

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

DECLARATORY SUIT NO. 04 OF 2005

Plaintiff:

Mr. Thuamngurthanga
Lungbial, Zembawk, Aizawl

By Advocate's : Mr. C. Zoramchhana, Adv.

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the
Govt. of Mizoram
2. The Commissioner/Secretary to the Govt. of Mizoram
Revenue Department
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
4. Mr. Esh Lamgina Thanghom
S/o D.K. Liana
Lungbial, Zemabawk
Aizawl- Mizoram

By Advocates :
For the defendants 1-3 : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

For the defendant's 4 : 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra, Adv.

Date of arguments : 29-11-2011

Date of Judgment & Order : 30-11-2011

BEFORE

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

JUDGEMENT & ORDER

GENESIS OF THE CASE

The plaintiff had purchased a land from Mr. Vanlalkoha in consideration of Rs. 25,000/- under Provisional House Pass issued under Memo No. R. 14019/1/85- DC (A) Dated, Aizawl, the 8.8.1986 with Govt. approval under No. LRR/PLAN-4/85/87 Dt. 3.2.1986 issued in the name of Mr. Rothangpuia S/o Laikunga, Zemabawk, Aizawl. The defendants 1-3 thereafter issued House Pass No. 940 of 2004 to the defendant no. 4. The defendant no. 4 already sold the said land to one Mr. Zodingliana. Court fees at Rs. 30/- is also paid. The defendants 1-3 therefore issued a letter to the plaintiff directed to vacate the suit land and also further informed to submit application to them if the plaintiff may find any other vacant land for allotment under Memo No. C. 13016/N-41/03- DISP/DTE (REV) Dated Aizawl, the 31st March, 2005. The plaintiff therefore prayed a decree (i) declaring the plaintiff as the rightful owner of the land covered by House Pass issued under Memo No. R. 14019/1/85- DC (A) Dated, Aizawl, the 8.8.1986 (ii) to direct the defendants not to interfere with the peaceful enjoyment of rights of use, possession/ownership of the said land and building of the plaintiff (iii) directing the defendants to pay cost of the suit and (iv) any other relief which this court deem fit and proper.

The defendants 1-3 in their written statements contended that Lungbial House site plan was made in 1985. The Deputy Commissioner i/c Revenue had issued a number of Provisional passes not based with the plan map causing disputes. In order to settle the said disputes, 56 pass holders at Lungbial were informed to have discussion over the said matter but the plaintiff or Mr. Rothangpuia was not also included in the said list. Even then, all the Pass holders at Lungbial were informed through Newspaper and All India Radio under letter Dt. 30-10-1996 and Dt. 16/9/1997 but the plaintiff did not response of the same. With the approval of the government under Memo No. K. 19012/12/2001-REV Dt. 25-09-2002, the provisional passes relating to Lungbial were cancelled. Plot No. 147 was therefore allotted to the defendant no. 4 and thereby issued House Pass accordingly. The defendant no. 4 did not sell his total land but bifurcated to one Mr. Zodingliana. Thus, prayed to dismiss of the suit.

The defendant no. 4 in his written statement submitted that the plaintiff was directed merely to show cause and searching alternate land. Under the entity of Provisional pass, the plaintiff did not have any right on the suit land. The suit is also bad for non-joinder of necessary parties as the Village Council of Zemabawk North also directed the plaintiff to vacate the suit land on 25/4/2005 but excludes them. The plaintiff also fails to report himself before Revenue authorities as per the notice of Revenue Department. The Government under letter Dt. 25/9/2002 rather cancelled all the previous Provisional passes over to Lungbial site plan area. The defendant no. 4 did not sell his total land but bifurcated to one Mr. Zodingliana. While the suit is valued at Rs. 2 lakhs, court fees at Rs. 30/- is insufficient. Thus, prayed to dismiss of the suit.

ISSUES

Upon hearing of both parties and on perusal of pleadings, the issues were framed on 26-06-2006 and amended towards correct findings such as-

1. Whether the suit is maintainable or not
2. Whether the plaintiff has cause of action against the defendants or not
3. Whether the suit is bad for insufficient court fees stamp
4. Whether Provisional Pass issued to Mr. Rothangpuia continues to remain valid and enforceable. If so, whether it is transferable or not.
5. Whether the House Pass No. 940/2004 issued to the defendant no. 4 is validly made or not. If so, whether the claimed lands are located in the same plot of land.
6. Whether the decisions of Revenue authorities communicated under No. C. 13016/N-14/03- DISP/DTE (REV) Dt. 31-03-2005 is lawful and 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 namely-

1. Mr. Thuamngurthanga, Lungbial, Zemabawk- Aizawl (Hereinafter referred to as PW-1)
2. Smt. Lalrovuli W/o Lalthlamuana, Zemabawk, Lungbial (Hereinafter referred to as PW-2)
3. Mr. Lalnghakliana, Zemabawk- Lungbial (Hereinafter referred to as PW-3)
4. Mr. C. Chawngkhuma, Zemabawk- Lungbial (Hereinafter referred to as PW-4)
5. Mr. Vanlalkoha S/o Thangchhunga (L), Thuampui Vengthar- Aizawl (Hereinafter referred to as PW-5)

The **PW-1** in his examination in chief after reiterating his plaint deposed that Ext. P- 1 is a copy of House site pass in the name of Mr. Rothangpuia, Ext. P-2 is a copy of Inhmun Leina, Ext. P-3 is Govt. letter dt. 31.3.2005, Ext. P-3 is a copy of Inhmun inphelna dt. 11.12.2004.

In his cross examination, he admitted that the Provisional pass remain in the name of Mr. Rothangpuia. He admitted that in his plaint he prayed to set aside Govt. letter dt. 31/3/2005 and Dt. 27/5/2005. He admitted that he did not pray to set aside House Pass No. 940 of 2004 issued in favour of the defendant no. 4. He denied that his land is not different from the claimed land of the defendant no. 4. He also admitted that till date he fails to convert the Provisional pass into LSC. He also stated that

he had purchased a land from Mr. Vanlalkoha in consideration of Rs. 25,000/-.

The **PW-2** in her examination in chief deposed that she was allotted a land with Mr. Rothangpuia in 1986 and she constructed a house and occupied till date.

In her cross examination, she stated that Mr. Rothangpuia was issued Provisional Pass.

The **PW-3** in his examination in chief deposed that he witnessed purchasing of Provisional pass by the plaintiff from Mr. Vanlalkoha in consideration of RS. 25,000/-. Ext. P- 2 (b) is his signature.

In his cross examination, he deposed that after survey of the land in 2000, no pass/LSC was issued in favour of the plaintiff.

The **PW-4** in his examination in chief deposed that in 1994, he settled at Lungbial and known both the plaintiff and the defendant no. 4. He witnessed that the provisional pass was purchased by the plaintiff from Mr. Vanlalkohva. On the basis of the survey done in 2000, houses pass in the suit land were regularized by the government.

In his cross examination, he deposed that the original pass of the plaintiff was allotted to Mr. Rothangpuia. He admitted that the plaintiff did not construct a house in the suit land.

The **PW-5** in his examination in chief deposed that he had purchased the suit land from Mr. Rothangpuia at Rs. 2500/-. He constructed a house and rent out of the same. He also planted some crops. On 3/5/1996, he sold the suit land to the plaintiff at Rs. 25,000/- as he want to construct another house.

In his cross examination, he denied that he did not have any right to transfer the provisional pass to the plaintiff.

The defendants fails to produce any evidence although given an ample time with directions to produce the same.

ARGUMENTS

Only the state defendants 1-3 contested at the stage of arguments, Miss Bobita Lalhmingmawii, learned AGA submitted that from the plaint, written statement and depositions of witnesses, it is clear-

- (a) That the House Pass issued to the original owner Pu Rothangpuia was only a Provisional Pass which did not confer any transferable, heritable or ownership rights.
- (b) That the Provisional House Pass had not been converted into LSC at the time of filing of the suit.

- (c) That the Provisional House Pass was still in the name of the original owner and not the Plaintiff's even at the time of cancellation of the same by the Revenue Deptt.
- (d) That the construction of a house within the suit land by the Plaintiff is illegal in all respect, the reason being that he did not possess any valid Pass from the very inception.

Thus, she earnestly prayed to dismiss the instant suit with cost

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

The instant suit is filed with supporting Verifications but fails to support the plaint by the affidavit, there is failure to testify the paragraphs of pleadings whether with his own knowledge or what he verifies upon information received or belief to be true. Thus, this 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."

With regards to non-joinder of necessary parties, the well settled principles of law in regards to non-joinder and mis-joinder of necessary parties 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.”

In this arena, allotment of land in the urban area, the village council did not have any authority except to witness of the land for issuance of LSCs as formality. Thus, exclusion of village council, Zemabawk as defendant is irrelevant in the instant case.

However, in the plaint and prayer, there is no pleadings to set aside or null and void of the House Pass No. 940 of 2004. Without it, what efficacious order can be passed in favour of the plaintiff is debatable. The law 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 Kuppuswami & 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.”

Thus, the suit is bad in law in limine for proper, accurate and correct adjudication.

Issue No. 2

Whether the plaintiff has cause of action against the defendants or not

The law is again settled in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.** decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475, it was held that-

“Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

The existing land law is silent on the entity of Provisional Pass, Ext. P-1 viz. Provisional pass issued to Mr. Rothangpuia itself is also vague due to lack of the provisions of law under which the same was issued. Evidence of the plaintiff clearly revealed that the said Provisional Pass was transferred to Mr. Vanlalkoha, the said Vanlalkoha again transferred to the plaintiff. Inevitably, due to vague issuance and allotment, there will be no authority of transferrable of the suit land by Mr. Rothangpuia to others as it was provisionally issued as the name indicates which require further regularization by the government. I therefore find no right to sue in favour of the plaintiff.

Issue No. 3

Whether the suit is bad for insufficient court fees stamp

Undisputedly, the plaintiff is accompanied by Rs. 30/- of court fees. 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 held by Full Bench of the Allahabad High Court. Very obviously, Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) clearly mentioned that when a consequential relief is sought even in Declaratory suit, court fees at Rs. 30/- is not enough. 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 valuation of suit in the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is required to make up by the plaintiff. The instant issue is also decided in favour of the defendants.

Issue No. 4

Whether Provisional Pass issued to Mr. Rothangpuia continues to remain valid and enforceable. If so, whether it is transferable or not.

The impugned order under Memo No. C. 13016/N-41/03- DISP/DTE (REV) Dated Aizawl, the 31st March, 2005 is marked as Ext. P- 3 is speaking letter which speaks that the provisional pass belonging to Mr. Rothangpuia was not transferrable. The plaintiff or the said Mr. Rothangpuia also fails to submit their pass to the authority concerned although wide publication was made. The defendant no. 4 was already allotted the same land under Plot No. 147 by issuing House Pass No. 940 of 2004. Without reiterating the land laws governed the crux, obviously, as the said provisional pass was issued not in conformity with the land laws, the instant issue is again decided in favour of the defendants.

Issue No. 5

Whether the House Pass No. 940/2004 issued to the defendant no. 4 is validly made or not. If so, whether the claimed lands are located in the same plot of land.

Certainly, after due surveyed of the land, House Pass No. 940 of 2004 was issued in favour of the defendant no. 4, as the validity of the said House Pass No. 940 of 2004 is unchallenged in the pleadings. No evidence is also adduced in this respect. I therefore find no grounds to challenge the validity of House Pass No. 940 of 2004.

Issue No. 6

Whether the decisions of Revenue authorities communicated under No. C. 13016/N-14/03- DISP/DTE (REV) Dt. 31-03-2005 is lawful and valid or not

As per the findings under issue No. 4, I find no grounds to null and void the impugned order under Memo No. C. 13016/N-41/03- DISP/DTE (REV) Dated Aizawl, the 31st March, 2005 which is marked as Ext. P- 3. This issue therefore decided in favour of the defendants.

Issue No. 7
Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

In the mingling evidences and on the basis of the findings in the above various issues, inevitably, no entitlement of the plaintiff in the instant suit is found.

ORDER

In view of the findings in various issues and UPON hearing of both parties, it is hereby ORDERED that the suit is dismissed on merit and on maintainability.

Parties shall 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 30th November, 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/4/2005, Sr. CJ (A)/

Dated Aizawl, the 30th Nov., 2011

Copy to:

1. Mr. Thuamngurthanga, Lungbial, Zembawk, Aizawl through Mr. C. Zoramchhana, Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram C/o Miss Bobital Lalhmingmawii, AGA
3. The Secretary to the Govt. of Mizoram, Revenue Department through Miss Bobital Lalhmingmawii, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Miss Bobital Lalhmingmawii, AGA
5. Mr. Esh Lamgina Thanghom S/o D.K. Liana, Lungbial, Zemabawk, Aizawl- Mizoram through Mr. C. Lalramzauva, Sr. Adv.
6. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR