 ah he LSC sawi tak hi Office ad rawn thehlut tura hriattir nghal a ni.

Sd/- ZADINGLIANA
Director
Land Revenue and Settlement
Mizoram- Aizawl

Memo No. S. 11016/18/2003/LSC/DTE (REV)/18 Dated Aizawl, the 24the Sept., 2003

Copy to:-

1. Pi. Lalramengmawii D/o Neihdanga, Mamit, Dinthar Veng for necessary action
2. Pi Zoramthangi, A.P. Veng, Aizawl for information

(ZADINGLIANA)
Director
Land Revenue and Settlement
Mizoram- Aizawl"

The order which may be passed by the Executive organs in the governance have two ingredients viz. (i) Natural Justice (say- Audi Alteram Partem and Nemo Judex in Causa Suo) (ii) Reasoning/Reasoned order by making reliance in the followings-

In the case of **U.P. State Road Transport Corporation vs Suresh Chand Sharma** decided on 26 May, 2010 in connection with Civil Appeal No. 3086 of 2007 with Civil Appeal No. 3088 of 2007, the Apex Court has held that-

> "19. Therefore, the law on the issue can be summarized to the effect that, while deciding the case, court is under an obligation to record reasons, however, brief, the same may be as it is a requirement of principles of natural justice. Non- observance of the said principle would vitiate the judicial order."

In the case of **State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors**. decided on 07/02/1967 and reported in 1967 AIR 1269: 1967 SCR (2) 625, it was further held that-

> "Even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case of the State and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken"

In **A. K. Kraipak & Ors. vs. Union of India & Ors**. AIR 1970 SC 150, a Constitution Bench of the Supreme Court held:

> "The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet csse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice".

The order itself speaks that all the concerned parities appeared for passing of the impugned Order but the reason mention is too short and unexplained as merely says "Diklo tak/Wrongfully". However, such lacunae is fill up by evidences in the instant case. As admitted, no existing laws barred to cancel wrong decisions on mutation of LSC to a person by the state defendants for reaching a correct decision. I therefore have no grounds to set aside of the impugned order under Memo No. S. 11016/18/2003/LSC/DTE (REV)/18, Dated Aizawl, the 24the Sept., 2003. Rather I appreciated such kind of confidence decisions of the Director, Land Revenue and Settlement Department, Govt. of Mizoram to meet justice for the needy by utilizing his official capacity in the right direction.

Issue No. 8
Entitlement of the relief claimed by the plaintiff and it's extend

As per the findings in the foregoing issues, no relief is entitled by the plaintiff in the instant suit except the Revenue tax already paid by her. In the Ext. P- 3 viz. copy of LSC No. AZL. 1905 of 1987, the revenue payable per annum is at Rs. 50/- on account of LSC No. AZL. 1905 of 1987. On 15/1/2002, the said LSC was mutated in the name of the plaintiff and reverted into Mr. Lalchungnunga as per the impugned Order Dt. 24th Sept., 2003 and the suit is instituted on 10.10.2003, the amount already spent by the plaintiff will be Rs. 100/- (One hundred rupees) only.

ORDER

In view of the findings in various issues, the inevitable conclusion is to dismiss the suit on merit. The suit is therefore dismissed on merit by declaring that Late Mr. Lalchungnunga S/o Z. Dengthanga, Armed Veng North as the legal owner of LSC No. AZL. 1905 of 1987. No order as to costs of the suit due to the peculiarities of the case. The defendant no. 5 is directed to pay Rs. 100/- (One hundred rupees) only to the plaintiff which she already spent for revenue tax for two years.

The case shall stand disposed of

Give this order copy to all concerned.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. DS/14/2003, Sr. CJ (A)/ Dated Aizawl, the 25th April, 2011

Copy to:

1. Smt. Lalramengmawii D/o Neihdinga, Mamit, Dinthar Veng through Mr. C. Lalramzauva, Sr. Advocate
2. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The ASO- II, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
6. Smt. Zoramthangi D/o Dengthanga (L), Armed Veng, Aizawl- Aizawl District through Mr. W. Sam Joseph, Advocate
7. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR