

**IN THE COURT OF SENIOR CIVIL JUDGE- 1  
AIZAWL DISTRICT :: AIZAWL**

**DECLARATORY SUIT NO. 07 OF 2004**

*Plaintiff:*

Mr. R.K. Pahlira  
S/o Dengkunga  
Chanmari West, Aizawl

*By Advocates*

: 1. Mr. W. Sam Joseph  
2. Mr. H. Laltanpuia  
3. Mr. Zochhuana

*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 Deputy Director  
Land Revenue and Settlement Department  
Govt. of Mizoram
5. Mr. H. Lalrinthanga  
S/o Rohranga  
Chanmari West, Aizawl

*By Advocates*

:

For the defendant Nos. 1-4 : 1. Mr. R. Lalremruata, AGA  
2. Miss Bobita Lalhmingmawii, AGA

For the defendant No. 5 : Mr. L.H. Lianhrima

**BEFORE**

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

Date of Arguments : 01-12-2011  
Date of Judgment & Order : 05-12-2011

## JUDGMENT & ORDER

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### GERMINATION OF THE CASE

The plaintiff had submitted in his plaint that the Plaintiff was allotted a plot of land by the Revenue Department way back in the year 1972 vide house Pass No. 533 of 1972 and in the year 1971 the Plaintiff applied to the Revenue Authorities for conversion of his house Pass to permanent settlement. In pursuance of the application, the Revenue Authorities after due verification and demarcation had issued the LSC No.730 of 1977 superseding the house pass no.533 of 1972. The said LSC covered an area of 8354 Sq.ft=776.15 Sq.m= 0.52 bigha. In the year 1986, the bottom of his land covered under the said LSC No.730 Of 1977 was extended and some portion of the LSC was sliced out and a separate LSC vide No.Azl-3865 of 1986 was issued in favour of his wife Smt. H Zamawii. However, this does not in any way alter/change the boundary line and demarcation of other sides. It only changed the area. When the House Pass was converted into LSC, there was a building within the said land. Hence the first boundary pillar was erected at the distance of 4.60 m from the north eastern corner of the existing building and 2 m from the footpath. In the original boundary description attached to the original LSC it is written in Mizo. The contents run thus:" *Amah hmun hmarchhak kilah teh tan a ni. Hetah hian B. Piller No.1 phun a ni. He Piller hi a in hmarchhak kil atangin 4.60m leh foot path atangin 2m a ni*". The last pillar No.8 was placed at the northern side of the land adjacent to the land of one Mr. Thuamluaia. The boundary description from pillar no.8 runs as follows: "*B.Pillar No.8-na atangin ramri chu thuamluaia nen in rina ah 121 degree in a chhova 42m ah Starting Pont Pillar 1-na man chho leh a ni.*" When the LSC was issued in favour of the plaintiff way back in the year 1977, southern side of his land was bounded by PHE land. In the year 1982, Pu C. Rozama was allotted a plot of land by the revenue authorities under House Pass No.54 of 1982 and the said House Pass was converted into LSC No.396 of 1982. At the time of the demarcation for the conversion of House Pass No.54 of 1982 into LSC No. 396 of 1982, the plaintiff was present with his LSC Documents. Demarcation for Pu C. Rozama's LSC was made just coinciding with the southern side of my land. Reference distance point was also taken from the south-east of my building corner, which was 2.25m, perpendicular distance from the said building (as can be seen clearly from the map drawn by the surveyor). The building corner still exists intact. The plaintiff and owner of his adjacent land Pu Rozama have never had any boundary dispute from the beginning till date. The House Pass CCB-6 of 1974 was issued to Pu Lalthuamluaia and the same was converted to LSC No.526 of 1980 in the year 1980, three years after the issuing of my LSC. In the said original LSC the boundary description at the southern side runs thus: "*B.Pillar No.4 na atang chuan ramri chu 125 degree in a kal a, Pu pahlira ram nen inri zelin 43m ah chiah chuan B.Pillar No.1 na phun chu a man leh chiah a ni.*" Whereas my boundary line on the northern side runs in the direction of 121 degrees, the southern side of Pu Thuamluaia's should also have to run in the side bearing i.e. 121 degree but it runs in the direction of 125 degree bearing.

This shows that the junior LSC encroached upon the senior LSC by 4 degree magnitude. Pu Thuamluaia who is his immediate neighbour divided his land in to two halves and he sold one half which is adjacent to his land to Pu Sangzama and the portion sold to Pu Sangzama was put under LSC No. 705 Of 1980. Later defendant no.5 purchased both the LSC No.705 of 1980 and LSC No.526 of 1980 and both the LSC were mutated in the name of defendant No.5 without changing the registration numbers. When the original LSC was first issued in favour of Pu Thuamluaia, reference to the starting point was made from the plaintiff's LSC. The starting point B.P No.1 was fixed side by side to his land. Starting in the boundary description attached to the LSC runs as follows: "*Ama ram chhimchhak lam atang a 3.04m a hla Pahlira B.P. No.1-na bul ah tan a ni a, hetah hian B.P. No.1 na phun a ni.*" Since Pu Thuamluaia's land was purchased by the Defendant No.5, all the reference to his LSC or Pass should be taken from the boundary description attached to the original LSC of the plaintiff. From the record maintained in the Revenue Deptt, it is clear that the plaintiff's LSC was issued much earlier than that of Pu Thuamluaia. Hence the question of my encroaching upon the land of Pu Thuamluaia or the defendant no.5 cannot arise. The LSC No. 526 of 1980 was re-demarcated in the year 1983 in which the northern depth was extended and new reference point inserted (viz. 8.6m from the S.E. corner of Smt. Ruati's building etc.). While doing the re-demarcation, the original B.P. No. 2 was re-designated as B.P. No.1 and shifted down by 23mand shifted towards south which is clearly seen by comparing two sites plans. Originally the distance between B.P. No.2 and electric post (which was the reference point) which lies on the south east of the B.P. No.2 position was 2.30m. However in the re-demarcated LSC, B.P. No. 2 (which was re-designed BP No.1 was shifted at a distance of 4.60m from the same electric post. This clearly shows that the pillar was shifted down by about 2.30m to the north west of the electric post which was shifted to south west. The exact shifting towards the south could not be ascertained. Consequently, the land being tapering down, when shifted by about 2.3m using the same dimension i.e.9.75 it will surely encroach upon the land of the plaintiff. In the year 1996 when the defendant No.5 constructed his concrete building, the plaintiff suspected that a beam might have crossed the boundary line. With the aim of maintaining congenial and peaceful atmosphere between the plaintiff and his neighbour defendant no.5, one revenue officer (who live in the locality) and the village council members voluntarily offered them to verify their boundary problem. The Revenue Officer and the VC Members in presence of neighbours verified the boundary lines. It was found that the ground distance on their frontage line does not match with their LSC dimension. Taking a best point known to be their common pillar position by both the parties the boundary line was identified and was found that the beam constructed by the defendant no.5 had crossed over the identified boundary line about 5 inches. They arrived at an amicable settlement in such a way that the identified boundary should be used as their common boundary in future. However it was agreed by me that the portion of the beam crossing the identified boundary line should remain as it is. The two neighbour lived in good harmony till the early part of 2003. When the plaintiff constructed his new building, incidentally, the waste water pipe of the defendant no.5 which was close to his newly constructed building was found to be broken at the joint. The

defendant no.5 made a verbal complaint to the plaintiff about that the broken joint was caused by the cement mistiri. This was immediately followed by Bamboo fencing made by the defendant no.5 which (fenced in) the protruded beam of the defendant no.5 and which was made too close to the building of the plaintiff and made it impossible for the workers to construct the building wall. Consequent to this the plaintiff then submitted a written complaint to the Director, Revenue Department requesting to re-verify our boundary line vide petition dated.2.6.2003. That in response to the complaint, surveyor H. Sanghleia was detailed to verify the matter vide order No.E-1/ Chand Tech/DTE(REV)/5 Dt.20.9.03 at 6.30 AM. Verification was conducted on 24.6.03 in the presence of VCP and VCM, the two LSC owners and their parties, under the supervision of Asst. Director Surveyor(A). The spot verification was followed by discussion of the two LSC owners and their parties and the verifying team at the residence of Village Council Secretary. Even after long discussion an amicable solution of the problem could not be arrived at eventhough the plaintiff was willing to accept the earlier agreement if the defendant no.5 agree not to hinder the progress of his house construction. Consequent upon the Surveyor's report, the director of LR & S, had passed an order and issued vide memo No. C. 13016/W-11/03/DISP/DTE(REV)34 dt. 23 Feb 2004. As per the said order, the fencing made by the defendant no. 5 was removed as per the agreement. After a lapse of one month, Pu S. Rolianthanga, Deputy Director of Surveyor was deputed to re-verify the disputed area vide order No. C. 13016/N-11/02-DISP/DTE (REV) dt. 23 March 04. In the said order, it was mentioned that the re-verification will be done on 2.4.04 at 11 AM. Accordingly DD(S) accompanied by technical staff of the Revenue Department conducted re-verification on 2.4.2004. During the verification, the plaintiff was not given an opportunity to explain his case and the measurement was taken by the said DDS basing on the defendant No.5's LSC even though he knew that the LSC of the plaintiff was issued by the Revenue Department prior to the issuance of the LSC in the name of the defendant no.5. Accordingly the iron angle post was fixed 90cm inside the land of the plaintiff on frontage. Aggrieved by the activities and the mode of the verification by the verifying team led by DDS, the plaintiff had submitted a petition to the Director, LR & S on 6.4.2004. Without giving any heed to the facts mentioned in the said petition and not considering the seniority of his LSC, the Director, LR & S passed the order vide order memo No. C. 13016/N-11/02-DISP/DTE(REV) dt. 8 April, 2004 upholding the iron angle post fixed by the DDS to be the common boundary line between the land of the plaintiff and defendant no.5. The said order was passed without superceding or cancelling the previous order dt. 23 Feb, 2004. As per the order dt.8 April 2004 about 90cm (frontage) x 42m=37.8 Sq. m was taken away from my area in favour of defendant no.5. The said order is illegal and liable to be set aside/cancelled. Aggrieved by the said order, the plaintiff through his counsel had served notice u/s 80 CPC. Despite receipt of the notice by the defendant no.1 to 4, they have not taken any step to cancel the said order. The cause of action for the suit arose when the defendant no.5 encroached upon the land of the plaintiff and also when the order No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8 April 2004 was issued and it continue till the said order is cancelled and the encroached portion be put in the name of the plaintiff and the boundary pillar be changed accordingly.

Court fees at Rs. 30/- is also paid. The plaintiff therefore prayed that- (i) Let a decree be passed declaring that the defendant no. 5 had encroached upon the land of the plaintiff covered under LSC No.730 of 1977 to the extend of 90cm x 42m = 37.8 Sq.m. (ii) Let a decree be passed declaring that the order passed and issued vide No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 by the defendants no. 3 is illegal and is to be set aside/cancelled/quashed/declared null and void and the same be cancelled/quashed. (iii) Let the cost of the suit be declared in favour of the plaintiff and against the defendants. (iv) Let any other relief to which the plaintiff is entitled according to justice, equity and good conscience be decreed in favour of the plaintiff.

The defendants 1-4 in their written statements contended that Rs. 30/- of court fees is not sufficient in the instant case. The suit is also bad for non-joinder of necessary parties. They contested that the original area of the plaintiff's House Pass No. 533/72 is not 8354 Sq. ft which could be calculated as length of the breadth of the land.

Length - 140 feet

Breath -  $70+40/2 = 110/2 = 55$  feet

Total area =  $(140 \times 55)\text{ft} = 7700$  Sq.ft.

It was further submitted that the House Pass itself does not share the true area of the land in question as it gives 8060 Sq.ft. to be the total area of the plaintiff's land is 360 Sq.ft. larger than the actual area. The boundary description also clearly states- "*.... Pu Pahlira nen inri zelin 43 m ah chiah chuan B.P No. 1 na phun a man leh chiah an*". This clearly indicates that the two boundaries do not overlap each other as seen in the boundary description of LSC No. 526/80. All the defects of the boundary description in LSC No. 730/1977 were rectified in 1983 without altering the original boundary of the LSC when re-demarcation. The instant dispute had arisen due to failure to comply section 10 of the Mizo District (Land and Revenue) Act, 1956 by the plaintiff as the plaintiff trailed to alter his boundary without the knowledge of the Revenue Department. In the report of the spot verification held on 2.2.2004, unfortunately, the boundary line on ground as pointed out by Mr. C. Rozama and Mr. R.K. Pahlira are not similar to the official record maintained by the defendants 1-4 in their office. As per record of rights, 0.5 length in the frontage have to be shifted from their so called pointed boundary pillar from the boundary of the plaintiff. Instead of moving towards Mr. C. Rozama's House site, the plaintiff moved forward to the house site of the defendant no. 5. Due to mis-interpretation and mis-determination of the boundary of the plaintiff, the instant dispute had arisen. The disputing parties were also present on the spot at the time of spot verification conducted by Mr. Rolianthanga, the then Deputy Director who is the most efficient and highest technical knowledge person in the Revenue Department in this field. Thus, prayed to dismiss of the suit with exemplary cost.

The defendant no. 5 also submitted his written statements stating that there is insufficiency of court fees in the plaint. He further submitted

that the boundary description also clearly states- “.... *Pu Pahlira nen inri zelin 43 m ah chiah chuan B.P No. 1 na phun a man leh chiah an*”. This clearly indicates that the two boundaries do not overlap each other as seen in the boundary description of LSC No. 526/80. All the defects of the boundary description in LSC No. 730/1977 were rectified in 1983 without altering the original boundary of the LSC when re-demarcation. The instant dispute had arisen due to failure to comply section 10 of the Mizo District (Land and Revenue) Act, 1956 by the plaintiff as the plaintiff failed to alter his boundary without the knowledge of the Revenue Department. In the report of the spot verification held on 2.2.2004, unfortunately, the boundary line on ground as pointed out by Mr. C. Rozama and Mr. R.K. Pahlira are not similar to the official record maintained by the defendants 1-4 in their office. As per record of rights, 0.5 length in the frontage have to be shifted from their so called pointed boundary pillar from the boundary of the plaintiff. Instead of moving towards Mr. C. Rozama’s House site, the plaintiff moved forward to the house site of the defendant no. 5. Due to mis-interpretation and mis-determination of the boundary of the plaintiff, the instant dispute had arisen. The disputing parties were also present on the spot at the time of spot verification conducted by Mr. Rolianthanga, the then Deputy Director who is the most efficient and highest technical knowledge person in the Revenue Department in this field. Thus, prayed to dismiss of the suit with exemplary cost.

### **ISSUES**

Issues were framed on 2/12/2005 but amended towards correct findings as follows-

1. Whether the suit is maintainable or not.
2. Whether the suit is bad for non-joinder of necessary parties.
3. Whether the land of the plaintiff under LSC No. 730 of 1977 is encroached by the land of the defendant no. 5 under LSC No. 526 of 1980 to the extent of 90cm x 42 m = 37.8 Sq. m
4. Whether the land of the plaintiff under LSC No. 730 of 1977 is encroached by the land of Mr. C. Rozama under LSC No. 396 of 1982 or not.
5. Whether the order passed by the defendant no. 3 issued under No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 is with arbitrariness/capriciousness liable to null and void/cancel.
6. 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 had produced the following witnesses, namely-

1. Mr. R.K. Pahlira S/o Dengkunga, Chanmari West, Aizawl (Hereinafter referred to as PW-1)
2. Mr. V.L. Hmuaka S/o Ropianga (L), Chanmari West, Aizawl

(Hereinafter referred to as PW-2)

The **PW-1** in his examination in chief reiterated facts mentioned in the plaint being the plaintiff. He further deposed that-

*Ext.P-1 is House Patta/Pass No.533 of 1972*

*Ext.P-2 is LSC No. 730 of 1977*

*Ext.P-3 is LSC No.730 of 1977*

*Ext.P-4 is LSC No. 3865 of 1986*

*Ext.P-5 is LSC No.396 of 1982 belonging to C. Rozama, Chanmari West*

*Ext.P-6 is LSC No 526 of 1980 belonging to Thuamluaia, Chanmari, aizawl*

*Ext.P-7 is LSC No.526 of 1980 belonging to H.Lalrinthanga, Defendant No.5*

*Ext.P-8 is a letter sent by me to the Director, LR & S, Govt of Mizoram*

*Ext.P-8(a) is my signature*

*Ext.P-9 is a letter dt.20.6.03 memo No.EI/Chand Tech/DTE(REV)/5 sent to me by the DDS/ADS/ASO-II, Directorate of LR & S*

*Ext.P-10 is order dt.Aizawl 23rd Feb,2004 memo No.C. 13016/N-11/03/DISP/DTE(REV)34 issued by Deputy Directoer for Director LR & S, Mizoram:Aizawl*

*Ext.P-11 is an order dt. Aizawl the 23rd Mar,2004 memo No.C. 13016/N-11/02-DISP/DTE(REV) issued by Deputy Director for Director LR & S, Mizoram:Aizawl*

*Ext.12 is an order dt. Aizawl the 8th April,2004 memo No.C. 13016/N-11/02/DISP/DTE(REV) issued by Director, LR & S, Mizoram :Aizawl*

*Ext.p-13 is a notice U/s 80 CPC sent by my counsel*

*Ext.P-14 is LSC No.326 of 1980 of Sangzama Chandmari, Aizawl*

*Ext.P-15 is LSC No.526 of 1980 of H.Lalrithanga, Chandmari,Aizawl*

*Ext.P-16 is CCB-6 of 1974 belonging to Thuamluaia, Chandmari which was superseded by LSC No.526 of 1980.*

In his cross examination, he deposed that the pass issued to him under House Pass No. 533/72 covered 8060 Sq. ft. He admitted that LSC No. 526 of 1980 was re-demarcated in 1983. He also admitted that he was present on the spot when Mr. S. Rolianthanga, Deputy Director had conducted spot verification in the instant disputes.

The **PW-2** in his examination in chief deposed that he is familiar with the plaintiff as he is the tenant of the plaintiff since 1981. One Assam type building of the plaintiff was occupied by him and ascertained that there was around 30 ft. gap between the pillar of the said building and the boundary of the plaintiff land on the disputed site. After the said Assam type building was dismantled, a pillar was again put up on the exact place where the

previous pillar was put up. There was still a 3ft gap between the pillar and the boundary of the plaintiff's land. Due to vehicular accident, all the marks put by the plaintiff were erased. He remain ascertained that approximately 3 ft gap always existed between the pillar and the boundary.

In his cross examination, he deposed that although the suit is being filed in 2006, there is not dispute in between parties as all actions in the disputed site were already taken by parties. He admitted that he never participated in the demarcation of the disputed land by the Revenue authorities.

For the defendants 1-4:

The defendants 1-4 also produced one witness namely- Mr. K. Lalhmuakliana, Assistant Director, Land Revenue and Settlement Department, Govt. Of Mizoram (Hereinafter referred to as **DW for defendants 1-4**). In his examination in chief, he deposed that the original area of the plaintiff's House Pass Number is not 8354 Sq. ft. but 7700 Sq. ft which could be calculated as length and breadth of the land. Further, the House Pass of the plaintiff does not share the true area of the land in question as it gives 8060 Sq. ft to be the total area of the plaintiff's land is 360 Sq. ft. larger than the actual area. The distance between the two pillars than the degree bearing and degree bearing is often taken after the boundary pillars are fixed in the measurements of every land. Further due to instrumental defects and some other conditions this kind of marginal error could arise without actually altering the boundary lines. The boundary description also clearly states- "... *Pu Pahlira nen inri zelin 43 m ah chiah chuan B.P No. 1 na phun a man leh chiah an*". This clearly indicates that the two boundaries do not overlap each other as seen in the boundary description of LSC No. 526/80. All the defects of the boundary description in LSC No. 730/1977 were rectified in 1983 without altering the original boundary of the LSC when re-demarcation. The instant dispute had arisen due to failure to comply section 10 of the Mizo District (Land and Revenue) Act, 1956 by the plaintiff as the plaintiff trailed to alter his boundary without the knowledge of the Revenue Department. In the report of the spot verification held on 2.2.2004, unfortunately, the boundary line on ground as pointed out by Mr. C. Rozama and Mr. R.K. Pahlira are not similar to the official record maintained by the defendants 1-4 in their office. As per record of rights, 0.5 length in the frontage have to be shifted from their so called pointed boundary pillar from the boundary of the plaintiff. Instead of moving towards Mr. C. Rozama's House site, the plaintiff moved forward to the house site of the defendant no. 5. Due to mis-interpretation and mis-determination of the boundary of the plaintiff, the instant dispute had arisen. The disputing parties were also present on the spot at the time of spot verification conducted by Mr. Rolianthanga, the then Deputy Director. On the basis of the said report, the impugned order is issued by the defendant no. 3. Ext. D- 6 is the written statement, Ext. D- 7 is the signature of Mr. H. Lalengmawia, the then Under Secretary to Govt. of Mizoram, Revenue Department.

In his cross examination, he deposed that he is posted at Asst. Director, Revenue Department since March, 2009 and occupied the said



post till date. He was not involved in the process of the instant dispute in their department as it was before his regime. House Pass No. 533 of 1972 was superseded by LSC No. 730 of 1977 belonging to the plaintiff.

For the defendant no. 5:

The defendant no. 5 had produced only one witness namely- Mr. H. Lalrinthanga S/o Rohranga (L), Chanmari West, Aizawl (Hereinafter referred to as **DW for defendant no. 5**). In his examination in chief, he deposed that he had purchased his house site under LSC No. 526/80 from one Mr. Sangzama, the breadth adjacent to the main road is 19.50 m and separated his landed property into two in the middle portion namely- LSC No. 526/80 and LSC No. 705/80. He had purchased the same without any disputes. He had also already mutated the said LSCs in his own name. He had fenced the boundary with the plaintiff, the plaintiff never have had any complaint. In 1996, the plaintiff had started construction of building, he encroached his land, his constructed step was also affected by one erected point. On 23.4.1996, two Revenue officials came to admeasure the disputed area but they failed to settle the dispute and they later came again on 15.5.1996. After thorough surveyed, the plaintiff and the defendant no. 5 reached settlement. As the plaintiff later dissatisfied of the said amicable settlement, arbitrary order was made on 23.2.2004 by the Revenue Department at the result of surveyed conducted on 24.6.2003. Another capricious order was also again made on 23.3.2004. As he disagreed of the said order dt. 23.3.2004, he preferred grievances to the Revenue Department, on his application, the survey team headed by Mr. S. Rolianthanga, the then Deputy Director came, although make suggestion for amicable settlement before surveyed, the plaintiff blenched on the same. The said survey team thoroughly measured the elaka from the boundary of PHE Department, their findings were similar with the findings of two surveyors in 1996. Two iron rod were erected in the find out boundary. The said survey team also marked the name "Revenue" in the wall of the plaintiff, soon after left by Revenue Officials, it was erased by the plaintiff. At the result of the said report, order was issued on 8.4.2004, as directed to me by the said order, I had constructed permanent pillar in the boundary.

In his cross examination, he deposed that he had received a copy of Ext. P- 10. He also admitted that the LSC of the plaintiff is more senior than his LSC.

For the court witness:

As prayed by learned counsel for the plaintiff, Mr. V. Lianzinga S/o Dohnuna (L), Chanmari West, Aizawl was examined as **court witness**. In his examination, he deposed that he knows the land belonging to the defendant no. 5 which is originally with a frontage of 60 ft i.e. 18.30 metres and the area of 3738 Sq. ft. When it was converted into LSC No. 526 of 1980, the frontage becomes 19.50 metre, the area also becomes 4648 Sq. ft. It was therefore increased to 910 Sq. ft. The original owner Mr. Thuamluaia gave 3 feet of his land for public step. The area of the defendant no. 5 therefore could not be increased. Although the LSC No. 730 of 1977 belonging to the plaintiff was trifurcated, there was no change of its original boundary.

During cross examination by learned counsel for the defendant no. 5, he also admitted the Revenue Department make a decision for promulgating an order on the basis of the surveyed conducted by Mr. S. Rolianthanga, Deputy Director of Revenue as Ext. D-5. He also admitted that both the plaintiff and the defendant no. 5 had already completed construction their own building in RCC and occupied the same for several years. Before Mr. S. Rolianthanga had conducted spot verification, he had conducted spot verification but the defendant no. 5 aggrieved his report and findings. Thus, Mr. S. Rolianthanga was again deputed to conduct spot verification.

During cross examination by learned AGA, he admitted that the report of his verification of the disputed lands is not found in the instant case record.

### **POINTS OF RIVALRY**

Mr. W. Sam Joseph, learned counsel for the plaintiff stated that both the Government defendants as well as the private defendant have some thing to hide. In fact the Government Advocate had produced Mr. V. Lianzinga as one of the witnesses but subsequently withdrew his name. Hence the court had to call him as court witness. The defendant no.5 examined himself and he also cited the name of Mr. S. Rolianthanga as one of the witnesses but failed to produce him to the court. The fact the defendants cited the names of the witnesses and not produced before the court makes the court to presume that the defendants have something to hide. In this connection the provisions of S.114 Illustration (g) is relevant to this case. From the evidence on record it is clear that the defendant no. 5 had encroached upon the land covered under LSC no. 730 of 1977 of the plaintiff to the extent of 90cm x 42m = 37.8Sq.m. It is also clear that the order passed and issued vide No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 by the defendant no.3 is illegal in order to help the defendant no.5 without any basis. Hence the plaintiff is entitled to get the relief claimed in the plaint. Therefore, he again pray the court to declare that the defendant no.5 had encroached upon the land covered under LSC no. 730 of 1977 of the plaintiff to the extent of 90cm x 42m = 37.8Sq.m. and the order passed and issued vide No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 by the defendant no.3 is illegal in order to help the defendant no.5 without any basis and the same be set aside/cancelled/quashed.

On the other hand, Mr. L.H. Lianhrima, learned counsel for the defendant no. 5 argued that the instant suit is bad for non-joinder of necessary party such as Pu C. Rozama who is the holder of LSC No 396 of 1982 and whose land is said to be located at the adjoining area of the Plaintiff's land. As per the Verification Report of boundary dispute of House sites between the Plaintiff, R.K. Pahlira and Defendant no 5, H. Lalrinthanga, it has been specifically mentioned at para 4 the fact that *in stead of moving towards Pu C. Rozama's House Site Pu R.K. Pahlira moved towards H. Lalrinthanga's house site*. As such, the instant suit cannot be properly determined and adjudicated without arraying C. Rozama as one of the defendants. Hence, the present suit is liable to be dismissed with exemplary costs. More so, the dispute between the plaintiff and the defendant no 5 arose due to non-compliance of the Rules No 10 of the Mizo

District (Land & Revenue) Act, 1956. The Plaintiff trailed to alter his boundary without the knowledge of Revenue Department. On 2-2-2004 at 11:00 am, the Deputy Director of Survey accompanied by other technical staff verified the dispute side and found that due to mis-interpretation and mis-determination of boundary lines by the Plaintiff, the dispute has arisen. The verifying officer who has got a good technical knowledge reported that the reasons of boundary dispute is that Shri C. Rozama s/o L.T. Zauva of Chanmari is having House site under LSC No 296/82 with an area of 113.08 sqm – 1216.74 sq.ft just adjacent to the Plaintiff's land in the western side. As per their record of rights, there is no overlapping in the boundary between Pu C. Rozama and the plaintiff too. Unfortunately, the boundary line on ground as pointed out by Pu C. Rozama and R.K. Pahlira are not similar to the official records maintained by the defendant in the office. As per records of rights, 0.5 length in the frontage have to be shifted from their so called pointed boundary pillar from the Plaintiff, R.K. Pahlira's boundary. Instead of moving towards Pu C. Rozama's house site, the Plaintiff moved towards the defendant no 5, Mr. H. Lalrinthanga's house site. As per the Plaintiff's pointed boundary he encroached upon the defendant no 5's site by 3:00 m in the frontage. As a result of such misinterpretation and mis-determination of boundary lines there arise boundary dispute between the Plaintiff and defendant no 5. Thus, it became clear that the Plaintiff wrongly based his contention on account of mis-interpretation and mis-determination of boundary lines there arose boundary dispute between the Plaintiff and the defendant no 5. This has been proved by the Deputy Director of Survey, Mr. S. Rolianthanga who is the most efficient and highest technical knowledge person in the Revenue Department in this field. In fact, the impugned order was passed and issued on the basis of verification report (Ext D-5) submitted by the Deputy Director of Survey after hearing the disputing parties properly and personally at the time of spot verification. He concluded his arguments that Shri V. Lianzinga, Deputy Director of Survey, LR & S who appeared as court witness apparently at the instance of the Plaintiff deposed that *"It is a fact that the then Deputy Director of Survey, S. Rolianthanga conducted spot verification into the land dispute between Pu R.K.Pahlira and Pu H.Lalrinthanga and submitted his verification report on 5-4-2004 which is Exhibit D-5"* The court witness further admitted that *"It is also a fact that the Revenue Department has taken decision with regards to the land dispute between R.K.Pahlira and H.Lalrinthanga on the basis of the verification report (Ext D-5) submitted by S.Rolianthanga"* Shri V.Lianzinga also admitted that *"It is also a fact that the plaintiff and the defendant no 5 have already completed their house building construction and occupied their respective lands for several years"*. The court witness, Shri V. Lianzinga finally admitted that *"It is a fact that I had conducted spot verification before Pu Rolianthanga conducted into the land dispute of the plaintiff and the defendant no5. However, the defendant no 5 made a complaint against my verification report. As a result, Pu S. Rolianthanga was detailed to conduct spot verification and his verification report which is ext D-5 was accepted by the department"* It is voluminously clear from the deposition of the witness that the instant suit is hopelessly barred by the limitation, principle of estoppel and acquiescence. Hence, the instant suit is liable to be dismissed outright with costs.

## FINDINGS

### Issue No. 1

#### Whether the suit is maintainable or not

Being claiming declaratory suit, court fees at Rs. 30/- is paid by the plaintiff. 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 43 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-

“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).”

In the instant case, the relief sought under point no (ii) is- Let a decree be passed declaring that the order passed and issued vide No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 by the defendants no. 3 is illegal and is to be set aside/cancelled/quashed/declared null and void and the same be cancelled /quashed. It clearly indicates that it is within the ambit of consequential relief. 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 suit valuation in the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is required to make up by the plaintiff.

The plaint is accompanied by verification but without affidavit, no specific paragraph wise verification like whether it is within the personal knowledge of the plaintiff or through records or through legal advice is not

seen in that facet. Thus, this lacunae is not sustainable as per O. VI. R. 16 of the CPC and as held by the Constitution Bench of the Supreme Court in **A. K. K. Nambiar v. Union of India and another**, AIR 1970 SC 652, held as follows:

"The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

Furthermore, 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 has 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"

The recent observation of Hon'ble Apex Court clearly solicited to follow/comply the procedure set forth in the Code of Civil Procedure, 1908 in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), the Supreme Court has held that-

"70..... However, in our view, its applicability to the adjudicatory process for determination of 'civil disputes' governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and

exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience.”

The instant issue is therefore decided in favour of the defendants as procedure is meant for the end of justice, equity and good conscience.

### **Issue No. 2**

#### **Whether the suit is bad for non-joinder of necessary parties**

With regards to non-joinder of necessary parties, the well settled principles of law 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. And 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, wherein, 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.”

As admitted by deposition of court witness and facts determined, the instant cause of action had arisen on the basis of the verification report of boundary disputes of house sites between Mr. R.K. Pahlira and Mr. H. Lalrinthanga marked as Ext. D-5 submitted by Mr. S. Rolianthanga, Deputy Director of Survey, Land Revenue and Settlement Department on 5/4/2004 conducted in pursuance of the order passed by the defendant no. 3 under Memo No. C. 13016/N-11/02-DISP/DTE (REV) Dt. 23/3/2004, some relevant portion of his reports may be extracted as below-

#### **“3. Ground realities:**

Field check measurements for re-location of boundary pillars and boundary lines was conducted. There is no overlapping on boundary base on their records-of rights of LSC No. 730 of 1977 and LSC No. 526 of 1980 maintained by the

Department.

#### **4.Reason of boundary dispute:**

Shri. C. Rozama S/o L.T. Zauva of Chanmari is having house site under LSC No. 296 of 1982, area= 113.08 Sq. m-1216.74 Sq. ft just adjacent to Pu. R.K. Pahlira in the western side. As per their record-of-rights, there is no overlapping in the boundary between Mr. C. Rozama and Mr. R.K. Pahlira too.

Unfortunately, the boundary line on the ground as pointed by Pu C. Rozama and Pu R.K. Pahlira are not agreed with the official records of this office. As per record of rights, 0.5 metre length in the frontage have to be shifted from their so called pointed boundary pillar from Pu R.K. Pahlira's boundary. Instead of moving towards Pu C. Rozama's house site, Pu R.K. Pahlira towards Pu H. Lalrinthanga's house site. As per Pu R.K. Pahlira's pointed boundary he encroached by 0.30 metre to Pu H. Lalrinthanga's site in the frontage. As result of such misinterpretation and misdetermination of boundary lines there arise boundary dispute between Pu R.K. Pahlira and Pu. H. Lalrinthanga."

So is the findings of the spot verification which sowed the impugned order under No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 marked as Ext. P-12. Without impleadment of Mr. C. Rozama S/o L.T. Zauva (L), Chanmari who is the holder of LSC No. 296 of 1982, cogently there can be no proper and effective adjudication of the case in respect of the said impugned order. The suit is therefore bad for non-joinder of necessary parties.

#### **Issue No. 3**

**Whether the land of the plaintiff under LSC No. 730 of 1977 is encroached by the land of the defendant no. 5 under LSC No. 526 of 1980 to the extent of 90cm x 42 m = 37.8 Sq. m**

Although the plaintiff claimed that the land of the plaintiff under LSC No. 730 of 1977 is encroached by the land of the defendant no. 5 under LSC No. 526 of 1980 to the extent of 90cm x 42 m = 37.8 Sq. m. Court witness make deposition without any documentary evidence as the area which is deposed by him requires to examine with supporting documents. Indeed, it requires technical expertise. As admitted by court witness, who deposed in favour of the plaintiff that the previous survey report of the disputed area which is inadvertence with the instant impugned order and survey report is not found in the case record. Lacking to annex this essence documents leads hindrances for accurate findings. The relevant portion of the verification report of boundary disputes of house sites between Mr. R.K. Pahlira and Mr. H. Lalrinthanga marked as Ext. D-5 submitted by Mr. S. Rolianthanga, Deputy Director of Survey, Land Revenue and Settlement Department on 5/4/2004 conducted in pursuance of the order passed by the defendant no. 3 under Memo No. C. 13016/N-11/02-DISP/DTE (REV)

Dt. 23/3/2004, may be again extracted as below-

“5. Step taken for settlement of boundary dispute:

- (1) The disputed portion covered only about 4.0 Sq. m being 0.30 m (wide) in the frontage and 27.00 m depth (length)
- (2) Attempt have been made for peaceful settlement for good neighbourhood through negotiation without resorting ground measurement as the disputed portion is not large area. Pu. H. Lalrinthanga accepted the proposal whereas Pu R.K. Pahlira regretted and demanded grand measurement. As there is no other alternative ground measurement have been conducted.

.....  
.....”

No concrete and credible evidence to diverse the above survey report is revealed and exhibited in the instant proceedings. This issue is again decided in favour of the defendants. Pertinently, there is no relevancy of the seniority of the disputed LSCs in the instant case although raised the same by the plaintiff in his plaint and deposition as PW-1 without proving the encroachment area of the said LSCs. Moreover, as submitted in their written statements by the defendants 1-4, mechanical error, topographical changes as natural consequences may also alter the land forms and its area slightly even as common knowledge.

#### **Issue No. 4**

**Whether the land of the plaintiff under LSC No. 730 of 1977 is encroached by the land of Mr. C. Rozama under LSC No. 396 of 1982 or not.**

Due to non-joinder of necessary parties, no other findings except Ext. D-5 viz. verification report of boundary disputes of house sites between Mr. R.K. Pahlira and Mr. H. Lalrinthanga submitted by Mr. S. Rolianthanga, Deputy Director of Survey, Land Revenue and Settlement Department on 5/4/2004 conducted in pursuance of the order passed by the defendant no. 3 under Memo No. C. 13016/N-11/02-DISP/DTE (REV) Dt. 23/3/2004 is found.

#### **Issue No. 5**

**Whether the order passed by the defendant no. 3 issued under No. C. 13016/N-11/02-DISP/DTE (REV) dt. 8th April 2004 is with arbitrariness/capriciousness liable to null and void/cancel**

Being expertise in their field except proving of arbitrary/capricious act, how this court may intrude in the said findings is the moot point. The law is recently settled in the case of **Mig Cricket Club vs Abhinav Sahakar Edn. Society & Ors.** decided on 5 September, 2011 in connection with Civil Appeal No. 2047 of 2007, wherein, the Supreme Court has held that-

“14. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not



interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable.

We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same.”

As admitted by court witness, who deposed in favour of the plaintiff that the previous survey report of the disputed area which is inadvertent with the instant impugned order and survey report is not found in the case record. Lacking to annex this essence documents leads incomplete pleadings. The law in this task is already settled in **Narmada Bachao Andolan vs State Of M.P. & Anr.** decided on 11 May, 2011 in connection with Civil Appeal No. 2082 of 2011, the Supreme Court has held that-

“7. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas.”

And in **M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh**, AIR 2001 SC 1684, the Supreme Court observed as under:-

"The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

Also vide, **Vithal N. Shetti & Anr. Vs. Prakash N. Rudrakar & Ors.**, (2003) 1 SCC 18; **Devasahayam (Dead) by L.Rs. Vs. P. Savithramma & Ors.**, (2005) 7 SCC 653; and **Sait Nagjee Purushottam & Co. Ltd. Vs. Vimalabai Prabhulal & Ors.**, (2005) 8 SCC 252.)

Thus, such incomplete pleading is not also sustainable in the eye of law towards correct adjudication of the case/suit while the Hon'ble Supreme Court in **Rangammal vs Kuppaswami & Anr.** decided on 13 May, 2011 in connection with Civil Appeal No. 562 of 2003 has observed that-

“24. It is further well-settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit before the trial court in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. This basic principle, seems to have been missed not only by the trial court in this case but consistently by the first appellate court which has been compounded by the High Court.

25. Thus, we are of the view, that the whole case out of which this appeal arises had been practically made a mess by

missing the basic principle that the suit should be decided on the basis of the pleading of the contesting parties after which Section 101 of The Evidence Act would come into play in order to determine on whom the burden falls for proving the issues which have been determined.”

Suggestion in the verification report of boundary disputes of house sites between Mr. R.K. Pahlira and Mr. H. Lalrinthanga marked as Ext. D-5 submitted by Mr. S. Rolianthanga, Deputy Director of Survey, Land Revenue and Settlement Department on 5/4/2004 conducted in pursuance of the order passed by the defendant no. 3 under Memo No. C. 13016/N-11/02-DISP/DTE (REV) Dt. 23/3/2004 is excerpt as below-

**“6. Suggestions:**

- (1) Pu R.K. Pahlira may be informed that there is no overlapping of LSCs towards their boundary with Pu H. Lalrinthanga.
- (2) Pu R.K. Pahlira may also be informed to honour the boundary fixed/pointed out by the Deputy Director of Survey as per official records of Land Revenue and Settlement Department should be honoured.
- (3) Pu H. Lalrinthanga may construct permanent fencing as per boundary line fixed/pointed out by Deputy Director of Survey as early as possible under the supervision of Surveyor of Land Revenue and Settlement, Aizawl”

The impugned order marked as Ext. P- 12 is merely an order/action pursuant to the said verification report marked as Ext. D-5 including fixing permanent fencing by the defendant no. 5.

Although PWs 1 and 2 deposed in favour of the plaintiff, the deposition of PW-2 is his general knowledge as a laymen who well acquainted with the area as occupant. PW-2 further admitted that he never participated in the survey over to the disputed area. More so, the PW-1 being the plaintiff verse with his own understandings without any technical points to proof the arbitrariness of the impugned order. The PW-1 being the plaintiff also admitted during his cross examination that he himself was also present on the spot when spot verification was conducted by Mr. S. Rolianthanga, the then Deputy Director of Revenue wherein, the impugned order came out. I do not find any reasons to intrude in the said impugned order as the plaintiff fails to proof its arbitrariness and capriciousness.

**Issue No. 6**

**Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.**

In view of the above mingled findings in various issues, no entitlement of the plaintiff will be arisen except to dismissal of the suit on merit and maintainability as held in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products (supra.)**

**ORDER**

UPON hearing of the rival submissions of both parties and evidences adduced by parties gauged as above, it is hereby ORDERED that the suit is dismissed on merit and on maintainability.

Parties are directed to bear their own cost.

The case shall stand disposed of

Give this copy to all concerned.

Given under my hand and seal of this court on this 5<sup>th</sup> December, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 1  
Aizawl District: Aizawl

Memo No. DS/7/2004, Sr. CJ (A)/

Dated Aizawl, the 5<sup>th</sup> Dec., 2011

Copy to:

1. Mr. R.K. Pahlira S/o Dengkunga, Chanmari West, Aizawl through Mr. W. Sam Joseph, Adv.
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 through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Deputy Director, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. Mr. H. Lalrinthanga S/o Rohranga, Chanmari West, Aizawl through Mr. L.H. Lianhrima, Adv.
7. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR