

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

RFA NO. 15 OF 2007

Appellant:

Mr. Sawmliana
S/o Suakkhuma
I.O.C Veng, Vairengte
Kolasib District- Mizoram

By Advocates

: 1. Mr. R.C. Thanga
2. Smt. Lalthanmawii

Versus

Respondent:

Mr. B.A. Thanga
S/o Zadailova (L)
Vairengte Venglai
Kolasib District- Mizoram

By Advocate's

: Mr. R. Lalawmpuia

Date of hearing : 09-07-2012

Date of Judgment & Order : 09-07-2012

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, Subordinate District Council Court, Aizawl dt. 22.05.2007 in Civil Suit No. 04 of 2002. Wherein, the learned SDCC directed that the defendants/appellant shall be evicted from the suit land covered by Periodic Patta No. 3 of 2000 but no compensation was awarded in favour of the plaintiff/respondent in respect of the occupation of the suit land by the defendants.

Learned counsels of both parties appeared and the admitted facts which is also elicited by materials on record is that the appellant/defendants occupied the suit land without any pass/permit from the competent authority before issuance of Periodic Patta No. 3 of 2000 to the plaintiff/respondent till date.

Meanwhile, Mr. R.C. Thanga, learned counsel for the appellant contended that the suit area was within the town area of Vairengte where Periodic Patta for agricultural land cannot be issued. More so, in the original suit, without impleadment of Revenue Department, there was finality which is bad for non-joinder of necessary parties.

FINDINGS AND REASONS

In the learned trial court, the following issues were framed namely-

- (1) Whether the suit is barred by law of limitation
- (2) Whether there is any cause of action for the suit
- (3) Whether the suit is bad for non-joinder of necessary parties
- (4) Whether the suit is under valued for the purpose of court fee
- (5) Whether the plaintiff is entitled to the relief? If so, to what extent
- (6) Whether the defendants have the legal right to stay within the land covered by Periodic Patta No. 3 of 2000
- (7) Whether the reduction of land alleged by the defendants is true or not
- (8) Whether the defendants actually damaged the fruit bearing plants
- (9) Whether the plaintiff is entitled to compensation

In respect of issues 1-4, without appreciation of evidences, the trial court maintained the suit.

With regards to issue no. 5, the trial court found that the plaintiff is entitled to continue planting of fruit bearing trees on the sui land as the issues 1, 2 and 3 were decided in favour of the plaintiff.

With regards to issue no. 6, the learned trial court simply adjudicated that as the defendants have no any kind of passes over to the suit land, it was decided in favour of the plaintiff.

In respect of issue no. 7, the trial court found that as there was no evidence at all about reduction of the land covered by the Periodic Patta of the plaintiff, it was decided in favour of the plaintiff by accepting the area of the Periodic Patta No. 3 of 2000 of the plaintiff is 15 ½ bighas.

With regards to issue no. 8, as no acceptable evidence was adduced by the plaintiff, no compensation can be granted about damaged of the planted trees of the plaintiff.

The learned trial court therefore opined under issue no. 9 to direct that the defendants/appellant shall be evicted from the suit land covered by Periodic Patta No. 3 of 2000

On perusal of the case record of the learned trial court, there were 20 defendants who are undisputedly occupied the suit land covered by Periodic Patta No. 3 of 2000 belonging to the plaintiff till date.

In the trial court, the plaintiff had produced three witnesses namely (i) Mr. B.A. Thanga (Hereinafter referred to as PW-1) (ii) Mr. F. Larithanga (Hereinafter referred to as PW-2) and (iii) Mr. L.C. Kima (Hereinafter referred to as PW-1). The PW-1 exhibited the following documents-

Ext. P-1 is plaint

Ext. P-1 (a) is his signature

Ext. P-2 is a copy of his Periodic Patta No. 3 of 2000

Ext. P-3 (a)- (d) are a copies of tax payment receipt

Ext. P- 4 is the Garden Permit issued by Village Council, Vairengte

Ext. P-5 is the application forwarded to the Government for Periodic Patta

Ext. P-6 is the Public Notice issued by the Village Council, Vairengte

Ext. P-7 is the recommendation for his Periodic Patta by the Village Council, Vairengte

Ext. P-8 is a copy of forward letter of Administrative Officer to ASO-I, Aizawl

Ext. P-9 is the application forwarded to Hon'ble Minister i/c Land Revenue

Ext. P-10 is the letter forwarded by ASO-II, Kolasib to Director, Land Revenue and Settlement Department

Ext. P-11 is verification report of the suit land

Ext. P-12 is approval letter of the Govt. of Mizoram for garden pass

Ext. P-13 is a letter of the plaintiff for evicting the defendants

Ext. P-14 is a complaint submitted to the Deputy Commissioner, Kolasib

Ext. P-15 is the order of EAC, Kolasib for detailing the A.O for spot verification

Ext. P-16 is the letter submitted to the EAC, Kolasib

Ext. P-17 is the letter submitted to the SDO (C), Vairengte

All the PWs corroboratively deposed that the defendants occupied the suit land covered by Periodic Patta No. 3 of 2000 during 2000 without any passes or permits at all although objected by the plaintiff. Before obtaining Periodic Patta No. 3 of 2000 by the plaintiff, the Village Council, Vairengte allotted the suit land to the plaintiff for agricultural purpose.

The defendants had produced only one witness namely- Mr. Zochhanliana, he deposed that during 1992 and 1998, the defendants occupied the suit land, the area covered by Periodic Patta No. 3 of 2000 was reduced to 13 bighas from 15 ½ bighas, their occupied area was therefore beyond the area covered by Periodic Patta No. 3 of 2000. Although measurement was already taken by the Revenue Department for issuance of passes to the defendants, it was not yet made. The Government did not also object their dwelling in the suit by rather provided power supply, drinking water etc. they also paid house taxes to the government regularly. He further exhibited that-

Ext. D-1 is a reply submitted by defendants to the court

Ext. D-2 to D-12 are tax payment receipt

Ext. D-13 is certificate issued by Vice President, Village Council, Vairengte to the effect that the occupied area of the defendants are outside the area of the plaintiff

Ext. D-14 is 14 is certificate issued by the President, Village Council, Vairengte to the effect that the occupied area of the defendants are outside the area of the plaintiff

Ext. D-15 is his petition to the court

Ext. D- 15 (a) is his signature

Ext. D-16 is his written statement

Ext. D-16 (a) and (b) are his signatures

Ext. D-17 are house tax payments receipt

Ext. D-18 is letter of authority to represent the defendants

Ext. D-19 is Vakalatnama

Ext. D-20 is his petition to the court.

So is the oral and documentary evidence, the grounds of Mr. R.C. Thanga stating that the area covered by Periodic Patta No. 3 of 2000 was reduced to 13 bighas from 15 ½ bighas is not proof by the defendants whilst burden of proof lies on them by eschewed on documentary evidence on it whilst, Ext. P-2 viz. Periodic Patta No. 3 of 2000 is not disputed which embodied that the area covered by the said Periodic Patta No. 3 of 2000 is 15 ½ bighas.

On facts, as admitted that the appellant/defendants occupied the suit land without any pass/permit from the competent authority before issuance of Periodic Patta No. 3 of 2000 to the plaintiff/respondent till date.

However, instead of challenging non-joinder of necessary parties in the lis, it will be rather appropriated to raise as issue the subject matter jurisdiction of the court under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 for impleadment of non-tribal like the State of Mizoram as party which the defendants failed to do so in the proceedings in the trial court.

Thus, I have no grounds to interfere in the impugned judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 22.05.2007 in Civil Suit No. 04 of 2002 as the defendants/appellants are merely the trespasser. Pertinently, payment of house tax does not confer any rights and title on lands as it was admittedly imposed for all the occupier of their respective houses in the terrain. Moreover, whether the urban/town area or not, it is the competency of the Revenue Department to make allotment as per their statutory laws whilst counter claim was not prefer by the defendants in the original lis to challenge the validity of Periodic Patta No. 3 of 2000 towards cancellation or null and void. It simply means that it is beyond pleadings to travel on the validity for issuance of Periodic Patta No. 3 of 2000 and its legal entity.

ORDER

In view of the above ins and outs of the case, the instant appeal due no basis and no locus standi for meritorious is hereby dismissed but no order as to costs.

The case record of learned trial court be returned to the aegis of learned Civil Judge-I, Aizawl District.

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 9th 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. RFA/15/2007, Sr. CJ (A)/ Dated Aizawl, the 9th July, 2012

Copy to:

1. Mr. Sawmliana S/o Suakkhuma, I.O.C Veng, Vairengte, Kolasib District- Mizoram through Mr. R.C. Thanga, Adv.
2. Mr. B.A. Thanga S/o Zadailova (L), Vairengte Venglai, Kolasib District- Mizoram through Mr. R. Lalawmpuia, Adv.
3. Pesker to Civil Judge-I, Aizawl District, Aizawl
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Case record.

PESKAR