

The plaintiff also paid a requisite court fees at Rs. 5000/-. The plaintiff therefore prayed to declare him as the rightful owner of the land

covered under P. Patta No. 21 of 1980 and also consequential relief to order for cancellation of the LSCs possessed by the defendants 1-3.

The defendants 1-3 in their written statements contended that (i) without making substitution of the deceased defendant no. 2, the plaintiff filed a suit against him is liable to dismissed. (ii) No legal notice is served to the state defendants is also in violation of S. 80 of the CPC. (iii) No supporting Affidavit is enclosed in the plaint. (iv) The same cause of action is already decided on merit by the learned Magistrate SDCC, Aizawl in Title Suit No. 4 of 1999 on 25-1-2001 as ANNEXURE- 3 in the plaint and therefore barred the suit by S. 11 of the CPC. (v) the order passed by the Director, Land Revenue and Settlement Department under Memo No. C. 13016/N-2/07- DISP/DTE (REV) Dated Aizawl, the 17th Sept., 2007 also clearly elicited as ANNEXURE – VI in the written statements that the P. Patta No. 21 of 1980 is already acquired for Army located in the upside of the NH-54 and the said P. Patta does not cover the area below the said NH-54.

After conducting hearing of the suit on 19/1/2011 and deferred the same, parties are absent without knowing reasons on 4/5/2011 as fixed for hearing on preliminary issues. The suit is therefore liable to dismiss under O. IX, R. 3 of the CPC. However, on perusal of case record and as per conducting first hearing on 19/1/2011, I could not oblivious on the following laches on merit of the case as follows-

Maintainability of the suit

Lack of Affidavit in the plaint

Due to lack of supporting Affidavit in the plaint, it violates the provisions of O. VI, R. 15 (4) of the CPC by making reliance in **Ananga Uday Singh Deo Vs. Ranga Nath Mishra & Ors** in connection with Appeal (civil) 6658 of 2000 decided on 12/10/2001 reported in 2001 AIR 2992, 2001 (4) Suppl. SCR 88, 2002 (1) SCC 499, 2001 (7) SCALE 172, 2001 (8) JT 574

“Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.”

Failure to serve prior Legal Notice to the defendant No. 4

The provisions of S. 80 of the CPC is very mandatory subject to sub-section (2) of S. 80 of the CPC violation of the said provisions without reasons is inimical to the ratio laid down by the Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486 and the later decisions of the Hon'ble Gauhati High Court in **Manindra Ch. Paul vs State Of Tripura And Ors.**

decided on 16 March, 2007 reported in AIR 2007 Gau 103, 2007 (3) GLT 300. Thus, the suit is also laches in that sense.

Against the deceased defendant no. 3 without LRs

The suit is also bad for filing against the deceased without making any Legal representative/substitution in the light of the provisions of O. XXII, R. 3 of the CPC.

Res Judicata

In respect of Res Judicata under section 11 of the CPC, the judgment & order passed by SDCC, Aizawl in Title Suit No. 4 of 1999 Dt. 25.1.2001 already decided the disputes on merit dealing with P/Patta No. 21 of 1980 with its boundaries. No submissions on freeing from the said judgment ratio is found in the instant case.

Cause of action

The plaintiff in his plaint submitted that he bought the disputed P/Patta from one Mr. Ringngheta on 27-04-1982 and claiming of ownership for the said P/Patta is in gross violation of statutory laws/existing land laws in the state whilst the court cannot go beyond the statutory duly enacted or framed. On the facet of the backside of the enclosed copy of P. Patta No. 21 of 1980, the conditions under section 4 (3) of the Mizo District (Agricultural Land) Act, 1963 is imposed, in its condition paragraph no. 13 reads thus- "The holder of this Periodic Patta shall not dispose the land without prior approval of the Government" which is insisted by Rule 28 of the Mizo District (Agricultural Land) Rules, 1971 failing on which it will entail cancellation of the Periodic Patta under Rule 42 of the Mizo District (Agricultural Land) Rules, 1971 as enshrined in paragraph no. 14 of the conditions imposed in the backside of the Periodic Patta. In short, Periodic Patta is not transferable without prior permission of the Government which mode is the procurement of the disputed P. Patta by the plaintiff. In otherwords, the disputed P/Patta No. 21 of 1980 is liable to cancel or not is now questionable. Howsoever, as per the findings of the defendant no. 4 in his official Government Order under Memo No. C. 13016/N-2/07-DISP/DTE (REV) Dated Aizawl, the 17th Sept., 2007, the plaintiff has no rights to claim the land below the NH-54 at Zemabawk relating to the disputed P. Patta No. 21 of 1980. I therefore find no cause of action in favour of the plaintiff in the instant suit.

ORDER

As per the findings of the above on merit of the case and due to absence of both parties for conducting hearing of the case, the inevitable conclusion is that the suit is dismissed forthwith under O. VII, R. 11 of the CPC, S. 11 of the CPC and O. IX, R. 3 of the CPC. Since the plaintiff has paid in full of requisite court fees while presenting the plaint and engaged with lawyers should be with fees, no order as to costs of the suit. The case shall stand disposed of.

Give this order copy to both parties and all concerned.

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

Memo No. DS/22/2010, Sr. CJ (A)/

Dated Aizawl, the 4th May, 2011

Copy to:

1. Mr. H. Thansanga S/o Taisena (L), Zemabawk: Mizoram through Dr. C.V.L. Auva, Advocate
2. Mr. Lalhmingmawia S/o Pasena (L), Zemabawk- Aizawl through Smt. Zairemsangpuii, Advocate
3. Pasena (L), Zemabawk- Aizawl through Smt. Zairemsangpuii, Advocate
4. Smt. Khawlthangi D/o Pasena (L), Zemabawk- Aizawl through Smt. Zairemsangpuii, Advocate
5. Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. P.A. to District & Sessions Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR