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

RFA NO. 30 OF 2009

Appellant:

Smt. Vanlalveni
W/o Lianhmingthanga (L)
Selesih, Aizawl

By Advocates : 1. W. Sam Joseph
2.Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalengliana
5. Mr. Francis Vanlalzuala
6. Mr. C. Lalfakzuala

Versus

Respondents:

1. Mr. Lalthlamuana Varte
S/o Lianhmingthanga (L)
Chanmari, Aizawl

2. Mr. Lalzamliana Varte
S/o Lianhmingthanga (L)
Chanmari, Aizawl

By Advocates : _____

Date of hearing : 28-02-2012
Date of Judgment & Order : 28-02-2012

BEFORE
Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge
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 order passed by learned Magistrate, Additional Subordinate District Council Court, Aizawl dt. 22.9.2009 in Heirship Certificate Case No. 118 of 2009. Wherein, the learned Magistrate appointed the respondents as the legal heir of the deceased Mr. Lianhmingthang who died on 11.9.2009 in respect of nine house site LSCs.

Learned counsel for the appellant is appeared, the respondents remains fails to appear nor file written objections till date although summon order were duly served to them. Thus, by virtue of O. XLI, R. 17 (2) of the CPC, the appeal is heard ex parte.

FINDINGS

On the facet of the impugned order, it can be clearly seen that no notice was issued for contesting in the said case, simply order was made that "Issue HC as prayed for" by passing the same on the date when filing of the application.

In this hurry justice, the learned Magistrate must comply the procedure embodied under O. IX R. 6 (a) of the CPC before ex parte judgment & order as already settled the law in **Sushil Kumar Sabharwal vs Gurpreet Singh And Ors.** decided on 23 April, 2002 reported in (2002) 3 CALLT 77 SC, JT 2002 (4) SC 489, it was observed that-

> "12. The provision contained in Order 9 Rule 6 of the C.P.C. is pertinent. It contemplates three situations when on a date fixed for hearing the plaintiff appears and the defendant does not appear and three course to be followed by the Court depending on the given situation. The three situations are: (i) when summons duly served, (ii) when summons not duly served, and (iii) when summons served but not in due time. In the first situation, which is relevant here, when it is proved that the summons was duly served, the Court may make an order that the suit be heard ex-parte. The provision casts an obligation on the Court and simultaneously invokes a call to the conscience of the Court to feel satisfied in the sense of being 'proved' that the summons was duly served when and when alone, the Court is conferred with a discretion to make an order that the suit be heard ex-parte. The date appointed for hearing in the suit for which the defendant is summoned to appear is a significant date of hearing requiring a conscious application of

> mind on the part of the Court to satisfy itself on the service of summons. Any default or casual approach on the part of the Court may result in depriving a person of his valuable right to participate in the hearing and may result in a defendant suffering an ex-parte decree or proceedings in the suit wherein he was deprived of hearing for no fault of his. If only the Trial Court would have been conscious of its obligation cast on it by Order 9 Rule 6 of the C.P.C., the case would not have proceeded ex-parte against the defendant-appellant and a wasteful period of over eight years would not have been added to the life of this litigation.
>
> 13. Be that as it may, we are satisfied that the summons was not served on the defendant-appellant. He did not have an opportunity of appearing in the Trial Court and contesting the suit on merits. The Trial Court and the High Court have committed a serious error of law resulting in failure of justice by refusing to set aside the ex-parte decree."

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.

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."

Due to the aforesaid reasons, the instant appeal case is a fit case to interfere in the impugned judgment & order rendered by learned Magistrate, Additional Subordinate District Council Court, Aizawl. The impugned order passed by learned Magistrate, Additional Subordinate District Council Court, Aizawl dt. 22.9.2009 in Heirship Certificate Case No. 118 of 2009 and Heirship Certificate Case No. 118 of 2009 is hereby set aside and quashed accordingly. 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.

Thus, 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 and territorial jurisdiction as it will be convenient for parties as well as adjudicating court towards avoidance of procedural lapse.

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 28th 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/30/2009, Sr. CJ (A)/ Dated Aizawl, the 28th Feb., 2012

Copy to:

1. Smt. Vanlalveni W/o Lianhmingthanga (L), Selesih, Aizawl through Mr. W. Sam Joseph, Adv.
2. Mr. Lalthlamuana Varte S/o Lianhmingthanga (L), Chanmari, Aizawl
3. Mr. Lalzamliana Varte S/o Lianhmingthanga (L), Chanmari, Aizawl
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record

PESKAR