

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

RFA NO. 26 OF 2007

Appellant:

1. Smt. Tlanglawmi
S/o Ranchhunga
Galili Veng, Zemabawk, Aizawl
2. Mr. Rangchhunga
H/o Tlanglawmi
Galili Veng, Zemabawk, Aizawl

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

Versus

Respondent's:

Mr. Lalngaizuala
C/o Sangluaii
T.B. Hospital
Zemabawk, Aizawl

By Advocate's :

Date of hearing : 17-02-2012

Date of Judgment & Order : 17-02-2012

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 learned Magistrate, Additional Subordinate District Council Court, Aizawl dt. 12.06.2007 in Eviction Suit No. 03 of 2007. Wherein, the learned Magistrate directed the appellant/defendant to vacate the area covered by LSC No. 103101/01/23 of 2006.

Assailed in the impugned judgment & order, the appellant submitted that by holding House Pass (Temporary) No. 124 of 1967 duly issued by the competent authority and by complying the conditions imposed therein, they settled in the suit land by constructing a house and dwelled for more than 40 years. Although their pass remain valid and not yet cancelled by the authority, LSC No. 103101/01/23 of 2006 was issued in the same plot of land in favour of the respondent. Learned Magistrate, Additional Subordinate District Council Court, Aizawl passed the impugned judgment & order on dt. 12.06.2007 in Eviction Suit No. 03 of 2007 without taking any evidence and also without framing of issues while no admission is made by the appellant.

FINDINGS AND REASONS

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."

Thus, without following the fundamentals of procedures under the CPC like framing of issues, adducing evidence on that basis, adjudication of the case on the basis of such issues by correctly appreciating evidence, justice will be hampered whilst the right to fair hearing is a guaranteed right as held by their Lordship of Hon'ble Supreme Court in the case of **Kanwar Natwar Singh vs Directorate Of Enforcement & Anr.** decided on 5 October, 2010 in connection with Civil Appeal No. 8601 of 2010 and also in **Maneka Gandhi vs Union Of India** decided on 25 January, 1978 and reported in 1978 AIR 597, 1978 SCR (2) 621. Although procedure is held as the handmaid of justice as recognized in **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719. Also vide in **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244. Whether there was abuse/miscounting of justice in the impugned judgment & order without framing of issues and without taking evidence whilst in a contested suit like the courts governed by the *Lushai Hills Autonomous District (Administration of Justice) Rules, 1953* will only be the criteria for determining memorandum of appeal and the crux in the instant case.

As the appellant in the lower court contested in the suit but fails to frame issues and also further fails to take evidence to dispose of the case on merit will not be tenable in law. Thus, the impugned judgment & order passed on dt. 12.06.2007 in Eviction Suit No. 03 of 2007 by the learned Magistrate, Additional Subordinate District Council Court, Aizawl is liable to set aside and quash.

The respondents neither appeared nor filed written objections till date while a very long pending case, I am however confident to adjudicate the case on merit on material circumstances available with the case record.

Thus, by virtue of O. XLI R. 17 (2) of the CPC, as inevitably it is my inclined to dispose of the case on merit at this stage.

ORDER

In view of the above findings and reasons, the impugned judgment & order passed on dt. 12.06.2007 in Eviction Suit No. 03 of 2007 by the learned Magistrate, Additional Subordinate District Council Court, Aizawl is 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 17th Feb., 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/26/2007, Sr. CJ (A)/

Dated Aizawl, the 17th Feb., 2012

Copy to:

1. Smt. Tlanglawmi S/o Ranchhunga, Galili Veng, Zemabawk, Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. Rangchhunga H/o Tlanglawmi, Galili Veng, Zemabawk, Aizawl through Mr. L.H. Lianhrima, Adv.
3. Mr. Lalngaizuala C/o Sangluaii, T.B. Hospital, Zemabawk, Aizawl
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record.

PESKAR