

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

RFA NO. 23 OF 2008

Appellants:

1. Smt. Annie Zosangi
D/o Relliana (L)
Tuikual 'A', Aizawl
2. Mr. Rintluanga
S/o Lalengliana (L)
Madanriting Shillong
Meghalaya

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

Versus

Respondent's:

Smt. C. Rohlupuii
Ex. W/o Zoramrelliana
Thuampui, Aizawl

By Advocate's : Mr. Lalawmpuia Ralte

Date of hearing : 13-04-2012

Date of Judgment & Order : 13-04-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the nascent insulation of judiciary from the executives in Mizoram towards

meeting globalization era in the very competitive globe where malfunctioning of the government is a sine quo non to vanish.

BRIEF FACTS

This appeal is directed against the judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 20.06.2008 in Title Suit No. 3 of 2007. Wherein, the learned SDCC declared and appointed as the rightful owner of LSC No. 2641 of 1991 located at Zuangtui, Aizawl.

Learned counsel for the appellant appeared, the respondent neither appear nor file written objections whilst the instant appealed was filed on 10/11/2008 and resumed the hearing since 15/12/2011 in this court. Towards timely justice and avoidance of undue pendency of the case, by virtue of O. XLI, R. 17 (2) of the CPC, the case is heard ex parte.

Mr. L.H. Lianhrima, learned counsel for the appellants submitted that the proceedings in the learned lower court was beyond their knowledge, although substituted service of summons through local daily newspapers was allegedly made, it was not known to them and the place of publication appears at Aizawl whilst the appellant no. 2 dwelled at Shillong, Meghalaya. More so, even on merit of the case, the respondent was the divorced wife of the deceased Mr. Zoramrelliana by producing acknowledgement certificate whilst the disputed property was belonging to the said deceased. The respondent does not have any locus standi to file the said suit and decreed in her favour.

FINDINGS AND REASONS

Very clear and as admitted on the basis of the petition, the learned Magistrate issued the impugned judgment & order ex parte without making any points for determination and sufficient evidence.

In one angle, the proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908 remains unaltered. Rule 48 of the *Lushai Hills Autonomous District (Administration of Justice) Rules, 1953* for ready reference may be quoted as-

“48. In civil cases, the procedure of the District Council Court or the Subordinate District Council Court, shall be guided by the spirit, but not bound by the letter, of the Code of Civil Procedure, 1908 in all matters not covered by recognized customary laws or usages of the district”

It may be Pertinent to express the pretext of application of only the spirit of the Code in Mizoram, it would meant that whenever and wherever the provisions of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is silent for proceedings of the *lis*, the fundamental provisions of the CPC will be applied in the court established/constituted under the Lushai Hills Autonomous District (Administration of Justice)

Rules, 1953. Abuse of the process and travelled without basis will be beyond the spirit of the Code. The relevancy is already settled 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), wherein, the Supreme Court has held that-

“70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. 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 discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction.”

Howsoever, even when summons were duly served to the defendants, the defendants have a time to file their written statements within 90 days with sufficient reasons as per O. VIII, R. 1 of the CPC. And even in the case of fit for invoking O. IX R. 6 (a) of the CPC viz. ex parte proceedings, duty remains cast as observed in **Smt. Sudha Devi vs M.P. Narayanan & Ors** decided on 26 April, 1988 and reported in 1988 AIR 1381, 1988 SCR (3) 756, the Apex Court has held that-

“6. On the failure of the defendants to appear in the suit, the learned trial Judge decided to proceed with the case ex-parte. Even in absence of a defence the court cannot pass an ex-parte decree without reliable relevant evidence. The fact that the plaintiff chose to examine some evidence in the case cannot by itself entitle her to a decree.”

And also in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 and reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, the Supreme Court has held that-

“....Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of Order VIII Rule

10 of the CPC is attracted and the Court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

The Hon'ble Apex Court further went that-

"27. We have already noticed that the defendant was being proceeded ex-parte. His application for setting aside the ex-parte proceedings was rejected by the Trial Court as also by the High Court in revision. In Sangram Singh v. Election Tribunal, Kotah -, this Court held that in spite of the suit having been proceeded ex-parte the defendant has a right to appear at any subsequent stage of the proceedings and to participate in the subsequent hearings from the time of his appearance. If he wishes to be relegated to the position which he would have occupied had he appeared during those proceedings which have been held ex-parte, he is obliged to show good cause for his previous non-appearance."

Thus, before ascertainment of summons were duly served to the defendants or not, ex parte proceedings was bad in law. Even ex parte proceedings, without chalking out of points for determination and by taking at least sufficient evidence from the plaintiff, a final judgment & order is futile. Inevitably, the learned Magistrate fails to comply with mandatory provisions for the sake of justice as enumerated above.

It is true that even in case of substituted service of summons in the daily newspaper, it should be circulation in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain as per O. V, R. 20 (1A) of the CPC but which is not fulfilled as the defendant/appellant no. 2 resided outside the state of Mizoram permanently.

In the other arena, right to fair hearing is a guaranteed right and Hon'ble Apex Court lamented in incomplete hearing the case in **State of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors.** decided on 16 August,

2011 in connection with Civil Appeal No.5374 of 2005, the Supreme Court has held that-

“15. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based, on mainly events which happened in the past. Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.

Thus, the impugned judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 20.06.2008 in Title Suit No. 3 of 2007 is liable to set aside and quash.

ORDER

Even in case of ex parte proceedings of the lower court, an appellate court have jurisdiction to set aside of the decree as observed in **Baldev Singh Vs. Surinder Mohan Sharma & Ors.** in connection with Appeal (civil) 7162-7163 of 2002 decided on 01/11/2002 reported in 2003 AIR 225, 2002 (4) Suppl. SCR 43, 2003 (1) SCC 34, 2002 (8) SCALE 296, 2002 (9) JT 235, it was held that-

“It is now a well-settled principle of law that an ex parte decree is as good as a contesting decree unless it is set aside. An ex parte decree can be set aside by the court passing it or by an appellate court only at the instance of a person aggrieved thereby.”

In view of the above findings and reasons, the impugned judgment & order passed by the learned Magistrate, Subordinate District Council Court, Aizawl dt. 20.06.2008 in Title Suit No. 3 of 2007 and its consequential administrative/executive order if any are hereby set aside and quashed.

As civil courts in Mizoram are modulating in tune with the nascent insulation of judiciary from the executives with some changes of enactments and institutions not suit for directing de novo trial. Hence, in view of the on going process of systematization of civil courts in the state of Mizoram in line with the nascent insulation of judiciary from the executives, instead of remanding back of the case to the learned lower court viz. Civil Judge for de novo trial, parties are at liberty to file a fresh suit/case in the appropriate court of law having subject matter, pecuniary and territorial jurisdiction as it will be convenient for parties as well as adjudicating court meant to avoid procedural lapses.

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 13th April, 2012 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. RFA/23/2008, Sr. CJ (A)/ Dated Aizawl, the 13th April, 2012

Copy to:

1. Smt. Annie Zosangi D/o Relliana (L), Tuikual 'A', Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. Rintluanga S/o Lalengliana (L), Madanriting Shillong, Meghalaya through Mr. L.H. Lianhrima, Adv.
3. Smt. C. Rohlupuii Ex. W/o Zoramrelliana, Thuampui, Aizawl through Mr. Lalawmpuia Ralte, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record.

PESKAR