

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

CIVIL SUIT NO. 32 OF 2008

Plaintiff:

Mr. Raymond Lalmuanpuia
S/o Liandawla (L)
Tanhрил, Aizawl

By Advocate's : Mr. L.H. Lianhrima, Advocate

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the
Government of Mizoram
2. The Secretary to the Govt. of Mizoram
Higher and Technical Education Department
3. The Director
Higher and Technical Education Department
Govt. of Mizoram
4. The Deputy Director (Administration)
Higher and Technical Education Department
Govt. of Mizoram
5. Mr. Lalramtiama, Advocate
S/o Rualkhuma (L)
Mission Veng, Aizawl
6. The Assistant General Manager
State Bank of India
Main Branch: Aizawl

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

Date of Arguments : 28-07-2011
Date of Judgment & Order : 28-07 -2011

BEFORE

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

JUDGMENT & ORDER

INTRODUCTORY

Here is the case where learned advocate ruined by taking the money of persons who disagreed to share half of the amount to the said learned advocates, it reminds me one holy observations in the case of **Satish Kumar**

Sharma Vs. The Bar Council of Himachal Pradesh in connection with Appeal (civil) 5395 of 1997 decided on 03/01/2001 and reported in 2001 AIR 509, 2001(1) SCR 34, 2001 (2) SCC 365, 2001 (1) SCALE 23, 2001 (1) JT 236, the Apex Court has held that-

“The profession of law is called a noble profession. It does not remain noble merely by calling it as such unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be preserved, protected and promoted. An institution cannot survive in its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich traditions consistent with its grace, dignity, utility and prestige. Hence the provisions of the Act and Rules made thereunder inter alia aimed at to achieve the same ought to be given effect to in their true spirit and letter to maintain clean and efficient Bar in the country to serve cause of justice which again is noble one.

Another rhyme, composed by Hon'ble Apex Court in the case of **Vikas Deshpande Vs. Bar Council of India & Ors.** in connection with Appeal (civil) 4003 of 2001 decided on 29/11/2002 reported in 2003 AIR 308, 2002 (4) Suppl. SCR 398, 2003 (1) SCC 384, 2002 (8) SCALE 637, 2002 (9) JT 619 is calling, it was held that-

“Relationship between an advocate and his client is of trust and therefore sacred. Such acts of professional misconduct and the frequency with which such acts are coming to light distresses as well as saddens us. Preservation of the mutual trust between the advocate and the client is a must otherwise the prevalent judicial system in the country would collapse and fail. Such acts do not only affect the lawyers found guilty of such acts but erode the confidence of the general public in the prevalent judicial system. It is more so, because today hundred percent recruitment to the Bench is from the Bar starting from the subordinate judiciary to the higher judiciary. You cannot find honest and hard working judges unless you find honest and hard working lawyers in their chambers. Time has come when the Society in general, respective Bar Council of the States and the Judges should take note of the warning bells and take remedial steps and nip the evil or the curse, if we may say so, in the bud.”

Failure to observe of the above holy dictum caused the instant suit whilst the learned advocates are the king pin for restoring public faith in the justice delivery system.

GENESIS OF THE CASE

The plaintiff being the legal heir of the deceased Mr. Liandawla under Heirship Certificate No. 227 of 2008 in respect of all the moveable and immovable properties of the said deceased including compensation awarded for the land acquisition for the purpose of Mizoram University. While sanction was accorded for Rs. 31,11,520/- for the land belonging to the deceased father, 50% of the said amount was illegally paid to the defendant no. 5 without the knowledge and consent of the plaintiff. The plaintiff also did not subscribe his signature in the 'Intiamna' Dt. 17-04-2006 executed by other land owners. Meanwhile, the defendant government had without application of mind, simply complied with the request of the defendant no. 5 by issuing cheque No. 596452 Dt. 13-05-2008 for 7 crore, 86 lakhs in favour of the defendant no. 5. Thus, prays a decree (i) directing the defendant no. 5 to return 50% of the total amount of compensation of Rs. 31,11,520/- to the plaintiff (ii) costs of the suit and (iii) any other relief which this court deems fit and proper.

Although summons were duly served to all defendants, they did not submit their written statements without knowing reasons. Thus, proceeded the case ex parte.

POINTS FOR DETERMINATION

The following power points should determine the case as follows-

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiff has a cause of action and locus standi to file the suit against the defendants
3. Whether the defendant no. 5 had illegally received 50% of the amount out of Rs. 31,11,520/- from the award made in favour of the plaintiff
4. Whether the plaintiff is entitled to the relief claimed. If so, to what extend

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Raymond Lalmuanpuia S/o Liandawla (L), Tanhril- Aizawl (Hereinafter referred to as PW-1)
2. Mr. Chawngthankima S/o Sapbuha, Tanhril, Aizawl (Hereinafter referred to as PW-2)

The PW- 1 in his examination in chief merely reiterated the contents in the plaint being the plaintiff himself, he further deposed that-

Ext. P- 1 is the plaint submitted by him

Ext. P- 1(a) and (b) are his signatures

Ext. P-2 is a copy of Heirship Certificate No. 227 of 2008

Ext. P-3 is a copy of Intiamna Dt. 17/4/2006

Ext. P-4 is a copy of application dt. 12/5/2008

Ext. P-5 is a copy of recommendation

In his cross examination by learned counsel for defendants no. 1-4, he deposed that at the time of execution of 'Intiamna' his father remains alive. He admitted that he claims the amount only from the defendant no. 5

The PW- 2 in his examination in chief deposed that he witnessed as the previous Asst. Secretary in the Committee on Mizoram University Compensation that the father of the plaintiff refused to put his signature in the 'Intiamna' with Mr. Lalramtiam, the defendant no. 5 Mr. Lalramtiam rather taken the amount to be received by the plaintiff at Rs. 15,55,760/- is not justifiable.

In his cross examination by learned counsel for defendants no. 1-4, he deposed and admitted that the claims is that the amount to be recovered only from the defendant no. 5

The defendants being not contested in the suit remains betrayed the proceedings by failing to produce their evidence.

FINDINGS

Point No. 1

Whether the suit is maintainable in its present form and style

Whilst the suit is valued at Rs. 15,55,760/-, a requisite court fees is make up on 13/7/2011. In short, I find irregularities which vitiate the proceedings in the suit and plaint.

Point No. 2

Whether the plaintiff has a cause of action against the defendants

As deposed by PWs and as the holder of Heirship Certificate No. 227 of 2008 as Ext. P-2 by declaring the plaintiff as the legal heir of the deceased Mr. Liandawla whose name is appeared in Sl/No. 86 in the alleged 'Intiamna' Dt. 17/4/2006 as Ext. P-3 by awarding compensation amount, I find that there is cause of action in favour of the plaintiff and having locus standi against the defendants whilst the defendants did not contested in the suit/case. Reliance may be taken as held in **State of U.P. Vs. U.P. State Law Officers Association** decided on 25/01/1993 and reported in 1994 AIR 1654, 1994 SCR (1) 348, Hon'ble Supreme Court has observed that-

“15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.”

Point No. 3

Whether the defendant no. 5 had illegally received 50% of the amount out of Rs. 31,11,520/- from the award made in favour of the plaintiff

Even on meticulously examining the facet of Ext. P-3 viz. 'Intiamna' Dt. 17/4/2006, the father of the plaintiff did not put his signature supplemented by deposition of PW-2. Meanwhile, as silent, the defendant no. 5 was paid Rs. 15,55,760/- out of total amount of the award viz. Rs. 31,11,520/- as 50% of the said sum total. Similar precedent may be taken as held in the case of **Rajendra V. Pai Vs. Alex Fernandes & Ors.** decided on 09/04/2002 and reported in 2002 AIR 1808, 2002 (4) SCC 212, 2002 (3) SCALE 380, 2002 (3) JT 605, it was held that-

“A brief resume of the facts would suffice for the purpose of this order. It appears that there were large scale land acquisition proceedings in the village to which the appellant belongs. There were about 150 villagers whose lands were involved. Some land owned by the family members of the appellant also suffered acquisition. Inasmuch as the appellant was an advocate and also personally interested in defending against the proposed acquisition of land belonging to his family members, the villagers either on their own or on persuasion confided in the appellant, who played a leading role initially in contesting the land acquisition proceedings and later in securing the best feasible quantum of compensation. There were around 150 claimants out of whom three only filed complaints against the appellant which were inquired into by the Disciplinary Committee of the State Bar Council and held proved against the appellant. The substance of the allegations found proved is that the appellant solicited professional work from the villagers; that he settled contingent fee depending on the quantum of compensation awarded to the claimant; and that he identified some claimants in opening a bank account wherein the cheque for the awarded amount of compensation was lodged and then the amount withdrawn which identification was later on found to be false. The gist of only relevant one out of the several pleas taken up by the appellant before the Bar Council and pressed for the consideration of this Court by learned counsel for the appellant is that the entire episode points out only to rustic naivety on the part of the appellant though an advocate. It was submitted that the appellant did not solicit professional work as such and in fact the villagers confided in him because of his being an advocate, also looking after litigation relating to his family land, and the villagers had voluntarily agreed to contribute to a collective fund raised for covering the expenses of litigation as they were likely to make an overall saving in litigation expenses by fighting collectively as a group and it is out of this fund that the appellant incurred expenses including those by himself. So far as false identification in opening the bank account is concerned the appellant acted irresponsibly when he relied on other villagers who persuaded him to make an identification which only was acceptable to the authorities on account of his being an advocate. This fact finds support from the circumstance that out of little less than 150, only 3 of the litigating landowners have filed these complaints to Bar Council. It was urged most passionately by the learned counsel for the appellant that it was the first fault, if at all, of the appellant and if debarred from practise for his life at his age yet in early forties, the appellant and his family would be completely ruined.

... The appeals are partly allowed. Though the finding of the appellant having been guilty of committing professional misconduct as arrived at by the State Bar Council and the Bar Council of India is maintained, the punishment awarded to the appellant is modified. Instead of the name of the appellant being removed from the State rolls of Bar Council of the State it is directed that his licence to practise shall remain suspended for a period of seven years. Order awarding the costs is maintained.”

The above observation reveals the act of defendant no. 5 whether justification or not which confirmed this findings.

Point No. 4

Whether the plaintiff is entitled to the relief claimed. If so, to what extend

As per the findings in various previous issues, there can be no other diverse findings except that the plaintiff is entitle to the amount which is claimed by him with an interest rate at 12% per annum from the date of this order as no specific plea is found on interest in the plaint.

ORDER

UPON reading of the above findings, it is hereby ORDERED and DECREED that- the defendant no. 5 is directed to pay Rs. 15,55,760/- (Rupees fifteen lakhs, fifty five thousand, seven hundred and sixty) to the plaintiff within six months from the date of this order with an interest rate at 12% per annum from today till realization.

No order as to costs of the suit, the case shall stand disposed of

Give this copy to all concerned including decree.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2

Aizawl District: Aizawl

Memo No. CS/32/2008, Sr. CJ (A)/

Dated Aizawl, the 28th July, 2011

Copy to:

1. Mr. Raymond Lalmuanpuia S/o Liandawla (L), Tanhril, Aizawl through Mr. L.H. Lianhrima, Advocate
2. The State of Mizoram Through the Chief Secretary to the Government of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Higher and Technical Education Department through Mr. R. Lalremruata, AGA
4. The Director, Higher and Technical Education Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Deputy Director (Administration), Higher and Technical Education Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. Mr. Lalramtiana, Advocate S/o Rualkhuma (L), Mission Veng, Aizawl through Mr. L.H. Lianhrima, Advocate
7. The Assistant General Manager, State Bank of India, Main Branch: Aizawl through Mr. L.H. Lianhrima, Advocate
8. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
9. Case record

PESKAR