

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

DECLARATORY SUIT NO. 04 OF 2006

Plaintiff:

Mr. Vanlalhruaia Sailo
S/o Zosangliana Sailo (L)
Kelsih House-11
Upper Republic, Aizawl

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

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the
Government of Mizoram, Aizawl.
2. The Commissioner/Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department, Aizawl.
3. The Director
Land Revenue & Settlement Department, Aizawl.
Government of Mizoram, Aizawl.
4. The Assistant Settlement Officer – II
Land Revenue & Settlement
Mizoram, Aizawl
5. Mr. Lalhruailiana Sailo
S/o Lalthanmawia Sailo (L)
Upper Republic, Aizawl

By Advocates

For the defendants 1-4	: 1. Mr. R. Lalremruata, AGA 2. Miss Bobita Lalhmingmawii, AGA
For the defendant no. 5	: 1. Mr. W Sam Joseph 2. Mr. Zochhuana 3. Mr. Hranghmingthanga Ralte 4. Mr. F. Lalengliana 5. Mr. Francis Vanlalzuala 6. Mr. C. Lalfakzuala

Date of Arguments	: 17-07-2012
Date of Judgment & Order	: 18-07-2012

BEFORE

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

JUDGMENT & ORDER**BRIEF STORY OF THE CASE**

The plaintiff in his plaint submitted that on the basis of the Heirship Certificate issued under No. SDCC/HC-264/98/1570-72 Dated Aizawl, the 9.7.1998 which appointed the plaintiff as the legal heir of the deceased Mr. Zoliana Sailo in respect of "*Kelsih Lal inpui hmun only*", House Site Pass No. 1 of 2001 was issued in favour of the plaintiff. In the suit land, the defendant no. 5 obtained Periodic Patta No. 105203/10/495 of 2006. The plaintiff therefore prayed (a) a decree or order declaring the plaintiff is the rightful owner of the land covered by House Site Pass No. 1 of 2001 (b) a decree or order directing the defendants not to interfere with the peaceful enjoyment of right of use, possession/ownership of the said land of the plaintiff and to cancel the impugned Periodic Patta No. 105203/10/495 of 2006 issued to the defendant no. 5 (c) a decree or order directing the defendants to pay costs and (d) any other relief which this court deems fit and proper.

The defendants 1-4 in their joint written statements contended that the suit is not maintainable in its present form and style. No cause of action in favour of the plaintiff. The suit is bad for non-joinder of necessary parties and is also barred by law of limitation. For issuance of Periodic Patta No. 105203/10/495 of 2006, the defendant no. 5 relied on the Succession Certificate issued by the then Superintendent, Lushai Hills Dt. 11.2.1952 along with Heirship Certificate No. 769 of 2005. At the time of issuance of Periodic Patta, the location was not yet declared as a notified town area by the government.

The defendant no. 5 in his written statements contended that the plaintiff has no cause of action, the suit is bad for non-joinder of necessary parties, there is insufficient court fees in the plaint. The plaint/suit is hit by section 80 of the CPC. On the basis of the Heirship Certificate issued under No. SDCC/HC-264/98/1570-72 Dated Aizawl, the 9.7.1998, House Site Pass No. 1 of 2001 was issued in favour of the plaintiff but not specified any boundary description and the area of the land belonging to Mr. Zoliana Sailo (L). Mr. Lalsailova Sailo (L) was the chief of Kelsih, Hualngo, Mel-8 and Paikhai villages from 1/1/1913 to 10/1/1952. After the said Mr. Lalsailova was died on 10th Jan., 1952, his eldest son namely Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as chief of Kelsih as per the custom of Mizo chief. While the said Mr. Lalthanmawia Sailo was away in the military service, his younger brother Mr. Lalthansanga Sailo (L) was appointed s Regent to look after the village administration. The question of inheritance of the main house of Kelsih chief does not arise in favour of the plaintiff. The village council pass obtained by the plaintiff is baseless. As the

defendant no. 5 inherited the properties of his late father, the Revenue authorities also issued Periodic Patta for the same. The defendant no. 5 in his counter claim therefore prays that- (a) to declare the property under the name of 'Kelsih Lal Inpui Hmun' was never the property of the deceased Mr. Zoliana Sailo and declare that the said property was the property of the deceased Mr. Lalthanmawia Sailo (b) to declare the house pass issued in favour of the plaintiff is void as the said property was never the property of the deceased Mr. Zoliana Sailo (c) to declare the defendant no. 5 has the right, title possession over the said property under the name of 'Kelsih Lal Inpui Hmun' (d) to declare the Periodic Patta No. 105203/10/495 of 2006 issued in favour of the defendant no. 5 is legal and correct and the same are liable to convert in to Land Settlement Certificate as per the provision of the land laws in Mizoram (e) to declare the plaintiff has no right or cause of action to file this suit and suit is liable to dismissed.

ISSUES

Issues were framed on 20/5/2009 and amended towards correct findings namely-

1. Whether the suit is maintainable or not
2. Whether the plaintiff has cause of action to file the instant suit
3. Whether the landed property covered under Periodic Patta No. 105203/10/495 of 2006 belonging to the defendant no. 5 and Village Council House Site Pass No. 1 of 2001 belonging to the plaintiff is the similar area
4. Whether the suit land under House Site Pass No. 1 of 2001 was the property of Mr. Zoliana Sailo (L) from where the plaintiff inherited or Mr. Lalthanmawia Sailo (L) from where the defendant no. 5 inherited.
5. Whether the counter claim petition filed by the defendant no. 5 is maintainable or not.
6. Whether Periodic Patta No. 105203/10/495 of 2006 issued in favour of the defendant no. 5 is legal and is liable to convert into LSC or not.
7. Whether the plaintiff is entitled to the relief claimed. If so, to what extend
8. Whether the defendant no. 5 is entitled to the relief claimed in his counter claim. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Vanlalhruaia Sailo S/o Zoliana Sailo (L), Kelsih House-II, Upper Republic, Aizawl (Hereinafter referred to as PW-1)

2. Mr. Lalmachhuana Sailo S/o Lalthansanga Sailo (L), Upper Republic, Aizawl (Hereinafter referred to as PW-2)
3. Mr. Lalhmingliana S/o Lalsanga (L), Macdonald Hill, Aizawl (Hereinafter referred to as PW-3)

The **PW-1** in his examination in chief reiterated and affirmed the contents of the plaint being the plaintiff himself. He further continued that the description of his suit land in House Site Pass No. 1 of 2001 is as under-

Boundary:

Area

Chhimlamah (South)- Community Hall	Frontage: 'S' 58.00 M
Khawchhak lamah (East)-Lalthanmawia	Depth: 'W' 132.00 M
Khawthlang lamah (West)-L.P. School	Depth: 'E' 137.00 M
Hmarlamah (North)- Kawngpui	Base: 'N' 101.50 M

His total area therefore falls 11,956.00 Sq m.

Ext. P-1 is plaint submitted by him.

Ext. P-1(a) and (b) are his signatures

Ext. P-2 is a copy of House Site Pass No. 1 of 2001

Ext. P-3 is a copy of Heirship Certificate issued under No. SDCC/HC-264/98/1570-72 Dated Aizawl, the 9.7.1998

Ext. P-4 is a copy of Stay order Dt. 22.5.2006

Ext. P-5 is a copy of Vacation Order dt. 1/6/2006

Ext. P-6 is a copy of Heirship Certificate No. 769 of 2005

Ext. P-7 is a copy of order dt. 18/2/1952

Ext. P-8 is a copy of order passed by Mr. Lalbiakzama, SDCC, Aizawl Dt. 25/7/2006 (Documents were objected by learned counsels for the defendant no. 5)

During cross examination, he admitted that during the regime of Britishers in the then Lushai Hills, the Superintendent of Lushai Hills used to appoint the village chief. Mr. Lalsailova (His grandfather) was died on 10th Jan., 1952. He also admitted that after the said Mr. Lalsailova was died on 10th Jan., 1952, his eldest son namely Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as chief of Kelsih as per the custom of Mizo chief. While the said Mr. Lalthanmawia Sailo was away in the military service, his younger brother Mr. Lalthansanga Sailo (L) was appointed as Regent to look after the village administration. He further admitted that the heir of Mr. Lalthanmawia is Mr. Lalhruailiana Sailo. He also admitted that his father Mr. Zoliana Sailo was never appointed as the chief of Kelsih or the Regent of chief. The contents of Ext. P-7 is true. He only relied in Village Council pass and Heirship Certificate in respect of his late father's property. He also admitted that during the lifetime of his late

father, his late father never claimed 'Kelsih Lal inpui hmun'. He also admitted that he did not file written statement in the counter claim filed by the defendant no. 5.

In his re-examination, he further clarified that since he have no chance to file his written statement in the counter claim of defendant no. 5, he failed to file the same.

The **PW-2** in his examination in chief stated that although Mr. Lalthanmawia Sailo was appointed as the chief of Kelsih village, since he joined military service, Mr. Lalthansanga Sailo (L) who was his father occupied chieftainship of Kelsih village. After the death of Mr. Zoliana Sailo, Mr. Lalthanmawia Sailo intended to gift the suit land for Referral Hospital but the plaintiff objected the same. During the lifetime of Mr. Lalthanmawia Sailo, the plaintiff obtained Heirship Certificate whilst Mr. Lalrinawma Sailo also given No-Objection Certificate. Village Council thereby issued House Site Pass No. 1 of 2001 to the plaintiff.

In his cross examination, he admitted that after the said Mr. Lalsailova was died on 10th Jan., 1952, his eldest son namely Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as chief of Kelsih. While the said Mr. Lalthanmawia Sailo was away in the military service, his younger brother Mr. Lalthansanga Sailo (L) was appointed s Regent to look after the village administration. He also admitted that the heir of Mr. Lalthanmawia Sailo is the defendant no. 5. He further admitted that his father Mr. Zoliana Sailo was never appointed as the chief of Kelsih or the Regent of chief.

The **PW-3** in his examination in chief deposed that his mother was the eldest daughter of Mr. Lalsailova Sailo (L). Although Mr. Lalthanmawia Sailo was appointed as the chief of Kelsih village, since he joined military service, Mr. Lalthansanga Sailo (L) occupied chieftainship of Kelsih village. Mr. Lalthansanga Sailo also constructed a house building in the suit land and later dismantled due to too old. After the death of Mr. Zoliana Sailo, Mr. Lalthanmawia Sailo intended to gift the suit land for Referral Hospital but the plaintiff objected the same.

In his cross examination, he further deposed and admitted that after the said Mr. Lalsailova was died on 10th Jan., 1952, his eldest son namely Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as chief of Kelsih. Since he joined military service, Mr. Lalthansanga Sailo (L) occupied chieftainship of Kelsih village as Regent.

For the defendant nos 1-4:

The defendant no. 1-4 had produced only one witness namely –

1. Mr. R.L. Rindika, Superintendent, Land Revenue and Settlement Directorate, Govt. of Mizoram (hereinafter referred to as DW-1 for Def. no. 1-4)

The **DW-1 for Def. no. 1-4** in his examination in chief mainly affirmed their written statements. Ext. D-1 is their written statements. Ext. D-1 (a) is the signature of the then Under Secretary, Revenue Department.

During his cross examination, he further deposed that he did not know when the Kelsih village was declared as town area. It was beyond the knowledge of the government about the Heirship Certificate of the plaintiff.

For the defendant no. 5:

The defendant no. 5 had produced the following witnesses namely -

- 1 Mr. Lalhruailiana Sailo S/o Lalthanmawia Sailo (L), Kelsih House-I, Upper Republic, Aizawl (hereinafter referred to as DW-1 for Def. no. 7)
2. Mr. Lalzamlia Sailo S/o Lalthanmawia (L), Upper Republic, Aizawl (hereinafter referred to as DW-2 for Def. no. 5)
3. Mr. Lalrema Sailo, Kelsih Aizawl (hereinafter referred to as DW-3 for Def. no. 5)

The **DW-1 for Def. no. 5** in his examination in chief mainly affirmed his written statement and counter claim petition. He further exhibited the following documents-

Ext. D-1 is a copy of report issued by Superintendent of Lushai Hills

Ext. D-2 is a copy of appointment letter of Mr. Lalthanmawia (L)

Ext. D-3 is a copy of file showing list of chiefs of different villages maintained by the Deputy Commissioner, Aizawl

Ext. D-4 is a copy of Acknowledgement issued by Smt. Lalthantluangi

Ext. D-5 is a copy of first order passed in Review Case

Ext. D-6 is a copy of order passed by the court allowing the plaintiff to withdraw the case

Ext. D-7 is a copy of periodic patta

Ext. D-8 is a copy of Heirship Certificate

Ext. D-9 is a copy of Huan Pass issued by the Village Council, Kelsih

Ext. D-10 is a copy of stay order

Ext. D-11 is a copy of lifting the stay orders (Ext. D-1, 2, 3, 7, 8 and 9 are objected by learned counsel for the plaintiff)

In his cross examination, he deposed that he was born on 18/1/1947 at Kelsih village and his father was Mr. Lalthanmawia Sailo who died on 31/5/2002 and died his mother in 1977. His father was the eldest siblings. Heirship Certificate No. 769 of 2005 was issued in his favour for LSC No. 35 of 1965 and other house sites at Kelsih.

The **DW-2 for Def. no. 5** in his examination in chief deposed that he knew that Mr. Lalsailova (L) was the chief of Kelsih, Hualngo, Mel-8 and Paikhai villages. After he died on 10th Jan., 1952, his eldest son Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as

chief of Kelsih. As the said Mr. Lalthanmawia Sailo had joined military service, Mr. Lalthansanga Sailo as younger brother was appointed as Regent. During the absence of Mr. Lalthanmawia Sailo, the father of the plaintiff dismantled the Kelsih chief house and built himself a house at Upper Republic, Aizawl. After the said Mr. Lalthanmawia Sailo returned to Mizoram, he re-constructed a building in the suit land. He also knew that the father of the plaintiff never appointed as chief. The plaintiff also never enjoyed peaceful possession of the suit land as it was under the possession of defendant no. 5. In the year of 1958, Mr. Lalthanmawia Sailo was also allowed to extend the Kelsih Lal inpui hmun by the then Village Council.

In his cross examination, he deposed that the defendant no. 5 is his next elder brother. Till abolition of chieftainship in Mizoram, Mr. Lalthansanga Sailo remained occupied chiefship at Kelsih as Regent as his father remain served as army. His father was pensioned from army in 1962-1963.

The **DW-3 for Def. no. 5** in his examination in chief deposed that he knew the plaintiff and defendant no. 5 in the instant suit. He also knew that Mr. Lalsailova (L) was the chief of Kelsih, Hualngo, Mel-8 and Paikhai villages. After he died on 10th Jan., 1952, his eldest son Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as chief of Kelsih. As the said Mr. Lalthanmawia Sailo had joined military service, Mr. Lalthansanga Sailo as younger brother was appointed as Regent. His father was also the village elder of Mr. Lalsailova Sailo during his regime. During the absence of Mr. Lalthanmawia Sailo, the father of the plaintiff dismantled the Kelsih chief house and built himself a house at Upper Republic, Aizawl. After the said Mr. Lalthanmawia Sailo returned to Mizoram, he re-constructed a building in the suit land. He also knew that the father of the plaintiff never appointed as chief.

In his cross examination, he also deposed that he survived from Kelsih village. On 10th Jan., 1952, Mr. Lalsailova Sailo was died. He admitted that as Mr. Lalthanmawia Sailo (L) joined army service, he did not physically occupied chieftainship at Kelsih.

TERMS OF RIVALRY

At the time of arguments, learned counsels of parties remain stood in their own grounds by admitting the following facts-

1. Mr. Lalthanmawia Sailo (L) was appointed as chief of Kelsih to succeed Lalsailova Sailo (L) as per the appointment issued by the then Superintendent, Lushai Hills on 11.2.1952 and as the said Mr. Lalthanmawia Sailo (L) had joined military service, Mr. Lalthansanga Sailo as Regent.
2. The father of the plaintiff Mr. Zoliana Sailo was never occupied either chieftainship at Kelsih nor Regent of Mr. Lalthanmawia Sailo (L).
- 2 The landed property covered under Periodic Patta No. 105203/10/495 of 2006 belonging to the defendant no. 5 and Village Council House Site Pass No. 1 of 2001 belonging to the plaintiff is the similar area of land.

FINDINGS

Issue No. 1

Whether the present suit is maintainable in its present form and style.

A requisite court fees at Rs. 5000/- is make up by the plaintiff as directed u/s 149 of the CPC in tune with the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997). Exemption order from prior legal notice to the state defendants is also made on 28/7/2006. Meanwhile, verification by paragraph wise is made but not supported by affidavit. In this catena, the provisions of sub- rule (4) of rule 15 under Order VI of the CPC is attracted. For that purpose, the Constitution Bench of the Supreme Court in **State of Bombay v. Purushottam Jog Naik**, AIR 1952 SC 317. Vivian Bose, J. speaking for the Court, held:

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed."

The Constitution Bench of the Supreme Court again 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."

More so, recently in **Sinnamani & Anr. vs G. Vettivel & Ors.** decided on 9th May, 2012 in connection with Civil Appeal No. 4368 of 2012 @ SLP (Civil) No.11825 of 2008, Hon'ble Supreme Court has held that-

“11. A suit can be instituted by presentation of a plaint and Order IV and VII C.P.C. deals with the presentation of the plaint and the contents of the plaint. Chapter I of the Civil Rules of Practice deals with the form of a plaint. When the statutory provision clearly says as to how the suit has to be instituted, it can be instituted only in that manner alone, and no other manner.”

Thus, a plaint without supporting verification and affidavit by a paragraph wise is irregularities which can vitiate the proceedings like in the instant plaint.

Issue No. 2

Whether the plaintiff has cause of action to file the instant suit

Law is well settled in **Swamy Atmananda & Ors.Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was held that-

“A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

Recently in **Church Of Christ Charitable Trust & Educational Charitable Society vs M/S. Ponniammam Educationa Trust** decided on 3 July, 2012 in connection with Civil Appeal No. 4841 of 2012 (Arising out of SLP (C) No.30632 of 2011), the Supreme Court has held that-

“8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

The very concept of *locus standi* is dealt in the case of **S.P. Gupta Vs. President Of India And Ors.** decided on 30/12/1981 reported in AIR 1982

SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365, wherein, the Constitution Bench of Hon'ble Supreme Court has held that-

“14. The traditional rule in regard to *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.”

The plaintiff had obtained House Site Pass No. 1 of 2001 issued by the concerned Village Council on the basis of the Heirship Certificate issued under No. SDCC/HC-264/98/1570-72 Dated Aizawl, the 9.7.1998. However, this issue is left as per the findings under issue no. 4.

Issue No. 3

Whether the landed property covered under Periodic Patta No. 105203/10/495 of 2006 belonging to the defendant no. 5 and Village Council House Site Pass No. 1 of 2001 belonging to the plaintiff is the similar area

As undisputed even during oral arguments, the landed property covered under Periodic Patta No. 105203/10/495 of 2006 belonging to the defendant no. 5 and Village Council House Site Pass No. 1 of 2001 belonging to the plaintiff is the similar area.

Issue No. 4

Whether the suit land under House Site Pass No. 1 of 2001 was the property of Mr. Zoliana Sailo (L) from where the plaintiff inherited or Mr. Lalthanmawia Sailo (L) from where the defendant no. 5 inherited.

The plaintiff being the PW-1 during cross examination, he admitted that during the regime of Britishers in the then Lushai Hills, the Superintendent of Lushai Hills used to appoint the village chief. Mr. Lalsailova (His grandfather) was died on 10th Jan., 1952. He also admitted that after the said Mr. Lalsailova was died on 10th Jan., 1952, his eldest son namely Mr. Lalthanmawia Sailo (L) was appointed to succeed Lalsailova Sailo (L) as chief of Kelsih as per the custom of Mizo chief. While the said Mr. Lalthanmawia Sailo was away in the military service, his younger brother Mr. Lalthansanga Sailo (L) was appointed as Regent to look after the village administration. He further admitted that the heir of Mr. Lalthanmawia is Mr. Lalhruailiana Sailo. He also admitted that his father Mr. Zoliana Sailo was never appointed as the chief of Kelsih or the Regent of chief. The contents of Ext. P-7 (viz. appointment of Mr. Lalthanmawia Sailo (L) to succeed Lalsailova Sailo (L) as chief of Kelsih and also appointment of Mr. Lalthansanga as Regent) is true. He only relied in Village Council pass and Heirship Certificate in respect of his late father's property. He also

admitted that during the lifetime of his late father, his late father never claimed 'Kelsih Lal inpui hmun'.

However, Mr. Lalthansanga Sailo was appointed as Regent for a chief of Kelsih village due to Mr. Lalthanmawia Sailo (L) had joined military service, the said Mr. Lalthansanga Sailo did not have any interest in the case at hand in view of the version of PW-2 who is the son of Mr. Lalthansanga Sailo.

In respect of Ext. P-3 viz. Heirship Certificate issued under No. SDCC/HC-264/98/1570-72 Dated Aizawl, the 9th July, 1998 is about the legal heir of Mr. Zoliana Sailo. In deed, the above oral evidence of the plaintiff is rather corroborated with evidence of defendant no. 5. So is the case, no rights in favour of Mr. Zoliana Sailo in respect of the suit land exist. The undisputed fact even during oral arguments is that the father of the plaintiff Mr. Zoliana Sailo was never occupied either chieftainship at Kelsih nor Regent of Mr. Lalthanmawia Sailo (L). So is the case, there is no ground to adjudicate the crux in favour of the plaintiff and no cause of action had arisen in favour of the plaintiff.

Issue No. 5

Whether the counter claim petition filed by the defendant no. 5 is maintainable or not.

Requisite court fees is make up as directed u/s 149 of the CPC, his petition is also accompanied by verification by paragraph wise is made with supporting affidavit in tune with the provisions of sub- rule (4) of rule 15 under Order VI of the CPC. Thus, the counter claim petition is held as maintainable.

Issue No. 6

Whether Periodic Patta No. 105203/10/495 of 2006 issued in favour of the defendant no. 5 is legal and is liable to convert into LSC or not.

Evidence of the defendants 1-4 revealed that at the time of process of Periodic Patta No. 105203/10/495 of 2006 marked as Ext. D-7, Kelsih village was not declare as town areas. Cogently, Periodic Patta No. 105203/10/495 of 2006 is issued in accordance with the Mizo District (Agricultural Land) Act, 1963. Section 7 of the Mizo District (Agricultural Land) Act, 1963 for ready reference is again excerpts thus-

“7. Rights over Land:-

- (1) The Patta-holder shall have heritable and transferrable right of use on, or of sub-letting in his land subject to:-
 - (a) The payment of all revenues and taxes from time to time, legally assessed or imposed in respect of the land
 - (b) Such terms and conditions as are imposed by rules made under this Act.
- (2) No person shall acquire by length of possession or otherwise any right over land disposed of, allotted or occupied, unless registered and Patta obtained in accordance with provisions of this Act.”

Clause (8) of rule 2 of the Mizo District (Agricultural Land) Rules, 1971 further stated that-

“Periodic Patta holder” means a holder of Periodic Patta who has not acquired the Patta holder’s right under section 7 of the Act.”

Although preferred a counter claim petition by the defendant no. 5, the defendants 1-4 even in their evidence did not contest on the validity of Periodic Patta No. 105203/10/495 of 2006. However, no law points which can invalid the said Periodic Patta No. 105203/10/495 of 2006 is out of question during the proceedings. So is the case, this issue is indispensably adjudicated in favour of the defendant no. 4.

Issue No. 7

Whether the plaintiff is entitled to the relief claimed. If so, to what extend

The plaintiff case is mainly based on House Site Pass No. 1 of 2001 marked as Ext. P-2, as it speaks itself, the said Ext. P-2 was issued in pursuance to Heirship Certificate issued under No. SDCC/HC-264/98/1570-72 Dated Aizawl, the 9th July, 1998 marked as Ext. P- 3 which is about the legal heir of Mr. Zoliana Sailo (L). However, as decided under issue no. 4 that the suit land was not the property of the said Mr. Zoliana Sailo, no grounds to entitlement of the plaintiff in his seeking relief can be arose plus lack of maintainability as adjudicated under issue no. 1.

Issue No. 8

Whether the defendant no. 5 is entitled to the relief claimed in his counter claim. If so, to what extend.

The defendant no. 5 in his counter claim relief namely - (a) to declare the property under the name of ‘Kelsih Lal Inpui Hmun’ was never the property of the deceased Mr. Zoliana Sailo and declare that the said property was the property of the deceased Mr. Lalthanmawia Sailo (b) to declare the house pass issued in favour of the plaintiff is void as the said property was never the property of the deceased Mr. Zoliana Sailo (c) to declare the defendant no. 5 has the right, title possession over the said property under the name of ‘Kelsih Lal Inpui Hmun’ (d) to declare the Periodic Patta No. 105203/10/495 of 2006 issued in favour of the defendant no. 5 is legal and correct and the same are liable to convert in to Land Settlement Certificate as per the provision of the land laws in Mizoram (e) to declare the plaintiff has no right or cause of action to file this suit and suit is liable to dismissed. As the suit land is already adjudicated as the property of Mr. Lalthanmawia Sailo (L) under issue no. 4 and whilst Heirship Certificate No. 769 of 2005 marked as Ext. D-8 was issued in favour of the defendant no. 5 by declaring the defendant no. 5 as the legal heir of the said deceased Mr. Lalthanmawia Sailo over to the suit land at Kelsih. The defendant no. 5 will be entitled relief claimed in his counter claimed and it is therefore liable to declare that -

(1) the property under the name of 'Kelsih Lal Inpui Hmun' was never the property of the deceased Mr. Zoliana Sailo and that the said property was the property of the deceased Mr. Lalthanmawia Sailo

(2) the house pass issued in favour of the plaintiff is void as the said property was never the property of the deceased Mr. Zoliana Sailo.

(3) the defendant no. 5 has the right, title possession over the said property under the name of 'Kelsih Lal Inpui Hmun'.

(4) the Periodic Patta No. 105203/10/495 of 2006 issued in favour of the defendant no. 5 is legal and correct

(5) the plaintiff has no right or cause of action to file this suit and suit is liable to dismissed and also not maintainable of the suit in the present form and style.

For the purpose of conversion of Periodic Patta No. 105203/10/495 of 2006 into Land Settlement Certificate, law is well settled in the case of **Mig Cricket Club vs Abhinav Sahakar Edn. Society & Ors.** decided on 5 September, 2011 in connection with Civil Appeal No. 2047 of 2007, the Supreme Court has held that-

“14. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable.”

So is the case, instead of intrusion in the arena of Executive in the governance, the matter is left to the Revenue Authorities in respect of conversion of Periodic Patta No. 105203/10/495 of 2006 into Land Settlement Certificate unless the Revenue Authorities committed arbitrary and capricious act, interference on that purpose will be pre mature.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, it is hereby ORDERED, DECREED and DECLARED that-

(1) the property under the name of '*Kelsih Lal Inpui Hmun*' was never the property of the deceased Mr. Zoliana Sailo and that the said property was the property of the deceased Mr. Lalthanmawia Sailo.

(2) the house pass issued in favour of the plaintiff is void as the said property was never the property of the deceased Mr. Zoliana Sailo.

(3) the defendant no. 5 has the right, title possession over the said property under the name of '*Kelsih Lal Inpui Hmun*'.

(4) the Periodic Patta No. 105203/10/495 of 2006 issued in favour of the defendant no. 5 is legal and correct

(5) the plaintiff has no right or cause of action to file this suit and suit is liable to dismissed and also not maintainable of the suit in the present form and style.

No order as to costs of the suit.

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 18th July, 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. DS/4/2006, Sr. CJ (A)/

Dated Aizawl, the 18th July, 2012

Copy to:

1. Mr. Vanlalhruaia Sailo S/o Zosangliana Sailo (L), Kelsih House-11, Upper Republic, Aizawl through Mr. L.H. Lianhrima, Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
3. The Commissioner/Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer – II, Land Revenue & Settlement, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
6. Mr. Lalhrualiana Sailo S/o Lalthanmawia Sailo (L), Upper Republic, Aizawl through Mr. W. Sam Joseph, Adv.
7. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR