

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

EVICITION SUIT NO. 05 OF 2010

Plaintiff:

Smt. Lalropari
D/o Remthanga
Zalen Veng, Vairengte
Kolasib District: Mizoram

By Advocate's : Mr. C. Zoramchhana

Versus

Defendants:

1. Mr. Chhuana
IOC Veng, Vairengte
Kolasib District: Kolasib
2. Mr. Lunga
IOC Veng, Vairengte
Kolasib District: Kolasib
3. Smt. Vanlalhruaii (Chii)
D/o Ralkunga
IOC Veng, Vairengte
Kolasib District: Kolasib
4. Mr. Saikhawlam
S/o Saikhawkam
IOC Veng, Vairengte
Kolasib District: Kolasib
5. Mr. Lalkipchawng
D/o Devana
IOC Veng, Vairengte
Kolasib District: Kolasib
6. Mr. Lalramchhuana
S/o Sawikhawkhama
IOC Veng, Vairengte
Kolasib District: Kolasib
7. Mr. Lalneihna
S/o Liantea
IOC Veng, Vairengte
Kolasib District: Kolasib

By Advocates

- : 1. Mr. W. Sam Joseph
 2. Mr. Francis Vanlalzuala
 3. Mr. Hranghmingthanga Ralte
 4. Mr. F. Lalenglina
 5. Mr. C. Lalfakzuala

Proforma defendants:

1. The Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl.
3. The Director
Land Revenue & Settlement Department
Govt. of Mizoram, Aizawl.
4. The Assistant Settlement Officer -II,
Land & Revenue Settlement Department
Kolasib District, Kolasib.

By Advocates

- : 1. Mr. R. Lalremruata, AGA
 2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 19-07-2012
 Date of Judgment & Order : 20-07-2012

BEFORE

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

JUDGMENT & ORDER

FACTUAL SCENARIO

The plaintiff's case in brief is that whilst he possessed a valid Periodic Patta No. 7 of 1982, the defendant occupied the area covered by his Periodic Patta without his consent by making construction of a house means of permanent settlement, they rather destroyed their plantations. Although approached some other executive machineries for seeking relief, it became vain. The plaintiff therefore prayed that (i) a decree be passed declaring that the plaintiff is the legal and rightful owner of the land covered by Periodic Patta No. 7 of 1982 and has title, interest and possession of the said land covered within the said area (ii) a decree be passed for the eviction of the defendants from the suit land/directing the defendants to vacate the land area covered by Periodic Patta No. 7 of 1982 (iii) by way of permanent and mandatory injunction the defendants are restrained from making any

interference within the suit land and from dispossessing the plaintiff from the suit land the plaintiff be allowed to enjoy peaceful possession of the same and that they are further restrained from doing anything detrimental to the interest of the plaintiff (iv) any other relief which this court deems fit and proper.

The defendants 1-7 in their joint written statements stated that the suit is bad for non-joinder of necessary parties and is also bad for non-compliance of section 80 of the CPC. The defendant's occupied land is belonging to Forest Department within Reserve Forest under the 1973 forest plan. Thus, due to lack of locus standi and cause of action, the suit be dismissed with costs.

ISSUES

On the basis of the pleadings of the parties, issues were framed on 20.10.2010 and amended towards correct findings as follows-

1. Whether the suit is maintainable in its present form and style.
2. Whether the suit is bad for non-joinder of necessary parties or not
3. Whether the defendants have legal, title to settle in the suit land or not.
4. 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. R. Remthanga, Aizawl (Hereinafter referred to as PW-1)
2. Mr. Romawia S/o Vangthuama (L), Zalen Veng, Vairengte (Hereinafter referred to as PW-2)
3. Smt. C. Lalzawmliani D/o Rangkunga, Zalen Veng, Vairengte (Hereinafter referred to as PW-3)
4. Mr. C. Vanlalsiama S/o C. Romawia (L), Venglai, Vairengte (Hereinafter referred to as PW-4)

The **PW-1** in his examination in chief merely reiterated and affirmed the averments and submissions in his plaint. He further deposed that-

Ext. P- 1 is a copy of Periodic Patta No. 7 of 1982

Ext. P-2 is a copy of Tax receipt

Ext. P-3 is a copy of Tax receipt

Ext. P-4 is a copy of Private Teak plantation Hriatpuina

Ext. P-5 is a copy of FIR

Ext. P-6 is a copy of order issued by SDM, Vairengte

Ext. P-7 is a copy of Representation submitted to Chief Minister Dt. 19/4/2005

Ext. P-8 is a copy of letter Dt. 29/3/2006 submitted to SDO (C), Vairengte

Ext. P-9 is a copy of complaint Dt. 15/3/2007

Ext. P-10 is a copy of stay order dt. 16/3/2007

Ext. P-11 is a copy of judgment order dt. 17.4.2007

Ext. P-12 is a copy of application Dt. 9/5/2007 submitted to ASO-II

In his cross examination, he admitted that he never had any other pass before his Periodic Patta No. 7 of 1982. Although Periodic Patta No. 7 of 1982 was put in the name of his daughter, he filed all the previous complaints and petitions. He admitted that he did not sue against Forest Department.

The **PW-2** in his examination in chief deposed that he witnessed that the plaintiff is the rightful owner of Periodic Patta No. 7 of 1982 as he himself witnessed that the plaintiff developed the suit land.

In his cross examination, he deposed that he stayed at Zalen Veng, Vairengte.

The **PW-3** in her examination in chief deposed that at the time of starting development of the suit land for agricultural purposes, none intrude in the suit land as the plaintiff is her daughter.

In her cross examination, she deposed that their daughter the plaintiff used to stay at Singapore and she was born in 1973 and the Periodic Patta No. 7 of 1982 was in the name of their daughter the plaintiff. she did not know that whether the suit land is under the Reserve Forest area or not.

The **PW-4** in his examination in chief deposed that he witnessed that the plaintiff is the rightful owner of Periodic Patta No. 7 of 1982 as he himself witnessed that the plaintiff developed the suit land by cultivating paddy and cocunut and later cultivated paddy and teak trees. The plaintiff fully complied with government orders for management of the suit land including payment of tax in time.

In his cross examination, he deposed that he was born and brought up at Venglai, Vairengte. He admitted that the plaintiff went to Singapore but did not know the age of the plaintiff.

For the defendants:

The defendants had produced the following witnesses namely-

1. Mr. K. Kailiana, VCP, Vairengte-II, Kolasib District (Hereinafter referred to as DW-1)
2. Mr. J. Thangliana S/o Laltea, Chhim Veng, Vairengte (Hereinafter referred to as DW-2)

The **DW-1** in his examination in chief deposed that he is presently the VCP, Vairengte-II and holding Secretary of the Village Council Secretary in 1975. During 1980-1984, he was the member of Village Council and President of Village Council in 1984-1987 and also the member of Village

Council in 1990s. The land where the Government of Mizoram accommodated the defendants belongs to the Forest Department and no periodic patta can be issued. The instant periodic patta was issued without No-Objection from the Forest Department as it falls within the Reserve Forest under the 1973 forest plan. The defendants occupied the suit land since June 2003 with the help of the Village Council. He knows that the plaintiff has separate land with proper teak plantation.

In his cross examination, he deposed that the area of the plaintiff land is 7 ½ bighas. He admitted that the plaintiff also sued his son in another case and formed an association under his chairmanship in that case. He admitted that there is no sketch map or area of forest plantation in respect of the suit land in the case record.

The **DW-2** in his examination in chief deposed that he is permanently stayed at Vairengte working in the Power and Electricity Department since 1993, he is also the defendant no. 12 in Eviction Suit No. 3 of 2010 filed by the father of the plaintiff. The land where the Government of Mizoram accommodated the defendants belongs to the Forest Department and no periodic patta can be issued. The instant periodic patta was issued without No-Objection from the Forest Department as it falls within the Reserve Forest under the 1973 forest plan. The defendants occupied the suit land since June 2003 with the help of the Village Council. He knows that the plaintiff has separate land with proper teak plantation.

In his cross examination, he deposed that he did not know the area of the plaintiff suit land, he did not know whether the defendants submitted sketch map of the forest reserve area. He did not see the periodic patta of the plaintiff.

ARGUMENTS

After appreciation and elucidation of evidences adduced therein and meticulously examining the pleadings, learned counsels of both parties remain stood in their own footings in their written pleadings.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

Deficiency of court fees is make up by the plaintiff, the plaint is accompanied by proper verification supported by paragraph wise affidavit. The interference of state of Mizoram and its agents is proforma in nature by not barred by the rigour provisions of section 80 of the CPC. This issue is therefore decided in favour of the plaintiff.

Issue No. 2

Whether the suit is bad for non-joinder of necessary parties or not

Before looking to the case at hand, the well settled law is epitomized in **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera & Anr.** decided on 16/03/1999 reported in 1999 AIR 1341, 1999 (1) SCR 1097, 1999 (3) SCC 457, 1999 (2) SCALE 108, 1999 (2) JT 250, it was held that-

“These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined.”

And in **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on 20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, it was observed thus-

“The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681.”

Being the holder of Periodic Patta, although the defendants claimed that the suit land is forest land, there can be no non-joinder of necessary parties as cause of action in the instant case is only in between the plaintiff and the defendants. Again affirmative in favour of the plaintiff.

Issue No. 3

Whether the defendants have legal, title to settle in the suit land or not.

The defendants fails to adduce any documentary or oral evidence of their legal rights to settle in the suit land except claiming the forest land. The defendants rather annexed various documents of eviction order passed by the Environment and Forest Department authorities from the suit land. The defendants therefore fails to proof their case in this arena.

Issue No. 4

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

Periodic Patta No. 7 of 1982 belonging to the plaintiff is marked Ext. P-1 which is having validity upto 2013 whilst the suit is filed on 20/1/2010. Cogently, Periodic Patta No. 7 of 1982 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.”

Thus, the plaintiff is entitled to declare as the rightful owner of the Periodic Patta No. 7 of 1982 during its validity only subject to the provisions of the Mizo District (Agricultural Land) Act, 1963 and the Mizo District (Agricultural Land) Rules, 1971. As no basis and no grounds, the defendants are liable to evict from the suit land covered by Periodic Patta No. 7 of 1982 and further liable to restrain them from disturbing the peaceful possession of the suit land by the plaintiff in any form.

ORDER

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

1. The plaintiff is declared as the rightful owner of the Periodic Patta No. 7 of 1982 during its validity only subject to the provisions of the Mizo District (Agricultural Land) Act, 1963 and the Mizo District (Agricultural Land) Rules, 1971.
2. The defendants are directed to vacate the suit land covered by Periodic Patta No. 7 of 1982 within sixty days from the date of this order and further restrained them not to disturb the peaceful possession of the suit land by the plaintiff in any form henceforth.

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 20th 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. ES/5/2010, Sr. CJ (A)/

Dated Aizawl, the 20th July, 2012

Copy to:

1. Smt. Lalropari D/o Remthanga, Zalen Veng, Vairengte, Kolasib District: Mizoram through Mr. C. Zoramchhana, Adv.
2. Mr. Chhuana, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
3. Mr. Lunga, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
4. Smt. Vanlalhruaii (Chii) D/o Ralkunga, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
5. Mr. Saikhawlam S/o Saikhawkam, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
6. Mr. Lalkipchawng D/o Devana, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
7. Mr. Lalramchhuana S/o Sawikhawkhama, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
8. Mr. Lalneihna S/o Liantea, IOC Veng, Vairengte, Kolasib District: Kolasib through Mr. W. Sam Joseph, Adv.
9. The Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
10. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
11. The Director, Land Revenue & Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
12. The Assistant Settlement Officer -II, Land & Revenue Settlement Department, Kolasib District, Kolasib through Mr. R. Lalremruata, AGA
13. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
14. Case record

PESKAR