

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

CIVIL SUIT NO. 04 OF 2000

Plaintiff:

Shri Thanthuama, Ex-Subedar (L)
C/o Smt. Malsawmi, Chhing Veng, A/43,
Aizawl, Mizoram.

Represented by:

Mr. Jerry Lallungmuana
S/o Sub-Thanthuama (L)
Chhing Veng, Aizawl

By Advocates

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

Versus

Defendants:

1. Smt. Lalthanpari
W/o R. Lalthianghlina (L)
Venglai, Kolasib & Others
2. Shri Israela
S/o R. Lalthianghlina (L)
Venglai, Kolasib
3. Shri Lalhminga
C/o Lalhmingliana Fanai,

Excise Inspector,
D.C Court, Kolasib

4. Shri Nunsangliana
S/o Thanzama,
R/o Zamuang,
Mamit District, Mizoram
5. The State of Mizoram,
Through the Chief Secretary to the Govt. of Mizoram,
Aizawl
6. The Secretary to the Govt. of Mizoram,
Land Revenue and Settlement Department,
Govt. of Mizoram, Aizawl
7. The Director,
Land Revenue and Settlement Department,
Govt. of Mizoram, Aizawl
8. The Deputy Commissioner, I/C. Revenue,
Aizawl District, Aizawl.
9. The Deputy Commissioner, I/C. Revenue,
Aizawl North District, Aizawl.

By Advocates

:

For the defendants no. 1-2	: Mr. M Zothankhuma, Sr. Adv.
For the defendants no. 3-4	: 1. Mr. C. Lalramzauva, Sr. Adv. 2. Mr. A. Rinliana Malhotra, Adv.
For the defendants no. 5-9	: 1. Mr. R. Lalremruata, AGA 2. Miss Bobita Lalhmingmawii, AGA
Date of Arguments	: 01-06-2012
Date of Judgment & Order	: 07-06-2012

BEFORE

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

JUDGEMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiff in his plaint submitted that he was allotted a plot of land in his name under House Pass No. 182 of 1955 dt. 9.11.1955 located at Kolasib by the then Mizo District Council. Being an army living in different places in the country, he left the said House Pass to his younger brother Lalhluta of Kolasib. In the year 1979, Lalthianghlina S/o Lalhluta sold the said House Pass without his knowledge and consent to Pu Rothanga for a sum of Rs. 2500/-. On being informed about this, the plaintiff immediately redeemed the said land from Pu Rothanga by paying him @ Rs 2500/-. After plaintiff retired from the Army Service, he was employed by the NEEPCO and posted at Umrangso. Due to his job with NEEPCO, he could not come to Mizoram to stay in the land allotted to the plaintiff. In this connection the plaintiff stated that has no other land in Mizoram except the one allotted to him by the Defunct Mizo District Council vide House Pass no.182 of 1955. The plaintiff further submitted that as the plaintiff had redeemed the land covered under the said Pass no.182 of 1955 from Shri Rothanga of Kolasib, he was under the impression that nobody is there to claim the said land which the plaintiff had bought back from Mr. Rothanga. In fact Mr. Rothanga had dismantled the house constructed by him within the said land handed over the pass to the plaintiff. Eventhough the plaintiff redeemed the land from Mr. Rothanga, the defendant no.2 told the plaintiff that he had purchased the said land from Mr. Rothanga. To the plaintiff's utter surprise, he found the defendant no.3 constructing a building within the said land covered under House Pass no.182 of 1955, immediately the plaintiff approached him and told him that the land belongs to the plaintiff and no body has any right to interfere and do anything within the said land. At the request of the plaintiff, the defendant no.3 stopped constructing any structure within the said land and also stopped looking after the said land.

He told the plaintiff that he had purchased the said land from the defendant no.2. In fact the defendant no.2 has no right to sell the said land to any body without the authority of the plaintiff. While the plaintiff was intending to construct his own house within the said land, without the plaintiff's knowledge and consent started construction of a building within the said land. The plaintiff approached him and told him not to make any construction within the said land. Further, the plaintiff had submitted a letter to the Director, Land Revenue & Settlement, Govt. of Mizoram, on 26.2.1999 informing him about the illegal transfer of the said land in the name of the defendant no.1 without the plaintiff's consent and permission and for staying the construction of the building within the said land. Accordingly the Asstt. Settlement Officer – II, Land Revenue & Settlement, Kolasib had issued a stay order vide Letter no.L.11013/1/98-DC (K)/28: Dated Kolasib, the 26th Feb., 1999. But without giving any heed order of the ASO-II and the request made by the plaintiff, the defendant no.1 had completed construction of a house within the land of the plaintiff. After the stay order was issued by the ASO-II, Kolasib, the defendant no.2 had stated before the ASO-II, Kolasib that he has got a pass covered by LSC No. 61 of 1985 over the land in which the defendant no.1 had made the building ie.over the land covered under House Pass no. 182 of 1955. In pursuance of the statement made by the defendant no.2 before the revenue department, the ASO-II, Kolasib directed Pu Lalbiakzama, Surveyor to conduct verification and to find out as to whether the land covered under LSC No.61 of 1985 overlaps with the land covered under the land covered under the House Pass no. 182 of 1955. The plaintiff and the defendant no.2 were requested to be present during the verification on 29.4.99 at 10 AM. The plaintiff explained the facts to the Surveyor. After the verification was conducted by the revenue department, the Revenue department has not made any order over the said illegal claim made by the defendant no.2 over the land of the plaintiff and the Revenue department has not prevented the defendant no.1 from completing the construction of the building within the said land belonging to the plaintiff. The Revenue Department in the letter no.L.11013/1/98-DC (K)/ 43 dated the 19th April 99 had clearly mentioned that the land in which the defendant no. 1 had constructed the house belonged to the plaintiff. How another Pass was issued in favour of the defendant no - 2 was not known to the plaintiff. Even if any pass is issued over the land of the plaintiff, the said pass is null and void. The revenue department has not taken any steps to cancel the said illegal pass/LSC

issued in favour of the defendant no.2 over the land of the plaintiff. the plaintiff therefore prays that (1) Let a decree be passed declaring that the defendant no.1 one had illegally transferred the land covered under House Pass no.182 of 1955 in his name without any authority from the plaintiff. Further, let it be declared that as per the land laws in Mizoram, the land covered under the House pass cannot be transferred in the name of other person including the defendant no.1. (2) Let a decree be passed declaring that the defendant no.1 has no right to construct any building within the land of the plaintiff covered under House pass No.182 of 1955. Let a decree be passed declaring that the land and appurtenant thereto belongs to the plaintiff. (3) Let a decree be passed declaring that the Pass/LSC issued in favour of the defendant no.2 over the land covered under House pass no.182 of 1955 is null and void. (4) Let a decree be passed declaring that the plaintiff has the right have peaceful possession of the land covered under House Pass no.182 of 1955 without interruption from the defendants or any body else. (5) Let permanent injunction and other relief be decreed in favour of the plaintiff against the defendants and (6) Let any other relief to which the plaintiff is entitled be decreed in favour of the plaintiff.

The defendant nos. 1 and 2 in their written statement contended that the suit is barred by law of limitation, the plaintiff did not have a land in Mizoram under House Pass No. 182 of 1955. The husband of defendant no.1 has a plot of land at Diphu, Assam, as approached to him by the plaintiff, his plot of land at Diphu and House Pass No. 182 of 1955 was exchanged but not put in a written form. The husband of the defendant no. 1 again sold the said land to Mr. Rothanga (L), Kolasib @ Rs. 2500/- but denied that the plaintiff redeemed the said land from Mr. Rothanga (L). When the plaintiff went to the house of Mr. Rothanga, he asked to see House Pass No. 182 of 1955, as soon as handling the same, the plaintiff snatched it and fled away and tried to locate the plaintiff. The husband of the defendant no. 1 fairly paid back a sum of Rs. 2500/- + Rs. 500/- (Cost of construction) to the said Mr. Rothanga (L). Mr. Rothanga also stopped his construction work. The said House Pass No. 182 of 1955 was duly transferred in the name of Mr. R. Lalthianghlina (L) with the full consent and knowledge of the plaintiff which is evident by belated representation of the plaintiff Dt. 13/4/1992 when he came back to Mizoram in 1979. It is beyond their knowledge how LSC No. KLB 61 of 1985 was issued without

cancellation of the previous House Pass No. 182 of 1955 by merely superseding the previous Pass.

The defendants 3 and 4 in their joint written statements contended that the husband of the defendant no. 1 Mr. Lalthianghlma and the plaintiff were living at Diphu, Assam since the regime of insurgency in Mizoram in 1966. The said Mr. Lalthianghlma was the nephew of the plaintiff and both of them have landed at Diphu. When the said Mr. Lalthianghlma returned back to Mizoram, they exchanged his land at Diphu and the land of the plaintiff at Kolasib under House Pass No. 182 of 1955. The husband of the defendant no. 1 again sold the said land to Mr. Rothanga (L), Kolasib @ Rs. 2500/- but denied that the plaintiff redeemed the said land from Mr. Rothanga (L). When the plaintiff went to the house of Mr. Rothanga, he asked to see House Pass No. 182 of 1955, as soon as handling the same, the plaintiff snatched it and fled away and tried to locate the plaintiff. House Pass No. 182 of 1955 was also duly mutated in the name of the said Mr. Lalthianghlma. The said land was again sold to Mr. Lalhminga by the said Mr. Rothanga (L) and thereby issued LSC No. KLB 61 of 1985. It was again sold by Mr. Lalhminga to the defendant no. 4 in 1991 @ Rs. 45,000/-. Due to threatening of the labourers of the defendant no. 4 for his construction by the plaintiff and his relatives, the defendant no. 4 also stopped construction of his house building. Although preferred a complaint to the SDO (S), Kolasib by the defendant no. 3, it remain non-est. It is also denied that the plaintiff redeemed the said land from Mr. Rothanga. The defendant no. 4 by making counter claim thereby prayed that (i) a decree directing the plaintiff to pay a sum of Rs. 1.45 lakhs with pendent lite interest @ 12% per annum (ii) cost of the suit which may be quantified by the court (iii) any other relief which this court deems fit and proper.

The defendants 5-9 in their joint written statements stated that the plaintiff have no cause of action and the suit is not properly valued for the purpose of court fees and pecuniary jurisdiction. The suit is also barred by limitation, doctrine of estoppels and acquiescence. They further stated that House Pass No. 182/55 is originally allotted/granted to Mr. Thanthuama, Kolasib on 3.9.1955, it was again transferred to Mr. Rothanga on 6.2.1965 and again re-transferred to Mr. Lalthianghlma on 5.10.1972 which is subsequently transferred to Mr. Lalhminga Borai on 6.7.1981. As per section 5 of the Mizo District (Land & Revenue) Act, 1956, the pass holder

has no right of transfer or of inheritance or of sub-letting. As such, transfer of ownership of the said pass is against existing land laws. Conversion of House Pass No. 182/55 into LSC in favour of Mr. Lalthianghlma is not in order. Thus, some procedural lapse was found.

ISSUES

The following issues were framed on 5.8.2002 and amended towards correctly adjudication of the lis as follows-

1. Whether the suit is maintainable in its present form and style
2. Whether the suit is barred by law of limitation or not
3. Whether the transfer of the House Pass No. 182/55 from the name of the plaintiff to the other was within the knowledge of the plaintiff or not.
4. Whether the transfer of House Pass No. 182/55 in the name of Pu Rothanga then to Pu Lalthianghlma and to Pu Lalhminga are valid or not.
5. Whether the issuance of LSC No. KLB 61 of 1985 in the name of Mr. Lalhminga was legally valid or not.
6. Whether the defendants 1 to 4 have any right over the suit land or not.
7. Whether the counter claim petition filed by the defendant no. 4 is maintainable or not
8. Whether the plaintiff is entitled to reliefs claimed. If so, to what extent.
9. Whether the defendant no. 4 is entitled to a relief sought in his counter claim or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Shri Thanthuama, Ex-Subedar, Chhing Veng, A - 43, Aizawl (Hereinafter referred to as PW-1)
2. Shri K. Saibela, S/o Thangkhuma (L), Republic Veng Aizawl (Hereinafter referred to as PW-2)

3. Shri Rokhuma, S/o Kapthangvunga, Mission Vengthlang, Aizawl. (Hereinafter referred to as PW-3)
4. Smt. Lalbiakthangi, D/o Rangsula, Kolasib. (Hereinafter referred to as PW-4)

The **PW-1** in his examination in chief reiterated and affirmed the contents of the plaint being the plaintiff himself. He further continued that-

Ext. P-1 is the House Pass No. 182 of 1955 issued by District Council, Aizawl District

Ext. P-2 is the letter submitted by him and Ext. P-2(a) & (b) are his true signatures

Ext. P-3 is a copy of the Stay Order (objected by all the defendants) dt. 26.2.1999

Ext. P-4 is a letter issued by ASO-II Kolasib on the subject-Verification on land dispute.

Ext. P-5 is the House Tax Paying Certificate.

Ext. P-6 is the copy of the Notice U/s 80 CPC with acknowledgement.

During cross examination, he stated that he did not exchange the said land House Pass No. 182 of 1955 with Lalthianghlma's land in Diphu. He admitted that he had a land in Diphu in 1967. He denied that he had taken the House Pass No. 182 of 1955 from Pu Rothanga by deceiving him and fled away with the same. He came back to Mizoram in 1995. He denied that his land under House Pass No. 182 of 1995 was exchanged as alleged. He denied that his name was cancelled in the House Pass No. 182 of 1955 and fresh allotment given to Mr. Lalthianghlma with his consent and permission.

The **PW-2** stated in his examination in chief that he was working as Missionary in Union Christian English School at Diphu, Karbi Anglong, Assam as Principal from January 1968 till 1977 and that the family of the plaintiff had come within this period along with Lalthianghlma. He stated that he knew the fact that the plaintiff was having a landed property with a house standing therein at Diphu and that he knew the fact that the said Lalthianghlma was not having any landed property in Diphu.

During cross examination, he deposed that the plaintiff did not divide his land property located at Diphu at any time and whether Lalthianghlma

had any property in Diphu or the present suit land at Kolasib. The plaintiff had good relationship with Mr. John Terran, an important official at the Mikil Hills District Council and later gifted a portion of his land to the plaintiff. He further stated the possibility of the existence of an understanding between Lalthianghlma and the plaintiff in respect of the portion of the land. However, he has no knowledge as to whether an agreement between the plaintiff and the said nephew Lalthianghlma did exist.

In his re-examination, he further deposed that in his knowledge, Mr. Lalthianghlma did not have any land at Diphu. Mr. Lalthianghlma came to Diphu along with the plaintiff in June, 1968 and left Diphu by Mr. Lalthianghlma in December, 1969.

The **PW-3** stated in his examination in chief that he was working as a missionary in Diphu, Karbi Anglong, Assam from 1968 – 1981 which is during the stay of the family of the plaintiff. He had known the plaintiff from that time and that he was having a landed property with a house standing therein built by him in Diphu and one Lalthianghlma, son of the elder brother of the plaintiff came along with the family. The landed property of the plaintiff could be ascertained from the L.S.C of the then District Council of Mikir Hills, Diphu, Assam.

During cross examination, PW-3 stated that he has no knowledge of the suit land at Kolasib. He did not know the LSC No. of the land of the plaintiff at Diphu also its area.

In his re-examination, he deposed that so far as his knowledge concerned, the plaintiff is having a landed property at Diphu and two house buildings adjacent to each other were stood in the said land. Both house buildings were belonging to the plaintiff.

The **PW-4** in her examination in chief stated that she knows the fact that PW-1 is having a plot of land located at Kolasib Venglai and that the contents of the plaint were true to her knowledge. One day Mr. Rotlaia (L) who is the father of the plaintiff told her parent that the land of the plaintiff located at Kolasib Venglai was lost. Thereafter, the said land was excavated by some person and when the matter was enquired by Mr. Lalhluta (L), the younger brother of the plaintiff, he was told by Smt. Zakhumi that it was

excavated by Mr. Rothanga. The said Mr. Rothanga claimed that it was purchased by him from Mr. Lalthianghlina @ Rs. 2500/-. After informing the matter to the plaintiff, the plaintiff redeemed the said land by returning Rs. 2500/- to the said Mr. Rothanga in the residence of Mr. Lalhlua and she herself with her deceased father was also present at that time. Thereafter, as hearing that the land was excavated by some persons, as enquired, Mr. Lalhluta was informed that the land was purchased by Mr. Lalhminglana from Mr. Lalthianghlina. The land was again purchased by Mr. Nunsanglana from Mr. Lalhminglana. Thus, excavation was done as instructed by the said Mr. Nunsanglana. Mr. Lalthianghlina thereby constructed a house within the suit land and reported the matter to the Revenue Authorities. By violation of the stay order, Mr. Lalthianghlina completed his house building construction and occupied by some persons till date.

During cross examination, **PW-4** stated that she denied that Pu Lalthianghlina (L) completed his construction before the stay order was issued and that she is not concealing information due to her close family relationship with the plaintiff and that she is not deposing falsely.

For the defendant no. 4:

The defendant no. 4 had produced two witnesses namely-

1. Mr. Nunsanglana S/o Thanzama, Zamuang, Mamit District, Mizoram (Hereinafter referred to as DW-1 for deft. No. 4)
2. Smt. Lalthanpari W/o R. Lalthianghlina (L), Venglai- Kolasib (Hereinafter referred to as DW-2 for deft. No. 4)

The **DW-1 for deft. No. 4** in his examination in chief mainly affirmed the averments and submissions in their written statements as defendant no. 4. He further deposed that-

Ext. D-1 is a copy of LSC No. KLB 61 of 1985

Ext. D-2 is the boundary description of LSC No. KLB 61 of 1985

Ext. D-3 is No Objection Certificate in LSC No. KLB 61 of 1985

Ext. D-4 is Non-Encumbrance Certificate in LSC No. KLB 61 of 1985

Ext. D-5 is the Certificate of Land Valuation in LSC No. KLB 61 of 1985

Ext. D-6 is the Sketch Map of LSC No. KLB 61 of 1985

Ext. D-7 are copies of tax payment receipt in LSC No. KLB 61 of 1985

Ext. D-8 is the copy of "Inhmun Inleina"

Ext. D-8 (a) is the true signature of Mr. Lalhminga deft. No. 3 (But objected by learned counsel for the plaintiff.)

He also further deposed that he had purchased the suit land from Mr. Lalhminga when the land was put under LSC No. KLB 61 of 1985 but he has not yet mutated in his name.

In his cross examination, he deposed that before he bought the suit land from Mr. Lalhminga, he did not know Mr. Lalthianghlina, Smt. Lalthanpari and Mr. Israela. He did not know the rights, title of the deceased Mr. Lalthianghlina, other family members regards to the suit land. He denied that conversion of House Pass into LSC No. KLB 61 of 1985 in the name of Mr. Lalhminga was illegal. He admitted that he failed to pay court fees in his counter claim.

The **DW-2 for deft. No. 4** in his examination in chief mainly affirmed the averments and submissions in their written statements as defendant no. 1.

In her cross examination, she deposed that Mr. Thanthuama is the elder brother of her father in law. Her husband Mr. Lalthianghlina died in 1999. He admitted as a fact that the House Pass was issued in the name of the plaintiff. She denied that the plaintiff redeemed the suit land from Mr. Rothanga. She admitted as a fact that the plaintiff never put his signature in the transfer application of the suit land.

For the defendants 5-8:

The defendant nos 5-8 had produced only one witness Mr. R.L Rindika, Superintendent, LR & S Department, Aizawl, Mizoram (Hereinafter referred to as State Witness). In his examination in chief, he stated that it is an admitted fact from a copy of the House Pass No. 182/55 that the said pass was originally granted to Thanthuama of Kolasib on 3.9.55. Thereafter,

the ownership of the said pass was transferred to Rothanga on 6.2.1965 and again transferred to Lalthianghlma on 5.10.1972 which was subsequently transferred to Lalhminga Borai on 6.7.1981. As per section 5 of the Mizo District (Land & Revenue) Act, 1956, the pass holder has no right to transfer or of inheritance or of sub-let-ting. As such, transfer of ownership of pass is against the state land laws being in force. He further stated that transfer of ownership of House Pass has been restricted and conversion of House Pass No. 182/55 into LSC in favour of Lalthianghlma is not in order. If the House Pass is converted into Lsc first in the name of Thanthuama, ownership can be transferred to others subject to production of sale deeds or heirship certificate or gift document.

During cross examination, DW-1 stated that Ext. P-1 is the House Pass issued in favour of Thanthuama and as per the practice of their Dept., the transfer of the said pass from the name of Thanthuama to Lalthianghlma was illegal. It is also a fact that transfer of Ext. P-1 in the name of Lalthianghlma by the Revenue Officer, Revenue Dept. was illegal and that the said House Pass cannot be issued in anyone else's name other than the plaintiff. Ext.D-1 which is the LSC issued in the name of Lalhminga by superceeding the Original House Pass No.182 of 1955 and the said LSC is illegal. It should have been issued in the name of Thanthuama first and if permitted by him it could be transferred to other name. As per the record maintained in Revenue Department, Mr. Thanthuama never allowed the transfer of House Pass No.182 of 1955 to anybody's name including Mr. Lalthianghlma or any other person.

TERMS OF ARGUMENTS

Mr. W. Sam Joseph, learned counsel for the plaintiff after appreciating the minutes of oral evidences adduced in the proceedings submitted that the cause of action is continuous and more over the main issue in the present suit is the transfer of the suit land from the name of the plaintiff to others and from the evidence adduced by the defendant nos. 5 to 8 it is clear that the transfer of the said Pass and making the LSC in the name of the defendants are all illegal. Hence the plaintiff is entitled to the reliefs claimed in the plaint.

On the other hand, learned counsel for the defendants 3 and 4 after narrating factual matrix had taken reliance in the judgment & order of

Hon'ble Gauhati High Court, Aizawl Bench in **Smt. Thanmawii Vs. Smt. Lalchhuangi & Ors.** in connection with RSA No. 5/2010 Dt. 01-12-2011. Wherein, the Hon'ble Gauhati High Court by virtue of Article 59 of the Limitation Act, 1963 precluded the suit in respect of LSC No. 124/1972 which was transferred on 14.10.1993 although the plaintiff claimed that she aware of such transfer on 22.06.1999.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

A requisite court fees at Rs. 5000/- is paid by the plaintiff in his plaint. Meanwhile, simple verification without paragraph wise is made by the plaintiff without supported by affidavit. In this lacunae, the provisions of sub- rule (4) of rule 15 under Order VI of the CPC was made effective after institution of the instant suit viz. with effect from 1-7-2002 by Act No. 46 of 1999. Moreover, prior legal notice is also served to the state defendants by the plaintiff. This issue is therefore decided in favour of the plaintiff whilst the suit is filed during 2000.

Issue No. 2

Whether the suit is barred by law of limitation or not

No doubt, the law of limitation like in the instant case where the state are put as parties is applicable in the state of Mizoram as held by the Hon'ble Gauhati High Court in **Lalchawimawia & Ors. Vs. State of Mizoram** decided on 5-5-1999 in connection with WP (C) No. 4 of 1996 reported in 1999 (3) GLR 100 and the later case in **L. Biakchhunga vs State Of Mizoram And Ors.** decided on 1/8/2005 and reported in (2006) 2 GLR 610.

The plaintiff as PW-1 in his cross examination deposed that he came back to Mizoram in 1995. Meanwhile, LSC No. KLB 61 of 1985 was issued on 7th May, 1985. However, as per Ext. P- 1 viz a copy of House Pass No. 182/55, it was issued under memo No. 2951-55/P-1, Dated Aizawl, the 9th Nov., 1955. No doubt evidences of parties clearly depicted as also preferred a complaint by the plaintiff to the Revenue Authorities, the plaintiff must

aware of the issuance of the said LSC No. KLB 61 of 1985. Ground for condonation of limitation is un-explained although raised the said point by defendants 5-9 in their preliminary objection including the defendants 1 and 2, the observations in **Ram Prakash Gupta Vs. Rajiv Kumar Gupta & Ors** in connection with Appeal (civil) 4626 of 2007 decided on 03/10/2007 reported in 2007 (10) SCR 520, 2007 (10) SCC 59, 2007 (11) SCALE 549, 2007 (11) JT 472 is relevant in this context, the Supreme Court has held that-

“17) For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the Court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the Court to verify the entire plaint.

However, paragraph no. 14 of the plaint contains that the cause of action had arisen when the husband of the defendant no. 1 illegally had transferred the pass in his name and constructed a house in Feb., 1999 and also when LSC No. 61 of 1985 was issued in favour of defendant no. 3 by the Revenue Department and it continued till all the transfers are cancelled and vacant possession is given to the plaintiff.

For this purpose, Article 59 of the Limitation Act, 1963 is relevant viz. To cancel or set aside an instrument or decree or for the rescission of a contract and the period scheduled is three years and which should begin to run from when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him. In this catena, Ext. P-6 elicited that legal notice was served to the state defendants on 29/3/2000. The observations of Hon'ble Gauhati High Court, Aizawl Bench in **Smt. Thanmawii Vs. Smt. Lalchhuangi & Ors.** in connection with RSA No. 5/2010 Dt. 01-12-2011 is therefore attracted in the instant case.

By understanding the very purpose and entity of Law of Limitation, reliance may be taken as held in **Vareed Jacob vs Sosamma Geevarghese & Ors** decided on 21 April, 2004 in connection with Appeal (civil) 2634 of

2004 and reported in 2004 AIR 3992, 2004 (1) Suppl. SCR 534, 2004 (6) SCC 378, 2004 (5) SCALE 102, 2004 (2) Suppl. JT 165, the Supreme Court has observed that-

“A suit or a proceeding which is barred by limitation would oust the jurisdiction of the court to entertain the same. When a proceeding is barred by limitation, it culminates in a right to the non-suit.”

And in **Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors.** in connection with Appeal (civil) 2815 of 2008 decided on 16/04/2008 reported in 2008 (6) SCR 653, 2008 (6) SCALE 403, 2008 (4) JT 652, the Supreme Court has held that-

“17. It is well settled that Section 3(1) of the Limitation Act casts a duty upon the court to dismiss a suit or an appeal or an application, if made after the prescribed period, although, limitation is not set up as a defence.”

Clearly spelt out in the case of **Mr. Krishna Gopal Kakani Vs. Bank of Baroda** in connection with Civil Appeal No. 8448 of 2001 and reported in 2008 (13) SCALE 160, 2008 (11) JT 62, the Supreme Court observed that-

“12. A reading of this provision reveals that the time of three years would start running from the date when the right to sue accrues.”

Also in **Ramlal and others v. Rewa Coalfields Ltd.** reported in AIR 1962 SC 361, the Supreme Court held as under:

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right.”

In the instant case, the main relief sought by the plaintiff is to cancel LSC No. KLB 61 of 1985 which was issued on 7th May, 1985 and its connected previous actions pertaining to House Pass No. 182 of 1955. Thus, a period of three years is cogently lapse when the right to sue accrues as

held in **Mr. Krishna Gopal Kakani Vs. Bank of Baroda (supra.)**. So is the case, as held in **Vareed Jacob vs Sosamma Geevarghese & Ors (supra.)**, the jurisdiction of this court is also ousted to entertain the instant suit. By virtue of the observations in **Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors.** (supra.), the suit is liable to dismiss due to barred by law of limitation as also held by Hon'ble Gauhati High Court, Aizawl Bench in **Smt. Thanmawii Vs. Smt. Lalchhuangi & Ors.** in connection with RSA No. 5/2010 Dt. 01-12-2011. Allegation of the learned counsel for the defendants 3 and 4 in their written arguments also therefore credible that the plaintiff failed to institute the suit during the lifetime of Mr. Lalthianghlima with whom alleged as he had made a verbal agreement and whose landed property at Diphu had alleged taken over in exchange of the suit land.

In more detail, Hon'ble Gauhati High Court, Aizawl Bench in **Smt. Thanmawii Vs. Smt. Lalchhuangi & Ors.** in connection with RSA No. 5/2010 Dt. 01-12-2011 by virtue of Article 59 of the Limitation Act, 1963 precluded the suit in respect of LSC No. 124/1972 which was transferred on 14.10.1993 although the plaintiff claimed that she aware of such transfer on 22.06.1999 by not accepting the plea of the plaintiff and thereby leading set aside of the previous two judgment & orders.

Issue No. 3

Whether the transfer of the House Pass No. 182/55 from the name of the plaintiff to the other was within the knowledge of the plaintiff or not.

As the suit is barred by law of limitation, the instant suit is not deserved to dispose on merit.

Issue No. 4

Whether the transfer of House Pass No. 182/55 in the name of Pu Rothanga then to Pu Lalthianghlima and to Pu Lalhminga are valid or not.

Although the suit is barred by law of limitation and is not deserved to dispose on merit, reliance may be taken as held in **ITC Limited vs State Of U.P. & Ors.** decided on 5 July, 2011 in connection with Civil Appeal No.4561 of 2008, the Hon'ble Supreme Court has held that-

“63. The position is however different in public law. Breach of statutory provisions, procedural irregularities, arbitrariness and mala fides on the part of the Authority (transferor) will furnish grounds to cancel or annul the transfer. But before a completed transfer is interfered on the ground of violation of the regulations, it will be necessary to consider two questions. The first question is whether the transferee had any role to play (fraud, misrepresentation, undue influence etc.) in such violation of the regulations, in which event cancellation of the transfer is inevitable.

63.1) If the transferee had acted bona fide and was blameless, it may be possible to save the transfer but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations: (i) If public interest has neither suffered, nor likely to suffer, on account of the violation, then the transfer may be allowed to stand as then the violation will be a mere technical procedural irregularity without adverse effects. (ii) On the other hand, if the violation of the regulations leaves or likely to leave an everlasting adverse effect or impact on public interest (as for example when it results in environmental degradation or results in a loss which is not reimbursable), public interest should prevail and the transfer should be rescinded or cancelled. (iii) But where the consequence of the violation is merely a short-recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the short-fall in consideration.

....63.3) If the concluded transfer cannot be saved and has to be cancelled, the innocent and blameless transferee should be reimbursed all the payments made by him and all expenditure incurred by him in regard to the transfer with appropriate interest. If some other relief can be granted on grounds of equity without harming public interest and public exchequer, grant of such equitable relief should also be considered.”

So is the legal principles and whilst the House Pass No. 182 of 1955 appears issued under the Lushai Hills District (House Site) Act, 1953, what is the relevancy of the provisions of S. 5 of the Mizo District (Land and Revenue) Act, 1963 is also the moot point. Clause (11) section 2 of the Mizo District (Land and Revenue) Act, 1963 reads thus-

“Pass Holder means a person who has the temporary right of use and occupancy over a specified plot of land for a specified period under such terms as the Government may prescribe in the pass he holds”.

Section 5 of the said Act further depicted that-

“5. Rights of Pass-holder-

A pass holder shall have no right in the soil beyond a right user for the period for which it is given and shall have no right of transfer, or of inheritance beyond the period of the pass or of subletting.”

In the facet of House Pass No. 182 of 1955, there was no such specific period of time determining temporary rights of the holder. Thus, the said House Pass No. 182 of 1955 is freeing from the rigour of the above excerpt provision of S. 5 of the Mizo District (Land and Revenue) Act, 1963. So is the legal consequences, how can be held that the said House Pass No. 182 of 1955 has not vested transferrable right of the holders. Whilst the main onus of proof lies to Mr. Lalthianghlina and the suit is filed belatedly after the dead of the said Mr. Lalthianghlina, delay for filing the suit after lapse of period of limitation is vital and cogently deserved to dismiss.

Issue No. 5

Whether the issuance of LSC No. KLB 61 of 1985 in the name of Mr. Lalhminga was legally valid or not.

As the suit is barred by law of limitation, the instant issue is not deserved to examine on merit. Meanwhile, as duly exhibit by the defendant no. 4, the said LSC No. KLB 61 of 1985 was issued to supersede the previous Original House Pass No. 182 of 1955 which duly contains No-Objection Certificate, Non-Encumbrance Certificate etc. More so, as

revealed by Ext. D-7, requisite taxes were paid regularly by the concerned persons. How to challenge the mode of issuance at a very belated stage is doubtful.

Issue No. 6

Whether the defendants 1 to 4 have any right over the suit land or not.

As the suit is barred by law of limitation, the instant issue is not deserved to examine on merit whilst the defendant no. 4 in his counter claim failed to pay requisite court fees as also admitted by himself during his cross examination whilst it is not undisputed that the holder of LSC No. KLB 61 of 1985 transferred the suit land to the defendant no. 4 but could not adjudicated on merit due to lacunae on the said counter claim petition.

Issue No. 7

Whether the counter claim petition filed by the defendant no. 4 is maintainable or not.

As the defendant no. 4 in his counter claim failed to pay requisite court fees as also admitted by he himself during his cross examination. His counter claim is not maintainable and is liable to reject.

Issue No. 8

Whether the plaintiff is entitled to reliefs claimed. If so, to what extent.

Due to barred by law of limitation as already discussed above, no entitlement in favour of the plaintiff can be adjudicated.

Issue No. 9

Whether the defendant no. 4 is entitled to a relief sought in his counter claim or not. If so, to what extend.

As the defendant no. 4 in his counter claim failed to pay requisite court fees as also admitted by he himself during his cross examination. His counter claim is not maintainable and is liable to reject thereby not able to pass any decree in favour of the defendant no. 4.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, the suit is dismissed due to barred by law of limitation.

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 7th June, 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. CS/4/2000, Sr. CJ (A)/

Dated Aizawl, the 7th June, 2012

Copy to:

1. Mr. Jerry Lallungmuana S/o Sub-Thanthuama (L), Chhing Veng, Aizawl through Mr. W. Sam Joseph, Adv.
2. Smt. Lalthanpari W/o R. Lalthianghlina (L) Venglai, Kolasib & Others
3. Shri Israela S/o R. Lalthianghlina (L), Venglai, Kolasib
4. Shri Lalhminga C/o Lalhminglana Fanai, Excise Inspector, D.C Court, Kolasib through Mr. C. Lalramzauva, Sr. Adv.
5. Shri Nunsanglana S/o Thanzama, R/o Zamuang, Mamit District, Mizoram through Mr. C. Lalramzauva, Sr. Adv.
6. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA

7. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
8. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
9. The Deputy Commissioner, I/C. Revenue, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
10. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
11. Case record

PESKAR