

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

TITLE SUIT NO. 7 OF 2002

Plaintiff:

Master Zosangpuia
S/o Dr. Zokhuma (L)
Represented by Smt. Lalnunpuii
W/o Dr. Zokhuma (L)
Electric Veng, Aizawl

By Advocate's : Mr. H. Lalmuankima

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Revenue Department
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
4. The ASO- I
Aizawl District: Aizawl
5. Smt. Thanzamliani
D/o Thanthianga (L)
Luangmual- Aizawl
6. Mr. Thanthianga
S/o Tualtea (L)
Luangmual- Aizawl
Substituted by his LRs namely-
 - (1) Mr. Hmingdailova
 - (2) Dr. Lalnghinglova
 - (3) Smt. Lalduhsaki
 - (4) Smt. Lalthanpuii

By Advocate's :

For the defendants 1-4 : Mr. R. Lalremruata, AGA

For the defendants 5&6 : 1. Mr. W. Sam Joseph
2. Mr. H. Laltanpuia
3. Mr. Zochhuana

Date of Arguments : 29-04-2011
Date of Judgment & Order : 02-04-2011

BEFORE

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

JUDGMENT & ORDER

INTRODUCTORY

Here is the case, where a man having a vast plot of land with an area of 5606 Sq. m=4.18 Bighas=60321 Sq. ft., intended to partition his land in favour of his sister by duly filling up of the forms prescribed by the State viz. Land Revenue & Settlement Department, Govt. of Mizoram but sadly and very untimely demised before completion of the said partition process without leaving any valid Will. But in lieu of partition of the suit land, the name's of the holder of the disputed LSC was deleted by way of mutation (may be) to all other names when issuance of the said new LSCs and when the said gentlemen already deceased by leaving of his wife and children. May be because of the incomplete format of 'Application for partition of land' prescribed by the state viz. Land Revenue & Settlement Department, Govt. of Mizoram, the inclination and desire of the authority/holder of LSC in respect of the area to be partitioned for his sister is untraceable on evidences led in the proceedings and documents annexed in the pleadings.

BRIEF STORY OF THE CASE

The plaintiff in his plaint submitted that he is the son of Dr. Zokhuma who died on 1/8/1996 and as a minor represented by his mother namely- Smt. Lalnupuii (Hereinafter referred to as the plaintiff), while Heirship certificate case was pending in the court of Magistrate, SDCC, Aizawl under HC No. 3 of 1997, the land belonging to the deceased namely Dr. Zokhuma under LSC No. 188 of 1979 located at Luangmual, Aizawl has been partitioned into four LSCs such as- LSC No. AZL. 188/79 and LSC AZL. 2255/96 in the name of the defendant no. 6 namely- Late Mr. Thanthianga (who is the father of deceased Dr. Zokhuma) and LSC No. AZL. 2256/96 and 2258/96 were issued in the name of defendant no. 5 namely- Smt. Thanzamliani (Sister of the deceased Dr. Zokhuma). Meanwhile, as requested by his sister, the said Dr. Zokhuma during his lifetime allowed to slice out some portion of his land to his sister namely- Smt. Thanzamliani by making a handwritten no-objection certificate Dt. 26/7/1995. As such, during pendency of the instant case, the learned Magistrate, SDCC, adjudicated HC No. 3 of 1997 on 14th December, 2004 declaring that the plaintiff is the legal heir of the deceased Dr. Zokhuma under LSC No. 2888 of 1986 by leaving the instant disputed land for the disposal of this court.

The defendants 1-4 being the state defendants in their written statements submitted that during the process of partition application by detailing a reliable Surveyor and was demarcated by the said Surveyor on 9.7.96, by enclosing a chit of the then concerned Revenue Minister in his application of the defendant no. 6 as the father of deceased Dr. Zokhuma, the land was re-demarcated into four Blocks earmarking for Block No. 1 for defendant no. 6 namely Mr. Thanthianga and the remaining block numbers 2,3 & 4 were marked for defendant no. 5 namely Smt. Thanzamliani which was approved by the then Director, Land Revenue & Settlement Department and conveyed to ASO- 1, Aizawl under No. S. 121011/W/96- DTE (REV)/P-586 of 4.12.1996 for issuance of LSCs. After that four LSCs bearing 188/79, 2255/96, 2256/96 and 2258/96 were issued to Mr. Thanthianga and Smt. Thanzamliani. The first two were issued in favour of the former and the last two were issued in favour of the later Smt. Thanzamliani.

The defendants 5&6 submitted in their written statements that during the lifetime of the deceased Dr. Zokhuma, he intended to revert back his

landed property under LSC No. 188 of 1979 to the defendant nos 5&6 and thereby filed an application to the Revenue authorities, Govt. of Mizoram to put $\frac{3}{4}$ of the disputed land into the defendant no. 5 and the rest for the defendant no. 6 while the area covered under the said LSC No. 188 of 1979 was given to the deceased Dr. Zokhuma by his father the defendant No. 6 namely- Mr. Thanthianga from L.M.- 3 of 1978 unlike the conditions for gift where the defendant no. 6 applied only for partition to the said deceased and where the entire land was mutated in the name of the said deceased. As no landed documents can be issued in the name of the deceased, there is no legality to put it back the disputed land in the name of the deceased Dr. Zokhuma. In short, no illegality for issuance of four LSCs bearing 188/79, 2255/96, 2256/96 and 2258/96 were committed by the Revenue authorities.

ISSUES

The following issues were framed on 25/7/2005 such as-

1. Whether the suit is maintainable or not
2. Whether the suit is barred by law of limitation, doctrine of estoppels, acquiesce, delay and laches
3. Whether the plaintiff has cause of action or not
4. Whether the suit is properly valued for the purpose of court fees
5. Whether the late Dr. Zokhuma was having landed property under LSC No. 188 of 1979 during his lifetime
6. Whether LSC No. 188 of 1979 was legally partitioned into four LSCs namely-188/79, 2255/96, 2256/96 and 2258/96
7. Whether the deceased Dr. Zokhuma had taken a loan from HUDCO and constructed a house in the suit land during his lifetime
8. Whether the deceased Dr. Zokhuma had holds the entire area under LSC No. 188 of 1979 in his name without the authority of Mr. Thanthianga (L)
9. Whether the deceased Dr. Zokhuma had applied for partition of his land under LSC No. 188 of 1979 for his sister Smt. Thanzamlani with an area of $\frac{3}{4}$ of the entire area
10. Whether the plaintiff is entitled to the relief claimed or not. If so to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff has produced the following witnesses namely-

1. Smt. Lalnunpuii W/o Dr. Zokhuma (L), Ramthar Tlangveng, Aizawl (Hereinafter referred to as PW-1)
2. Smt. Lalhriatzuali D/o P.L. Chhuanthanga, Mission Veng, Aizawl (Hereinafter referred to as PW-2)

The **PW- 1** deposed in her examination in chief that she is working as LDC under Govt. of Mizoram, she married with the deceased Dr. Zokhuma on 7th March, 1991 and begets one daughter namely- Miss Lalruatfeli and Mr. Zosangpuia and the said Dr. Zokhuma was died on 1.8.1996. Even at the time of marriage with Dr. Zokhuma, her husband have had a plot of land under LSC No. 188 of 1979 slice out from L.M. 3/78 holds by late Mr. Thanthianga. During the lifetime of the said Dr. Zokhuma, he allowed to partition a land under LSC No. 188 of 1979 in favour of his sister namely Smt. Thanzamlani by executing no-objection Dt. 26.7.1995. As he was

posted at West Phaileng since 1995 till his death, the said process was pending till his death. So far as her knowledge concerned the said land under LSC No. 188 of 1979 was divided into four LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were issued to Mr. Thanthianga and Smt. Thanzamliani. The first two were issued in favour of the former and the last two were issued in favour of the later Smt. Thanzamliani during pending of HC No. 3/97 on the suit land, the defendants 5&6 contumaciously continued construction of building in the suit land although issued stay order by the Revenue Department. The said division of the suit land into four LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were illegal.

Ext. C-1 is photo copy of plaint

Ext. C-2 is certified true copy of Death Certificate of Dr. Zokhuma

Ext. C-3 is Birth Certificate of Miss Lalruatfeli

Ext. C-4 is Birth Certificate of Mr. Zosangpuia

Ext. C-5 is Heirship application

Ext. C-6 is W/o on HC Case by Mr. Thanthianga (L)

Ext. C-7 is gift Deed Dt. 26th July, 1995

Ext. C-8 is a copy of LSC No. 2256 of 1996

Ext. C-9 is a copy of LSC No. 188 of 1979

Ext. C-10 is Power of Attorney executed by Mr. Thanthianga

Ext. C-11 is a copy of re-joinder in HC No. 3/97

Ext. C-12 is a copy of Heirship Certificate No. 3/97 issued by SDCC

Ext. C-13 is a copy of Legal Notice

Ext. C-14 is stay order Dt. 25th August, 2000

Ext. C-15 is order to submit LSC by Mr. Thanthianga (L)

Ext. C-16 is exam in chief and

Ext. C- 16 (1) is her true signature

In her cross examination, she deposed that her late husband have six siblings including the defendant no. 5 and Mr. Lalnghinglova is the youngest son of the deceased Mr. Thanthianga and Mr. Thanthianga was died after the death of her husband. Even after the death of her husband, she remains to live with her father in law for about three months. She is also the recipients of pension benefits of her late husband including GPF and other service benefits of her late husband. She knew that her father in law gifted the land under LSC No. 2888 of 1986 to her late husband which was used for mortgaged but she already redeemed the same. She admitted that Ext. D-1 is no-objection written by her late husband and Ext. D-2 is the signature of her late husband. She denied that her late husband pledged to give $\frac{3}{4}$ of the area covered under LSC No. 188 of 1979 to his sister. Her son Mr. Zosangpuia was a posthumous son. She knows nothing about the conditions for converting LSC No. 188 of 1979 from L.M.- 3 of 1978.

The **PW- 2** in her examination in chief deposed that the plaintiff is the younger sister of her father, till the date of late Dr. Zokhuma and after married with the plaintiff, she used to stay with the family of the plaintiff to look after and care of their children and to help them for household works and indeed stayed with the plaintiff till her marriage in the year 1998. During her stayed with them, the late Dr. Zokhuma constructed a building in the suit land and since Dr. Zokhuma was posted at West Phaileng, she managed daily eateries etc. for the said construction. After the death of Dr. Zokhuma, the defendants 5&6 mutated the said LSC No. 188 of 1979 into their own names and continued construction began by late Dr. Zokhuma by using the materials already collected by the said Dr. Zokhuma. Even after stay order issued by Revenue authorities, the defendants 5&6 remains continued the said construction very contumaciously.

In her cross examination, she further deposed that after posted the late Dr. Zokhuma, his family vacated Govt. quarter and joined the main family with Mr. Thanthianga and she also accompanied them. Late Dr. Zokhuma died during posted at West Phaileng was died in the main house. She also admitted that late Dr. Zokhuma had submitted an application for partition of LSC No. 188 of 1979 in favour of his sister namely- Smt. Thanzamlani and Smt. Thanzamlani is a carrying contractor used to managed the construction of late Dr. Zokhuma in the suit land and she helped her for the same. She also denied that division of LSC No. 188 of 1979 into four were with the knowledge of the plaintiff.

For the defendants 5&6:

The defendants 5 & 6 produced the following witnesses namely-

1. Mr. Hmingdailova S/o Thanthianga (L), Luangmual- Aizawl (Hereinafter referred to as DW-1)
2. Smt. Thanzamlani D/o Thanthianga, Luangmual- Aizawl (Hereinafter referred to as DW-2)
3. Dr. Lalnghinglova S/o Thanthianga, Luangmual- Aizawl (Hereinafter referred to as DW-3)

The **DW- 1** in his examination in chief deposed that the land under L.M. 3 of 1978 was belonging to his late father namely- Mr. Thanthianga and in contravention of the conditions for gift, the deceased Dr. Zokhuma mutated/transferred the entire area into his name under LSC No. 188 of 1979, his late father also told to Dr. Zokhuma to revert it back the entire land in his name by giving some portion of the area to the defendant no. 5, the said Dr. Zokhuma thereby submitted an application for partition giving $\frac{3}{4}$ of the entire land in the name of defendant no. 5. As desired by deceased Dr. Zokhuma, $\frac{3}{4}$ of the entire land was put in the name of defendant no. 5 and the rest to defendant no. 6. The deceased Dr. Zokhuma did not construct any building in the suit land as he took a loan for constructing a house at a land mortgaged to HUDCO.

In his cross examination, he deposed that he do not know that whether LSC No. 188 of 1979 was slice out from L.M. 3 of 1978 or not and admitted that LSC No. 188 of 1979 was in the name of Dr. Zokhuma till his death. Without approaching the court, his family directly approached the Revenue authorities for divisions of the suit land after the death of Dr. Zokhuma and mutation of LSC No. 188 of 1979 was put after the death of Dr. Zokhuma. He also admitted that for the said partition/mutation of the suit land, they failed to inform the plaintiff and further admitted that they failed to comply stay order issued by Revenue authorities for construction of a building in the suit land. He also admitted that late Dr. Zokhuma did not specifically mentioned $\frac{3}{4}$ of the entire area of the suit land to be given to defendant no. 5.

The **DW- 2** in her examination in chief deposed that the land under L.M. 3 of 1978 was belonging to her late father namely- Mr. Thanthianga and in contravention of the conditions for gift, the deceased Dr. Zokhuma mutated/transferred the entire area into his name under LSC No. 188 of 1979, his late father also told to Dr. Zokhuma to revert it back the entire land in his name by giving some portion of the area to herself as the defendant no. 5, the said Dr. Zokhuma thereby submitted an application for partition giving $\frac{3}{4}$ of the entire land in the name of defendant no. 5. As desired by deceased Dr. Zokhuma, $\frac{3}{4}$ of the entire land was put in the name

of defendant no. 5 and the rest to defendant no. 6. Division of the suit land into four LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were legal and proper.

In her cross examination, she admitted that LSC No. 188 of 1979 was in the name of late Dr. Zokhuma till his death as gifted by her late father. No suit was filed against Dr. Zokhuma in any court to revert back into the name of their father. After the death of Dr. Zokhuma, the Revenue authorities issued four LSCs namely-188/79, 2255/96, 2256/96 and 2258/96. She knows nothing about HUDCO loan availed by Dr. Zokhuma.

In her re-examination, she deposed that as Dr. Zokhuma admitted his mistakes, no suit against him was filed for reverting the suit land to her father and herself.

The **DW- 3** in his examination in chief deposed that the land under L.M. 3 of 1978 was belonging to his late father namely- Mr. Thanthianga and in contravention of the conditions for gift, the deceased Dr. Zokhuma mutated/transferred the entire area into his name under LSC No. 188 of 1979, his late father also told to Dr. Zokhuma to revert it back the entire land in his name by giving some portion of the area to the defendant no. 5, the said Dr. Zokhuma thereby submitted an application for partition giving $\frac{3}{4}$ of the entire land in the name of defendant no. 5. As desired by deceased Dr. Zokhuma, $\frac{3}{4}$ of the entire land was put in the name of defendant no. 5 and the rest to defendant no. 6. The deceased Dr. Zokhuma did not construct any building in the suit land as he took a loan for constructing a house at a land mortgaged to HUDCO. Division of the suit land into four LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were legal and proper.

In his cross examination, he admitted that LSC No. 188 of 1979 was in the name of late Dr. Zokhuma till his death as gifted by his late father Mr. Thanthianga. He witnessed that his deceased father told Dr. Zokhuma to revert back the suit land in his name. He also witnessed that Dr. Zokhuma had submitted an application for partition of the suit land to defendant no. 5. No suit against Dr. Zokhuma was filed by his late father in respect of the suit land. He further deposed that in case when a father had died, the son will inherit the properties of the deceased father as per Mizo Customary Laws.

The state defendants failed to adduce their evidence in the proceedings.

POINTS OF RIVALRY

Mr. H. Lalmuankima, learned counsel for the plaintiff after revealing the averments in the plaint and brief story of the case submitted that the issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 is illegal and improper as lack of heirship certificate as it were issued after the death of the holder of LSC No. 188 of 1979 where derived from the said LSCs. More so, while partition of the suit land only was permitted by the holder of LSC for the defendant no. 5, mutation of all the entire area by deleting the name of original holder is also void and illegal. By making reliance in the decision of Hon'ble Gauhati High Court in the case of **Smt. Ralliani & Ors. Vs. Kaithuami & Ors, GLT 2008 (Suppl) 820**, the plaintiff being the only son of the deceased Dr. Zokhuma only is entitled to the suit land according to Mizo Customary Laws.

Mr. W. Sam Joseph learned counsel for the defendants 5&6 argued that the late Dr. Zokhuma submitted an application for partition of the suit land in favour of the defendant no. 5 with an area of $\frac{3}{4}$ which were also derived from the land of the defendant no. 6, no illegality for issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were found.

The state defendants also betrayed arguments of the proceedings of the case.

FINDINGS

Issue No. 1 Maintainability of the suit

The plaint if property drafted, accompanied by Verification and Affidavit duly signed and sworn by the plaintiff. A requisite court fees is also paid by the plaintiff. Thus, I find no irregularities which can vitiate the proceedings.

Issue No. 2 Barring of the suit by law of limitation, doctrine of estoppels, acquiesce, delay and laches

During the process of trial, till arguments, no points and issues on law of limitation, estoppels and acquiesce if heard from parties. Although framing on the issue, it may not be necessary to enter into minutes.

Issue No. 3 Cause of action

As admitted in evidences of both parties, till the death of the father of the plaintiff, the suit land under LSC No. 188 of 1979 was in the name of Dr. Zokhuma, although, the application for partition of the suit land was submitted by him to the Revenue authorities during his lifetime, issuance of four LSCs in the other names by deleting the original owner will lead cause of action. The answer is again affirmative in favour of the plaintiff.

Issue No. 4 Value of the suit and requisite court fees

As a requisite court fees at Rs. 5000/- is paid in full by the plaintiff and paragraph 13 of the plaint clearly elucidated that the suit is valued at Rs. 50 lakhs, I find that the suit is properly valued for the purpose of court fees and for determination of pecuniary jurisdiction of courts to trial and disposed of.

Issue No. 5 LSC No. 188 of 1979 was possessed by deceased Dr. Zokhuma during his life time or not

As all the evidences adduced by parties elicited and admissions of parties during arguments, LSC No. 188 of 1979 located at Luangmual, Aizawl was possessed by late Dr. Zokhuma before division into four LSCs which were issued after his death.

Issue No. 6 Legality of partitioned of LSC No. 188 of 1979 into four LSCs namely- 188/79, 2255/96, 2256/96 and 2258/96

The instant issue is also connected with issues No. 8 and 9 which deals the exactness and correctness of the suit land and its derivation from L.M. 3 of 1978. The Revenue authorities in their written statements contended that as per the chit from the then Revenue Minister which enclosed in the application submitted by the defendant no. 6, the said LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were issued in favour of the defendants 5&6 after the death of the Dr. Zokhuma who was the original owner of the suit land. Their written statements clearly elucidated that on the basis of application of the suit land by the deceased Dr. Zokhuma in favour of the defendant no. 5, the land surveyed conducted by Mr. H. Lalsiamliana, Surveyor was already finished and already demarcated the plot/land on 9.7.1996. But due to the said chit from the concerned Minister, re-surveyed conducted by Mr. Lalzamliaana caused re-demarcation on the basis of the said Minister chit and in accordance with the said re-demarcation, the said LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 were issued in favour of the defendants 5 & 6.

It is clearly seen that the suit land before demarcation into four was belonging to Dr. Zokhuma and he applied for partition of some portion of the suit land in favour of the defendant no. 5 being his sister. But, the prescribed form for such partition lacks the area to be partitioned. No other documents in this suit indicates the intention of late Dr. Zokhuma in respect of the area to partition for defendant no. 5. Although defendants 5&6 alleged that it will be $\frac{3}{4}$ of the entire area, no other corroborate evidences is found for the said claimed area. Very simple, the exact portion of area to be partitioned in favour of the defendant no. 5 from the suit land will be clearly documented in the demarcation prepared by Mr. H. Lalsiamliana, Surveyor on 9.7.1996. Since, the late Dr. Zokhuma does left any valid WILL, his intention on the suit land will be available in the said surveyed report and demarcation Dt. 9.7.1996.

Needless to say is that a chit of concerned Minister which is submitted to the Revenue officials/Director of Land Revenue and Settlement Department, Govt. of Mizoram by the defendant no. 7 alongwith his handwritten letter/application will not amounts to Government decision as discussed by their Lordship of Hon’ble Supreme Court in the case of **Shanti Sports Club & another Vs. Union of India & Others** in Civil Appeals Nos. 8500-8501 of 2001 with Contempt Petition Nos. 252-253 of 2001 decided on August 25, 2009 which were also submitted after the deceased of Dr. Zokhuma.

Pertinently, after the death of the holder of LSCs, the law is very clear that the Government of Mizoram by virtue of Ss. 6, 8 and 9 of the Mizoram (Taxes on Land, Buildings and Assessment of Revenue) Act, 2004 notified under No. K. 15013/69/99- REV, the 14th June, 2006 with retrospective effect from 18th July, 2005 (Vide, p. 5 of the Mizoram Gazette, Extra Ordinary; Vol. XXXV. 20.6.2006, Issue No. 154) fixed that the various rates as tabulated as follows:

“IV. FEES

A	Fee for issue of House/Shop/Stall pass and P. Patta for WRC/Garden/Fish Pond/Farm	Rs. 50.00
B	Mutation and Transfer Fee	Re. 0.50% of value of land transferred/altered/mutated

C	Mutation and transfer fee in the case of inheritance from paternal/maternal property on production of heirship Certificate/valid Will or gift between members of family which consists of father, mother, husband, wife, son, brother, sister, daughter, grandson, grand daughter and grand parents.	Rs. 100.00
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Thus, due to death of the holder of LSCs, production of Heirship Certificate or at least a valid WILL is necessary for mutation of such LSCs.

Obviously, partition of the suit land applied by the holder late Dr. Zokhuma during his lifetime was admitted even by the PWs in their depositions confirming that it was the willingness and desire of the said deceased in favour of the defendant no. 5, in contravention of the first demarcation prepared by Mr. H. Lalsiamliana, Surveyor on 9.7.1996, issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 which were issued in favour of the defendants 5&6 were arbitrary, capricious, illegal and improper not sustainable in the eye of law.

Issue No. 7

HUDCO loan availed by deceased Dr. Zokhuma and his construction in the suit land

As deposed by both PWs and DW-2, it is certainly seen that the late Dr. Zokhuma had availed housing loan from HUDCO and started construction in the suit land. But untimely before completion of such construction, he was died.

Issue No. 8

Holding of entire area under LSC No. 188 of 1979 in the name of Late Dr. Zokhuma without the authority of Mr. Thanthianga (L)

No evidences except deposition of DW-3 during his cross examination reveals allegations on illegality of conversion of L.M. 3 of 1978 into LSC No. 188 of 1979 where he witnessed that he knows when the defendant no. 6 asked the deceased Dr. Zokhuma to revert back the same verbally. Meanwhile, no other evidence elicited that it is the desire and willingness of the deceased Dr. Zokhuma to revert back the suit land into the name of defendant no. 6 being the holder of the said LSC No. 188 of 1979.

Issue No. 9

Area of application for partition of LSC No. 188 of 1979

As already discussed in issue no. 6 due to lack of sufficient evidence and documents in the instant proceedings, the area for partition of the suit land in favour of the defendant no. 5 as applied by the deceased Dr. Zokhuma will only available in the records of demarcation prepared by Mr. H. Lalsiamliana, Surveyor on 9.7.1996.

Issue No. 10

Entitlement of relief claimed and it's extend

Before discussing the issue, let us again close look the relief sought in the plaint such as-

- (i) A decree declaring that issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 from the original LSC No. 188 of 1979 without heirship certificate which were issued in favour of the defendants 5&6 were illegal and improper
- (ii) A decree declaring that issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 from the original LSC No. 188 of 1979 which were issued in favour of the defendants 5&6 were illegal and improper
- (iii) A decree for the restoration of the suit land originally covered by LSC No. 188 of 1979 in the name of Late Dr. Zokhuma so that an eligible persons can be a legal heir on it.
- (iv) A decree directing the defendants to hand over peaceful and vacant possession of the land cover by LSCs 188/79, 2255/96, 2256/96 and 2258/96 to the plaintiff

OR

For payment of a sum of Rs. 50,00,000/- (Rupees fifty lakhs) to the plaintiff on compensation

- (v) For cost of the suit and for any other relief as this court may deem fit and proper

As already discussed it is a sine quo non to declare that issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 which were issued in favour of the defendants 5&6 were illegal and improper not sustainable in the eye of law. Meanwhile, restoration of the original suit land as it is not the desire and willingness of the holder namely Late Dr. Zokhuma could not be appropriated but by upholding making partition of the original suit land as surveyed and demarcation prepared by Mr. H. Lalsiamliana, Surveyor on 9.7.1996.

ORDER

The inevitable conclusion is that issuance of LSCs namely-188/79, 2255/96, 2256/96 and 2258/96 which were issued in favour of the defendants 5&6 were illegal and improper and is therefore set aside in toto and is declared as null and void. Meanwhile, the defendants 1-4 are directed to issue a fresh LSCs from the original suit land under LSC No. 188 of 1979 as per the partition of the original suit land as surveyed and demarcation prepared by Mr. H. Lalsiamliana, Surveyor on 9.7.1996 as it is a well settled law that the properties left by the deceased will be inherited by prioritizing the willingness and intention of the concerned deceased. They are further directed to complete the said process by issuance of necessary LSCs within six months from the date of this order. In this direction, if the arguments advanced by Mr. W. Sam Joseph, learned counsel for the defendants 5&6 be true that LSCs cannot be issued in the name of the deceased person, as submitted by Mr. H. Lalmuankima, learned Advocate for the plaintiff making reliance in the decision of Hon'ble Gauhati High Court in the case of **Smt. Ralliani & Ors. Vs. Kaithuami & Ors, GLT 2008 (Suppl) 820**, and also relying in Section 109 (Para- 3) of Mizo Customary Laws, 1956 (As amended in 1960), the remaining portion of the suit land after making partition in favour of the defendant no. 5 shall be issued in the name of the plaintiff. The defendants 5&6 are further directed to vacate the land without any encumbrances and without disturbing the peaceful possession which will allot to the plaintiff in consonance with demarcation prepared by Mr. H. Lalsiamliana, Surveyor on 9.7.1996 as soon as issuance of a fresh LSC (s) in favour of the plaintiff by the defendants 1-4.

No order as to costs of the suit. Decree shall be drawn within fifteen days from the date of this order. The case shall stand disposed of accordingly.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. TS/7/2002, Sr. CJ (A)/

Dated Aizawl, the 2nd May, 2011

Copy to:

1. Master Zosangpuia S/o Dr. Zokhuma (L) Represented by Smt. Lalnunpuii W/o Dr. Zokhuma (L), Electric Veng, Aizawl through Mr. H. Lalmuankima, 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, Revenue Department through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The ASO- I, Aizawl District: Aizawl
6. Smt. Thanzamliani D/o Thanthianga (L), Luangmual- Aizawl through Mr. W. Sam Joseph, Advocate
7. Mr. Thanthianga S/o Tualtea (L), Luangmual- Aizawl Substituted by his LRs namely- (i) Mr. Hmingdailova (ii) Dr. Lalnghinglova (iii) Smt. Lalduhsaki (iv) Smt. Lalthanpuii through Mr. W. Sam Joseph, Advocate
8. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
9. Case record

PESKAR