

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

TITLE SUIT NO. 03 OF 2007

Plaintiff:

Mr. Lalrindika
S/o R. Sena (L)
Chanmari - Aizawl

By Advocate's : Smt. Lalthlamuani

Versus

Defendant:

Smt. Lalbiaknungi
D/o Laldailova
Chanmari- Aizawl

By Advocates : 1. Mr. K. Kawlkhuma
2. Miss Penlui Vanlalchawii

Proforma defendants:

1. The State of Mizoram
Through the Chief Secretary to the
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 Assistant Settlement Officer- I
Aizawl District: Aizawl
5. The Assistant Settlement Officer- II
Aizawl District: Aizawl

By Advocate's : Mr. R. Lalremruata, AGA

Date of Argument : 16-05-2011

Date of Judgment & Order : 19-05-2011

BEFORE

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

JUDGMENT & ORDER

This is a suit for declaration of the plaintiff as the rightful and legal owner of the property situated under LSC No. AZL. 94/1992 located at Chanmari- Aizawl on the grounds that the plaintiff is the youngest son of late Mr. R. Sena from his first marriage remains living in the main house

with his sister. After the death of his mother who was the first wife of the said Mr. Late R. Sena, during the lifetime of Mr. R. Sena, Mr. R. Sena gifted a portion of land from the main LSC to the plaintiff and was thereby duly demarcated as LSC No. AZL. 94/1992. While living with his father by looking after him in the main house, his father namely Mr. R. Sena got marriage with the defendant sometime in the year of 2005 and no issues were procreated for the said second marriage. The said Mr. R. Sena was died on 23.10.2006 and the plaintiff is supposed to inherit all the properties left by the said Mr. R. Sena being the son according to Mizo Customary Laws. The defendant was thereby alleged to stolen all the LSCs from the Almirah of the main house and fraudulently transferred/mutated the same in her name by way of alleged Affidavit. The suit land/LSC was also mutated under No. R. 20014/6/05-DC(REV)/Vol.- III/134 Dt. 18.4.2005. Subsequently, the defendant tried to sell of the said LSC/land. In short, the plaintiff therefore challenged the legality of the mutation of the disputed LSC in the name of the defendant. A requisite court fees at Rs. 5000/- is also paid in full at the time of filing of the plaint. The plaintiff therefore prays that (i) a decree to declare the plaintiff as the rightful and legal owner of the property situated under LSC No. AZL. 94/1992 located at Chanmari-Aizawl (ii) a decree declaring that the mutation/transfer with regards to LSC No. AZL. 94/1992 from the name of the plaintiff to the defendant is null and void (iii) a decree directing the profoma defendants to revert back the disputed LSC in the name of the original owner (iv) any other cost and relief which this court deems fit and proper.

The proforma defendants in their written statements submitted that without complying with the entity of S. 80 of the CPC for prior Legal Notice, the suit is blindly filed. For mutation of the suit land in the name of the defendant, the concerned President of Village Council with his official seal also evident the said application for mutation. The defendant also produced Gift Deed/Affidavit duly identified by learned Advocate in the suit land. There is no any laches or irregularities for mutation of the suit land in the name of the defendant. Thus, concluded that the suit is liable to dismiss with costs outright.

The defendant in her written statements objected that the late Mr. R. Sena had divided the main LSC into three namely- (i) LSC No. 628 of 1974 in the name of Mr. R. Sena S/o Maia (L) (ii) LSC No. 94 of 1992 in the name of Mr. Lalbiakdika S/o R. Sena (later transferred in the name of Smt. Lalbiaknungi D/o Laldailova (iii) LSC No. 93 of 1992 in the name of Lalduhawmi W/o R. Sena (L) (later transferred in the name of R. Sena on 2nd June, 2004). Briefly, the defendant contended that mutation of the suit land in the name of the defendant is with the consent of the plaintiff by executing an Affidavit. Thus, prayed to dismiss of the suit.

ISSUES

The issues were framed on 19-03-2008 but amended by the court towards justice as the said already framed issues were made before filing of written statement by the defendant and in the amended form are as -

1. Whether the suit is maintainable in its present form and style.
2. Whether there is any cause of action in favour of the plaintiff and against the defendant
3. Whether the plaintiff has locus standi to file the instant suit
4. Whether late Mr. R. Sena ahd gifted the landed property under LSC No. AZL. 94 of 1992 by slicing out a portion from the main LSC

5. Whether the plaintiff had gifted LSC No. AZL. 94 of 1992 to the defendant by executing an Affidavit and whether such gift is validly made or not
6. Whether transfer of ownership of LSC No. AZL. 94 of 1992 from the plaintiff to the defendant by the proforma defendants was legally valid or not.
7. 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 in the court such as-

- (1) Mr. Lalrindika S/o R. Sena (L), Chanmari- Aizawl (Hereinafter referred to him as PW- 1)
- (2) Mr. Rosiamngheta S/o B. Lalnghaka (L), Chanmari- Aizawl (Hereinafter referred to him as PW- 2)
- (3) Mr. J. Neihkunga S/o Chalpianga, Bawngkawn- Aizawl (Hereinafter referred to him as PW- 3)
- (4) Mr. Thangzuala S/o Hlianga (L), Champhai- Zotlang (Hereinafter referred to him as PW- 4)

The PW- 1 in his examination in chief merely reiterated the averments and submissions in the plaint being the plaintiff himself. He added that the disputed property was already transferred/mutated in the name of the defendant when one witness namely- Mr. Thangzuala appended his signature in the “Inhmun Inpekna Lehkha”. In the said “Inhmun Inpekna Lehkha”, it was written that he had gifted the same on 12/4/2005 but the affidavit was alleged sworn by him on 16/4/2005 but he never gifted the suit land to the defendant.

Ext. P- 1 is a copy of LSC. No. AZL. 94 of 1992

Ext. P- 2 is the Affidavit Dt. 16/4/2005

Ext. P- 3 is a copy of “Hmingthlak dilna”

Ext. P- 4 is a copy of “Hmun inpekna”

In his cross examination, he deposed that he had lodged FIR to the Police Station when he knew that the suit land was mutated in the name of the defendant. He regularly paid revenue on the suit land from his own pocket, his late father had kept the disputed LSC in his own almirah as he had also an authority on it. He denied that all the signatures in the Affidavit, Hmun Inpekna and Hmingthlakna are not his signatures. He came to know that LSC No. AZL. 94 of 1992 was in the hand of the defendant when she tried to sell of the same in the same year when his father died. He denied to sworn the Affidavit Dt. 16/4/2005. He also denied that the signature put in his name in the “Hmun Inpekna” (Ext. P- 4) is his signature so also in the “Hmingthlak dilna” (Ext. P- 3).

The PW- 2 in his examination in chief deposed that he was a President of Village Council, Chanmari during 2005 and also personally knows the plaintiff and his father as a resident of Chanmari. When the defendant came to his house for his signature on 15.4.2005 with “Hmingthlak Dilna”, it was already undersigned by Mr. Lalrindika, J. Neihkunga and Thangzuala and he appended his signature in the capacity as the then VCP. He neither saw at the time and present when putting signature by Mr. Lalrindika, J.

Neihkunga and Thangzuala in the said “Hmingthlak dilna”. Ext. P-5 (a), Ext. P-5(b) and Ext. P-5 (c) were his true signatures.

In his cross examination, he deposed that although he is well acquainted with the plaintiff, he is not familiar with the defendant but presumed that the defendant brought Ext. P- 4 (Hmun Inpekna form) in his residence not by the plaintiff. The signatures of LSC holder and witnesses were already appended at the time when bringing the said form into his house.

The PW- 3 in his examination in chief deposed that he personally knows the plaintiff and his father as a resident of Chanmari. His brother Mr. R. Sena came to his house with “Hmingthlak Dilna”, it was already undersigned by Mr. Lalrindika and Thangzuala and as requested he also subscribed his signature thereon without going through the contents thereof. He neither saw at the time and present when putting signature by Mr. Lalrindika, Rosiamngheta and Thangzuala in the said “Hmingthlak dilna”. Ext. P-6 (a), Ext. P-6(b) and Ext. P-6 (c) were his true signatures.

In his cross examination, he deposed that as brought Ext. P- 3 and Ext. P-4 by Mr. R. Sena into his shop, he merely put his signatures as requested. He admitted the decision of Mr. R. Sena being the head of family for the disputed mutation. He is not acquainted with the signature of Mr. Lalrindika.

The PW- 4 deposed that he used to stay in the neighbourhood of the plaintiff at Chanmari- Aizawl and therefore well acquainted with the plaintiff and his late father, Mr. R. Sena came to his residence at Chanmari bringing Hmingthlak Dilna as the said Mr. R. Sena intended to mutate LSC and he put his signature as witness. He did not present and see while putting signature by Mr. Lalrindika. Ext. P-7(a) and Ext.P-7(b) are his true signatures.

In his cross examination, he further deposed that he do not know that whether the plaintiff gave the disputed land/LSC to the defendant or not although putting his signature as witness in the form for mutation.

For the Defendant:

The defendant produced only one witness namely Smt. Lalbiaknungi D/o Laldailova, Champhai Vengsang- Champhai District (hereinafter referred to her as DW). In her cross examination, being the defendant, she merely reiterated the objections and its grounds already submitted in her written statement.

Ext. D-1 is Order passed by JMFC

Ext. D-2 is Property Search and Seizure form

Ext. D-3 is Marriage Certificate.

In her cross examination, she further deposed that she do not know the time when the disputed LSC was mutated in the name of the plaintiff. Although her deceased husband Mr. R. Sena talked with the plaintiff in respect of the suit land, she knows nothing on it about their discussion. She admitted that at the date of execution of Affidavit on 16/4/2005 when she was taken by her late husband to an advocate for execution of affidavit on 16/4/2005, Mr. Lalrindika was not present and further admitted that mutation of the disputed LSC in favour of the defendant was done on

10.4.2005. She had merely followed the instructions and guide from her late husband.

The proforma defendants neither produced any evidence nor pose in the arguments both in written and oral arguments.

TERMS OF RIVALRY

Smt. Lalthlamuani, learned counsel for the plaintiff argued that deposition of the defendant itself elicited that at the time of execution of alleged affidavit, the plaintiff was absent, none of the witnesses in the forms for mutation saw the plaintiff while putting his signature in the said forms in their depositions, the alleged signatures of the plaintiff in Affidavit Dt. 16.4.2005, Hmingthlak dilna and Inhmun pekna were totally different even with a naked eye. Mutation of the disputed LSC was done before executing affidavit is also doubtful.

Per contra, Mr. K. Kawlkhuma, learned counsel for the defendant contended that in the deposition of the plaintiff, he also did not deny that all the signatures in the Affidavit, Inhmun Inpekna and Hmingthlak dilna were not his signatures. More so, the plaintiff himself also admitted that during the lifetime of his father, his father was having an authority on the suit land even for mutation. Thus, the plaintiff does not have any locus standi in the instant suit.

FINDINGS

Issue No. 1 Maintainability of the suit

A requisite court fees is paid and no other disparage points is found even at the time of arguments, I find that the suit is maintainable in its present form and style as no other points is heard and found from the arguments advanced by the defendant and evidences so adduced.

Issue No. 2 Cause of action

Although the defendant in her written statement and examination in chief said that the original LSC of her deceased husband under LSC No. 628 of 1974 was divided into three namely- (i) LSC No. 628 of 1974 in the name of Mr. R. Sena S/o Maia (L) (ii) LSC No. 94 of 1992 in the name of Mr. Lalbiakdika S/o R. Sena (later transferred in the name of Smt. Lalbiaknungi D/o Laldailova (iii) LSC No. 93 of 1992 in the name of Lalduhawmi W/o R. Sena (L) (later transferred in the name of R. Sena on 2nd June, 2004). Till arguments and on appreciation of evidence, it is very clear that before mutation of the suit land in the name of the defendant, the same was put in the name of the plaintiff which itself is not trustworthy. If the plaintiff was the holder of the disputed LSC and mutated in the name of the defendant, I find that there is cause of action in the instant suit.

Issue No. 3 Locus standi

As discussed in issue no. 2, the plaintiff must have a locus standi to file the instant suit and is no need of detail elaborations on it

Issue No. 4

Gifted of LSC No. AZL. 94 of 1992 to the plaintiff by Late R. Sena

No evidences of both parties led that LSC No. AZL. 94 of 1992 was not gifted by Late R. Sena to the plaintiff. Indeed, the alleged Affidavit for gift of the suit land to the defendant was also alleged signed by the plaintiff as submitted by the plaintiff in her own written statement and her deposition in examination in chief and cross examination. On the facet of Ext. P-1 (the disputed LSC), before mutated in the name of the defendant, the name of the plaintiff can be clearly seen. It is therefore very clear that the deceased Mr. R. Sena mutated LSC No. AZL. 94 of 1992 in the name of the plaintiff.

Issue No. 5

Gifted of LSC No. AZL. 94 of 1992 to the defendant by the plaintiff

The arguments advanced by learned counsel for the plaintiff is correct saying that deposition of the defendant itself elicited that at the time of execution of alleged affidavit, the plaintiff was absent, none of the witnesses in the forms for mutation saw the plaintiff while putting his signature in the said forms in their depositions, the alleged signatures of the plaintiff in Affidavit Dt. 16.4.2005, Hmingthlak dilna and Inhmun pekna were totally different even with a naked eye. Mutation of the disputed LSC was done before executing affidavit is also doubtful. The defendant as DW in her cross examination also reveals that at the date of execution of Affidavit on 16/4/2005 when she was taken by her late husband to an advocate for execution of affidavit on 16/4/2005, Mr. Lalrindika was not present and further admitted that mutation of the disputed LSC in favour of the defendant was done on 10.4.2005. In the written statements submitted by the proforma defendants, their one ground is that on production of affidavit, the said mutation was done but it is not believable in view of the deposition of DW besides evidences adduced by the plaintiff viz. on the facet of Ext. P-1, mutation in the name of the defendant was made on 10.4.2005 but Ext. P-2 (Affidavit) was sworn on 16-04-2005.

None of the witnesses in the forms prescribed for mutation witnessed that the plaintiff being the holder of the disputed LSC/suit land subscribed his signature in the said forms. More so, the DW also deposed that at the date and time of execution of affidavit as Ext. P-2, the plaintiff although appearing his alleged signature in the said affidavit was not present. The instant issue is also goes in favour of the plaintiff.

Issue No. 6

Validity of mutation of LSC No. AZL. 94 of 1992 in the name of the defendant

As per the findings under Issue No. 5, cogently, the instant issue is also affirmative in favour of the plaintiff as no need to discuss again. In a very nutshell, evidences and documents exhibited in the court elicited that being the custody, the deceased Mr. R. Sena committed forged signatures of the plaintiff in the prescribed forms for mutation and in the affidavit allegedly sworn before the learned JMFC Dt. 16th April, 2005, the witnesses in the said prescribed forms for mutation and the concerned President of Village Council blindly appended their respective signatures in the said forms and on that basis the proforma defendants without any suspicious mind process mutation in favour of the defendant and carried out of the task.

Although the plaintiff in his cross examination as PW-1 admitted that the deceased Mr. R. Sena being his father have had an authority on the disputed LSC, the plaintiff not a lawmen blindly deposed according to his own understandings as in law and in reality being the holder of the disputed LSC before mutation in the name of the defendant, the plaintiff alone have an authority on it for the purpose of transfer, disposal, mutation, administration etc. instead of his late father Mr. R. Sena.

Issue No. 7

Entitlement of relief and it's extend.

Before entering into the discussion, going back to the relief sought in the plaint is that (i) a decree to declare the plaintiff as the rightful and legal owner of the property situated under LSC No. AZL. 94/1992 located at Chanmari- Aizawl (ii) a decree declaring that the mutation/transfer with regards to LSC No. AZL. 94/1992 from the name of the plaintiff to the defendant is null and void (iii) a decree directing the profoma defendants to revert back the disputed LSC in the name of the original owner (iv) any other cost and relief which this court deems fit and proper.

The plaintiff deserved to get all the relief claimed by him except costs of the suit as presumed that the defendant will be the have not sections in the society being a widow.

DIRECTIVES

In view of the above findings and reasons, it is ordered and decreed that the plaintiff is the rightful and legal owner of the property situated under LSC No. AZL. 94/1992 located at Chanmari- Aizawl with an area of 0.11 Bigha=152.00 Sq. m by declaring that the mutation/transfer with regards to LSC No. AZL. 94/1992 Vide. No. R. 20014/6/05- DC (REV)/Vol. III/134 Dt. 10-04-2005 from the name of the plaintiff to the defendant is null and void. The proforma defendants are therefore directed to revert back the LSC No. AZL. 94/1992 in the name of the original owner namely- the plaintiff as and when approaching them by the plaintiff. No order as to cost of the suit.

The case shall stand disposed of.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. TS/3/2007, Sr. CJ (A)/

Dated Aizawl, the 19th May, 2011

Copy to:

1. Mr. Lalrindika S/o R. Sena (L), Chanmari - Aizawl through Smt. Lalthlamuani, Advocate.
2. Smt. Lalbiaknungi D/o Laldailova, Chanmari- Aizawl through Mr. K. Kawlkhuma, Advocate
3. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA

4. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department through Mr. R. Lalremruata, AGA
5. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. The Assistant Settlement Officer- I, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
7. The Assistant Settlement Officer- II, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
6. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
7. Case record.

PESKAR