

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

TITLE SUIT NO. 14 OF 2007

Plaintiff:

Mr. C. Lalhrangluaia
S/o Chawngkanglova
Chanmari West, Aizawl

By Advocates

: 1. Mr. W. Sam Joseph
2. Mr. Zochhuana
3. Mr. Francis Vanlalzuala
4. Mr. Hranghmingthanga Ralte
5. Mr. F. Lalenglana

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Revenue Department
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
4. The Assistant Settlement Officer-I
Aizawl District, Aizawl
5. Mr. C. Lalhmingthanga
S/o Khuangthiauva (L)
Chawlhmun, Aizawl
6. Mr. Lianchungnunga
Chaltlang, Aizawl
7. Mr. Singhmuaka
S/o Hrangia (L)
Chanmari, Aizawl

By Advocates

:

For the defendant no. 1-4

: 1. Miss Bobita Lalhmingmawii, AGA
2. Mr. Joseph Lalfakawma, AGA

For the defendant no. 7 : Mr. Michael Zothankhuma, Sr. Adv.

Date of Arguments : 11-12-2012

Date of Judgment & Order : 14-12-2012

BEFORE

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

J U D G M E N T & O R D E R

INTRODUCTORY

As per the judgment & order passed by Hon'ble Gauhati High Court, Aizawl Bench in RFA No. 05 of 2011 Dt. 4th May, 2011 which set aside the previous judgment & order, trial of the suit is resumed as de novo trial from the stage of written statement by newly impleading defendant no. 7.

BRIEF STORY

House Pass No. 240 of 1985 belonging to the plaintiff was converted into LSC No. 740 of 1985 located at Chanmari West, Aizawl, the area of the land was therefore reduced from 540 Sq. m to 336.78 Sq. m. In the said boundary description, boundary pillar no. 1 would be fixed at a distance of 20.30m from the tree standing within the land of the defendant no. 5. As applied, the LSC of the plaintiff was partitioned to his wife by issuing LSC No. Azl. 1843 of 1985 with an area of 171.45 Sq. m. and the original LSC No. 740 of 1985 was re-issued with an area of 171.45 Sq.m. The LSC of the plaintiff was issued on 23.4.1985 and the LSC of the defendant no. 5 was issued on 25.7.1985. After selling his land by the defendant no. 5 to the defendant no. 7, the defendant no. 7 also included some portion of the land of the plaintiff. When Mr. Rosiamliana, Surveyor conducted spot verification as complaint by the plaintiff on 7th July, 2006, parties reached settlement by agreeing the version of the plaintiff. Later, on the complaint filed by the defendant no. 6 to the Revenue authorities, Mr. P.C. Malsawma, Surveyor took a measurement from the land belonging to Mr. P. Lungliana instead of taking the boundary pillars as mentioned in the LSC of the plaintiff. As submitted a report by the said Surveyor, discussion was held in the office of ASO-II. Still disputes, another surveyor Mr. H. Lalduhawma was detailed to conduct spot verification and thereby a report in favour of the defendant no. 7. Settlement Order was therefore issued under Memo No. R. 21011/37/92-DC (A)/272 Dt. 10th May, 2007 by the defendant no. 4 and asked the plaintiff to submit his LSC for making correction. The plaintiff therefore prayed a decree (i) confirming title of the plaintiff in respect of the land covered under LSC No. 740 of 1985 and the boundary cannot be changed and the measurement should be taken from the tree, which is in the land of the defendants no 5 and 7 (ii) declaring that Settlement Order issued under Memo No. R. 21011/37/92-DC (A)/272 Dt. 10th May, 2007 by the defendant

no. 4 is illegal and it was passed in order to held the defendant 5 and 7 (iii) declaring that the LSC No. 740 of 1985 Dt. 23.4.1985 and the boundary description and the sketch map in the name of the plaintiff are correct and valid (iv) by way of permanent and mandatory injunction restraining defendants over to the suit land and allowed the plaintiff for peaceful possession of the suit land (v) any other relief which this court may deem fit and proper.

The defendants 1-4 in their joint written statements contended that the suit land was duly verified on 4/5/2007 by the Surveyor in the presence of the VCP, Chanmari West and other members of the village council. As per agreement made by the plaintiff and the defendant no. 6, Settlement Order Dt. 10/5/2007 was issued and is therefore valid.

The defendant no. 7 in his written statement stated that the plaintiff has no locus standi to file the suit and is also barred by principles of waiver, acquiescence. The suit is also liable to dismiss on insufficient court fees. Reduction of the area of LSC of the plaintiff at the time of conversion into LSC is a settled matter since 1985. The LSC of the plaintiff was partitioned into two namely LSC No. Azl. 1843 of 1985 in the name of his wife and LSC No. 740 of 1985 which supersede the previous LSC No. 740 of 1985 issued on 23/4/1985. As such boundary description of the earlier LSC No. 740 of 1985 cannot be taken for locating boundary pillar no. 1. The boundary description of LSC No. 740 of 1985 for locating boundary pillar no. 2 is silent on alleged tree. LSC No. 1872 of 1985 was purchased by the defendant no. 7 from the defendant no. 5. When the defendant no. 7 purchased the suit land, the plaintiff claimed some portion of the land of the defendant no. 7 which the plaintiff never disputed with the previous owner. In short, the defendant no. 7 denied of averments and submission in the plaint and therefore prayed to dismiss of the suit.

ISSUES

Issues were framed on 26/08/2011 as follows -

1. Whether the suit is maintainable in its present form and style.
2. Whether the suit land was purchased from defendant no. 5 by defendants 6 or 7
3. Whether the tree mentioned in the earlier LSC No. 740 of 1985 of the plaintiff is to be taken for locating boundary pillar no. 1 in the plaintiff new LSC No. 740 of 1985
4. Whether the boundary description and the sketch map embodied in LSC No. 740 of 1985 Dt. 23.4.1985 is correct or not
5. Whether the Settlement Order Dt. 10th May, 2007 is liable to set aside or not
6. Whether the plaintiff is entitled to the reliefs 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. C. Lalhrangluaia S/o Chawngkanglova (L), Chanmari West, Aizawl (Hereinafter referred to as PW-1)
2. Mr. Lalrengpuia Sailo S/o Taihranga (L), Chanmari West, Aizawl (Hereinafter referred to as PW-2)
3. Mr. Johny Lalchhandama S/o Hranghrima (L), Chanmari-Aizawl (Hereinafter referred to as PW-3)

The **PW-1** in his examination in chief merely reiterated and affirmed the averments and submissions in his plaint being the plaintiff. He exhibited the following documents-

Ext. P-1 is a copy of House Pass No. 240 of 1985 in his name

Ext. P-2 is a copy of his LSC No. Azl. 740 of 1985

Ext. P-3 and Ext. P-4 are photo copies showing the portion of tree used to locate boundary pillar no. 1

Ext. P-5 is a copy of House Pass No. 1839 of 1984 in the name of Mr. C. Lalhmingthanga

Ext. P-6 is a copy of LSC No. Azl. 1872 of 1985 which is in the name of Mr. C. Lalhmingthanga

Ext. P-7 is a copy of his LSC No. Azl. 740 of 1985 after partitioned

Ext. P-8 is a copy of LSC No. Azl. 1843 of 1985 in the name of his wife Smt. Lalchhanhimi

Ext. P-9 is a copy of Settlement Order Dt. 10th May, 2007

Ext. P-10 is a copy of House Tax payee Certificates

In his cross examination by learned AGA, he admitted that his LSC No. Azl. 740 of 1985 is converted from House Pass No. 240 of 1985. He also denied that Settlement Order Dt. 10th May, 2007 is with his knowledge. He also stated that his present LSC is genuine one and valid.

In his cross examination by learned counsel for the defendant no. 7, he deposed that the survey map of his land and the first LSC No. 740 of 1985 was made by the Revenue Department on 15/4/1985 and the LSC No. 1872 of 1985 belonging to Mr. C. Lalhmingthanga was issued on 19/7/1985. He admitted as a fact that the land adjacent on his northern side was issued in the name of Mr. P. Lunglana Vide LSC No. Azl. 484/85. He also admitted that there is a Culvert on the northern side of Mr. Lunglana's land. The boundary description and map attached to his LSC No. 740 of 1985 is correct. If the LSC No. Azl. 1872 of 1985 had not been altered, its boundary description is correct but he did not know whether it was changed or not. He believed that the LSC of Mr. P. Lunglana is correct. He admitted as a fact that there is no 'Kawrté' between Lalchhanhimi's LSC and Mr. P. Lunglana's LSC. He admitted that he did not claim the area beyond his later LSC No. 740 of 1985. He also admitted that Mr. H. Lalduhawma Surveyor-I did not accept the tree in Ext. P-3 as a reference. He admitted that he did not see any sale letter in between the defendant no. 5 and 6 in respect of LSC No. 1872 of 1985. He admitted that when the surveyor conducted spot verification, the village council authorities were

present on the spot. He presently renting out the newly constructed Assam type building on a monthly rent of Rs. 1500/- and will dismantle the same if adjudicate the case in favour of defendants.

The **PW-2** in his examination in chief deposed that when the plaintiff applied a plot of land, he was a member of village council, Chanmari. He is also familiar with the disputed land. The Village council concerned also gave No Objection Certificate to partition the LSC of the plaintiff. While demarcating the boundary, the surveyor used one tree which was big and tall standing adjacent to the land of the plaintiff now claimed by the defendant no. 7. The said tree was cut but a huge portion of the said tree at the bottom remain available as shown in Ext. P-3 and 4.

In his cross examination, he deposed that he shifted at Aizawl in 1954. He did not know the LSC of the plaintiff and also do not know the area of the LSC of the plaintiff. In his knowledge, there was no boundary dispute in between the plaintiff and the defendant no. 5.

The **PW-3** in his examination in chief also deposed that he know the land of the plaintiff now covered by Edentharr village council area. For allotment of land to the plaintiff, it was he who advised to the plaintiff for application. Even for issuance of House Pass, he accompanied the plaintiff for verification done by the Revenue authorities. The VCP also issued No Objection Certificate for the same. While demarcating the boundary of the plaintiff's land, the surveyor used one tree which was big and tall standing adjacent to the land of the plaintiff now claimed by the defendant no. 7. The said tree was cut but a huge portion of the said tree at the bottom remain available as shown in Ext. P-3 and 4.

In his cross examination by learned counsel for the defendant no. 7, he deposed that he have known the plaintiff since 1982. He did not know the area covered by the LSC of the plaintiff. He did not know the neighbours of the land of the plaintiff. He have good relationship with the plaintiff as brother in law. He did not know if there is a tree mentioned as a starting point in the second LSC issued to the plaintiff having the same LSC No.

For the defendant No. 7:

The defendant no. 7 had produced only one witness namely- Mr. Lianchungnunga (Hereinafter referred to as DW). In his examination in chief, he mainly affirmed the contents and averments of the written statement of the defendant no. 7. He exhibited the following documents-

Ext. D- 1 is a copy of LSC No. 484 of 1985 in the name of Mr. P. Lunglana

Ext. D-2 is a copy of LSC No. Azl. 1872 of 1985 in the name of Mr. C. Lalhmingthanga

Ext. D-3 is a copy of letter Dt. 24/5/2012 issued by SPIO, Revenue Department

Ext. D-4 is a copy of letter Dt. 3/5/2007 written by Mr. H. Lalduhawma Surveyor to the ASO-1

In his cross examination, he denied that he had purchased LSC No. 1872 of 1985 from the defendant no. 5. In Ext. D-2, LSC No. 1872 of 1985 was issued on 23.7. 1985 and the survey was conducted on 11.7.1985. He denied that the tree mentioned in the original LSC issued on 23/4/1985 and in the Commission report are one and the same.

As directed, the Survey Commission headed by the Settlement Officer, Land Revenue and Settlement Department, Govt. of Mizoram submitted their report on 30/4/2012 stating that-

“At the time of local commission held on 24/4/2012, the plaintiff and his wife Smt. Lalchhanhimi, Mr. Lianchungnunga on behalf of the LSC of the defendant no. 5 and Mr. Francis Vanlalzuala, advocate present. The LSC of the plaintiff under No. 740 of 1985 was checked and found that it was encroached with the LSC No. 1872 of 1985 belonging to the defendant no. 5. The LSC of the plaintiff was also found partitioned out in favour of Smt. Lalchhanhimi”.

The Survey Commission also prepared Rough Sketch Map indicating the encroached portion of the suit land including vacant land adjacent to the land of Mr. P. Lunglana under LSC No. 484 of 1985 which is in between the land covered by the LSC of Smt. Lalchhanhimi and the LSC area of Mr. P. Lunglana.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style or not

Ad valorem court fees at Rs. 5000/ is paid by the plaintiff. The plaint certainly disclosed of cause of action on the impugned Settlement Order Dt. 10th May, 2007 marked as Ext. P- 9. Proper paragraph wise verification of the plaint supported by affidavit is also found. As per the court order Dt. 13/6/2007, the plaintiff was allowed to file the suit without prior legal notice. Thus, this issue is decided in favour of the plaintiff.

Issue No. 2

Whether the suit land was purchased from defendant no. 5 by defendants 6 or 7

Although the plaintiff alleged that the land covered by LSC No. 1872 of 1985 was purchased from the defendant no. 5 by the defendant no. 6, the defendant no. 6 acted as the lone DW denied of the same in co-opt with the written statement of the defendant no. 7 which Hon'ble Gauhati High Court, Aizawl Bench in RFA No. 05 of 2011 in its judgment & order Dt. 4th May, 2011 opined that the defendant no. 7 had purchased the said land from the defendant no. 5 (Vide paragraph no. 12 of the judgment & order). Thus, the version of the plaintiff is not tenable.

Issue No. 3

Whether the tree mentioned in the earlier LSC No. 740 of 1985 of the plaintiff is to be taken for locating boundary pillar no. 1 in the plaintiff new LSC No. 740 of 1985

Oral evidence is not much helpful to adjudicate this issue, as submitted by Mr. M. Zothankhuma, learned senior counsel for the defendant no. 7, the previous LSC No. 740 of 1985 Dt. 23/4/1985 was superseded by the later LSC No. 740 of 1985 after partitioned out of the land of Smt. Lalchhanhimi. So is the undisputed factum, Starting point in the boundary description reads that "*Boundary demarcates starting from the southern corner of his own land adjacent to the land of Mr. Lalhmingthanga by erecting B.P. No. 1*". For issuance of the later LSC No. 740 of 1985 after partitioned out of the land of Smt. Lalchhanhimi, no marking on tree is found which clearly speaks that starting of boundary demarcation or measurement of the land of the plaintiff from the alleged tree for the later LSC No. 740 of 1985 after partitioned out of the land of Smt. Lalchhanhimi is irrelevant and immaterial which is already abandoned even for issuance of the later LSC No. 740 of 1985.

As inevitably, this issue is held in favour of the defendant no. 7. Otherwise, chaos, disputes and vague boundary will be the only outcome like in the deposition of PWs in respect of the disputed tree.

Issue No. 4

Whether the boundary description and the sketch map embodied in LSC No. 740 of 1985 Dt. 23.4.1985 is correct or not

Oral evidence is not much helpful to adjudicate this issue, If the boundary description and the sketch map embodied in LSC No. 740 of 1985 Dt. 23.4.1985 is correct or not be held as correct as prayed by the plaintiff, as submitted by Mr. M. Zothankhuma, learned senior counsel for the defendant no. 7, in the boundary description of the said LSC under B.P. No. 3-4, it reads that "*From B.P. No. 3, boundary runs adjacent to the land of Mr. Lunglana at 149 deg (FB).....*". If it be so, how the survey commission found that there is vacant land in between the land of Smt. Lalchhanhimi whose LSC was partitioned out from the LSC No. 740 of 1985 and the land of Mr. P. Lunglana. Although learned counsel for the plaintiff relied on the report of survey commission, this issue cannot be held in favour of the plaintiff.

As streak out again by Mr. M. Zothankhuma, on perusal of the boundary description of LSC No. Azl. 1843 of 1985 belonging to Smt. Lalchhanhimi, in the northern side, it reads that- "*From B.P. No. 2, boundary runs adjacent to small gorge at 79 deg later adjacent/ bounded the land of Mr. Lunglana.....*". Even on meticulously examining the boundary description of LSC NO. Azl. 740 of 1985 belonging to the plaintiff after partition, in the northern side, it says that "*From B.P. No. 2, the boundary runs adjacent to small gorge at 79 deg later adjacent to the land of Smt. Lalchhanhimi @ 4.50m (S&H).....*". Thus, there can be no vacant land in between the land of Mr. P. Lunglana and Smt. Lalchhanhimi. In another sense, the report of survey commission is not credible to act upon

as it is contradictory with the boundary descriptions of the disputed LSCs.

However, in the survey commission appointed by this court, their report speaks that only the LSC of the plaintiff was checked. On that point, even on the laymen's knowledge, without measuring adjacent LSCs and neighbours land, no accurate findings on such land measurement can be had resulting that one LSC area may be correct but the other LSC will victimize remedy always lies on the accurate Settlement Order as it is also the onerous duty of the defendants 1-4 may be caused by geographical change and other factors.

Issue No. 5

Whether the Settlement Order Dt. 10th May, 2007 is liable to set aside or not

Settlement Order Dt. 10th May, 2007 is marked as Ext. P- 9 it reads thus-

“Since long time back disputes of the land of Mr. Lalhrangluaia and Mr. Lianchungnunga, Mr. H. Lalduhawma, Surveyor – I was detailed to conduct spot verification for the fourth times on 4/5/2007. In the presence of the village council authorities of Chanmary West, dispute was settled as follows

Both the LSCs were checked carefully and some marking for taking reference could not be traced out. The land of Mr. P. Lunglana in the eastern side was taken as reference point till the RCC structure of Mr. Saizahawla and found that the LSCs were overlapped by 2.60m in the frontage but cleared in the depth and base.

It is heard that parties agreed to settled shortage of 1.30 m each in the overlapped 2.60m as proposed by the verifying surveyor and the village council. The Revenue office also accepted the same and left to measure their land by the Cadastral Survey Operation Team and further informed the same to disputed parties”

Mr. M. Zothankhuma, learned senior counsel for the defendant no. 7 fairly accepted the said settlement order as the sole feasible measure to adjudicate the dispute whilst learned counsel for the plaintiff disagreed the same at the time of arguments.

The ante grounds of the plaintiff for disagreeing the impugned settlement order is a tree which was taken as reference point in the previous LSC of the plaintiff which was already superseded by the later LSC. How this desk of matter viz. Desk of court within four walls can seek other prudent effort in favour of the plaintiff. In a very nutshell, except the impugned settlement order, this court find fails to see any other possible measures and grounds to adjudicate the dispute. The impugned Settlement Order Dt. 10th May, 2007 is marked as Ext. P- 9 with suffice reasons

chalked out in the presence of the concerned village authorities is therefore inevitably held as correct with reasoning.

Issue No. 6

Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

In the corollary of the afore findings, no entitlement in favour of the plaintiff can be adjudicated except messaging to follow the impugned Settlement Order Dt. 10th May, 2007 is marked as Ext. P- 9 as the plaintiff failed to extenuate and override the reasons embodied in the said impugned Settlement Order Dt. 10th May, 2007.

Pertinently, although the LSC of the plaintiff is senior than the LSC of the defendants, Undisputedly, both the LSCs of disputed parties arose from their respective House Pass. Undisputedly, the House Pass of the defendant no. 5 now hold by defendant no. 7 is senior than the House Pass of the plaintiff from where originating of his LSC NO. Azl. 740 of 1985. It simply denotes that, if going to revert back on the superseded LSC No. Azl. 740 of 1985, the plaintiff will begin to trace his previous House Pass which is junior than the house pass of the defendant no. 5. If encroachment be found on that basis, the senior House Pass of the defendant no. 5 will cogently survive. Thus, the plaintiff has no case against the defendants in the instant cause of action.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, the suit lack of merits is hereby dismissed but no order as to costs.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 14th Dec., 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. CS/14/2007, Sr. CJ (A)/

Dated Aizawl, the 14th Dec., 2012

Copy to:

1. Mr. C. Lalhrangluaia S/o Chawngkanglova, Chanmari West, Aizawl

- through Mr. W. Sam Joseph, Adv.
2. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram through Miss Bobita Lalhmingmawii, AGA
 3. The Secretary to the Govt. of Mizoram, Revenue Department through Miss Bobita Lalhmingmawii, AGA
 4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Miss Bobita Lalhmingmawii, AGA
 5. The Assistant Settlement Officer-I, Aizawl District, Aizawl through Miss Bobita Lalhmingmawii, AGA
 6. Mr. C. Lalhmingthanga S/o Khuangthiauva (L), Chawlhmun, Aizawl through Mr. M. Zothankhuma, Sr. Adv.
 7. Mr. Lianchungnunga, Chaltlang, Aizawl through Mr. M. Zothankhuma, Sr. Adv.
 8. Mr. Singhmuaka S/o Hrangai (L), Chanmari, Aizawl through Mr. M. Zothankhuma, Sr. Adv.
 9. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
 10. Case record

PESKAR