

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

CIVIL SUIT NO. 10 OF 2003

Plaintiff:

Shri Ngursiama
S/o Vawmbika (L)
R/o Seling Tlangnuam

By Advocates

: 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra

Versus

Defendants:

1. The State of Mizoram
Represented by the Chief Secretary to the
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department
Aizawl
3. The Director
Land Revenue & Settlement
Govt. of Mizoram, Aizawl
4. The Assistant Settlement Officer – I
Land Revenue & Settlement
Govt. of Mizoram, Aizawl
5. Shri. Lalthazuala
S/o Khuma
R/o Ramhlun 'N', Aizawl
6. Smt. Lalnghaki representative of Lalkhama
R/o Dinthar, Aizawl
7. Shri Zathangvunga
R/o Thingsulthliah, Mizoram
8. Shri Lalhnuna representative of Shri Lalhlira
R/o Armed Veng, Aizawl
9. Shri Rochungnunga representative of Shri Pahnuaia
R/o Chanmari, Aizawl

10. Shri Khawvelthanga
R/o Ramthar Veng, Aizawl

11. Shri Lalbiaknunga representative of Rothawmliana
R/o Seling, Mizoram

By Advocates

:

For the defendants no. 1-4 : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

For the defendants no. 5-7 : 1. Mr. W. Sam Joseph
2. Mr. H. Laltanpuia
3. Mr. Zochhuana

Date of Arguments : 06-06-2012

Date of Judgment & Order : 12-06-2012

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 is the holder of the Periodic Patta No. 278/82 located at Thingsulthliah ram Phaibawk kawn covering an area of 15 bighas which was initially allotted to him by the Village Council authorities of Thingsulthliah Village in the year 1978 in pursuance of the policy of the Govt. for making a Garden Colony and subsequently, the defendants no. 1-4 under the relevant provisions of the Mizo District (Agricultural Land) Act, 1963 and the Mizo District (Agricultural Land) Rules, 1971 had issued the said P. Patta in his name and had also paid the tax in respect of his said garden land for the period upto 2003. The defendant no. 1 is the State of Mizoram and the defendants no. 2-4 are the authorities under the defendant no.1 dealing with matters relating to land and revenue while the defendants no. 5-7 had claimed ownership of some portions of the land covered by the said P. Patta belonging to the plaintiff on the basis of a Pass allegedly issued in their favour sometime in the year 1959 and the Proforma – Defendants are also claimants of some other portions of the said P. Patta on the basis of Passes issued to them during the District Council period, with whome the plaintiff had made an agreement which was already accepted by the ASO-I, Land Revenue & Settlement, Aizawl District, Aizawl vide Order Memo No. R.14033/2/83-91/DC(A)/173-174 dt. 28.11.02.

Due to numerous disputes, the Thingsulthliah Village Council in its Village Council sitting no.75 on 15/3/76 had passed a resolution holding

that all those who had owned land in Phaibawk kawn before 1976 and those who had shifted to different places would not be allowed to return. Consequent to this, the Thingsulthlah Village Council had declared the Seling Ram Phaibawk Kawn as Garden Colony in 1978 and it had allotted the land to those people whom it believed could really cultivate and develop banana gardens. The plaintiff was amongst those persons who were allotted the land in 1978 and he and his family members had thereafter developed the suit land by planting various cash crops and became the main source of livelihood for them. This fact was witnessed by Shri K. Lalchamreia, VCP of Seling for which he had issued a certificate dt. 17/12/02. Thereafter, the plaintiff had applied to the Revenue authorities for issuance of a proper Revenue Pass for the suit land and the authorities after complying with all the formalities required by the law, issued the P. Patta No. 278/82 in favour of the plaintiff for the suit land.

After the suit land was issued to the plaintiff, he had continued to cultivate and develop his said garden land for around 20 years when out of the blue, the defendants no. 5-7 along with the Proforma-Defendants had submitted a complaint belatedly to the defendant no.4 stating that their Shop Pass areas located at Phaibawk kawn, which was allotted to them by the erstwhile Mizo District Council in the year 1959, had been overlapped by the area covered by the said P. Patta. In pursuance of the complaint submitted, the Revenue authorities directed a surveyor to verify the dispute on 8/8/02 and had reported that the defendant no.5 represented by his wife had refused to sign in the proposed agreement while the rest of the complainants had agreed with the same. Accordingly, as per the specification of the location of the Passes in report of the defendants No. 6 & 7 as well as in respect of the Proforma-Defendants no. 8-11, an agreement was made to the effect that the said complainants (defendants no. 5,6,7 & Proforma-Defendants) shall pay a sum of Rs. 1000/- each to the plaintiff within a period of three months from the date of signing the agreement i.e. 8/8/02, with a further provision that they shall not in any manner interfere with the said portions of land unless and until the stipulated amount of Rs. 1000/- is paid to the plaintiff by them. The said agreement was also witnessed by Shri P. Zoliana, VCP of Seling and countersigned by Shri P.C. Lalmangaiha, Surveyor-III, Land Revenue & Settlement Department.

Thereafter, the defendants no. 6 & 7 wanted to withdraw the agreement and the defendant no. 5 also desired to have a re-verification of the matter at the spot. Accordingly, two surveyors were again directed to make a spot verification on 8/10/02 and reported that the area claimed by the defendants no. 5-7 was the best part of the suit land but as they had not looked after their lands for such a long time it was impossible to locate the exact position of their Shop Passes. Thereafter, the plaintiff and the defendants no. 5-7 were called by the Revenue authorities on 8/11/02 but as they could not reach an amicable settlement, the defendant no.4 had passed the Order Memo No. R.14033/2/83-91/DC(A)173-174 dt. 20/11/02 wherein the amicable settlement agreement dt. 8/8/02 reached between the parties was upheld and they were directed to comply with it. Accordingly, the Proforma-Defendants had paid up the stipulated amount of Rs.1000/- each to the plaintiff within the prescribed period of 3 months and now the

Proforma-Defendants in accordance with the condition of the agreement have taken over possession of their respective plots of land.

On the basis of a complaint dt. 2/12/02 submitted by the defendants no. 5-7, the defendant no.3 by letter dt. 10/1/03 had directed ASO-II to have another round of spot verification of the disputed claims and thereby, reported that defendant no.3 had passed an Order Memo No. C.13016/A-12/93-Disp/DTE(REV) dt. 17/4/03 in supersession of the earlier Order dt. 20/11/02 passed by the Defendant no.4 wherein the details of the verification report by the ASO-II were highlighted. On the basis of this verification, the defendant no.3 issued another order Memo No. C.13016/A-10/93-DISP/DTE(REV) dt. 4/8/03 with giving reference to the earlier order dt. 17/4/03. The subject matter of the said two orders is the same and there is no substantial difference between the two. The plaintiff further submitted that while conducting the said spot verification, only the version of the complainants (Defendants no.5,6 & 7) were taken into consideration without giving any regard to the facts stated by the plaintiff. Further, the fact that the plot of land claimed by the defendant no.6 on behalf of late Tuahzika was not located on the right (western) side of the Aizawl-Lunglei road wherein the plaintiff's land has been located, but the left (eastern) side of the said road was not taken into consideration. In this regard, Shri Lalngama, S/o Tuahzika (L) has stated and certified that the land of his late father which was said to be purchased by defendant no.6 was located on the eastern side of the road and not on the same line with the land of the Proforma-Defendants.

Since the plaintiff had cultivated his land under the said P.Patta for more than 20 years without any disturbance from any corner including the Defendants or the Proforma-Defendants and since he has been depending upon the products of his said Garden land for a number of years for his livelihood, it is no longer proper or legal on the part of the Defendants to make any such complaint against the Plaintiff's land holding. However, since the plaintiff has come to an amicable settlement of the matter with those of the Proforma-Defendants, so far as the said settlement has been implemented, the plaintiff is not willing to go back and say that the Proforma-Defendants also do not have any right on the basis of the Passes produced by them. As a result, the agreement made in the presence of the Official of the Revenue Department between the Plaintiff and the proforma-Defendants be not altered at this stage. As the plaintiff has been accepted as the owner and holder of the said P.Patta for about 20 years, the principle of adverse possession is directly applicable to the present case and there is no doubt that he is the owner and holder of the said P.Patta. Since there is no valid ground for the defendant no.7 to claim ownership of any portion of the land and neither of the private defendants as they had refused to come to amicable settlement with the plaintiff. The said Orders dt. 17/4/03 and dt. 4/8/03 being made on the basis of presumptions and suppositions and without proper verification, are liable to be declared null and void.

Thus, the plaintiff prayed the Court to pass a decree (i) declaring that the plaintiff was legally and validly allotted the land covered by the said P. Patta and that he is the rightful owner of the said land. (ii) to declare that

the defendants no. 5-7 have no right over the land covered by the said P. Patta and (iii) to declare that the plaintiff is entitled to ownership and possession of the suit land under the said P. Patta except the portions he had allowed the Proforma-Defendants to occupy on the basis of the amicable settlement made between them.

The defendants no. 1-4 in their joint written statement denied all the averments made by the plaintiff. They stated that even though the location of the land as per the P.Patta was stated to be within the VC area of Thingsulthliah, the area and location claimed by the plaintiff falls under the jurisdiction of Sesawng VC near Thuama's filling station at Phaibawkkawn along the Aizawl-Seking Road. The agreement signed by between the Shop Pass holders and the plaintiff in presence of ASO-I, Aizawl cannot be accepted by all the pass holders and therefore, an appeal was preferred to the Directorate of Revenue Department. An order by the ASO-I was set aside after spot verification and superseded by the order passed by the Director, LR&S. No village council in Mizoram has the power to make allotment of agricultural land passes as per the Mizo District (Agricultural Land) Act, 1963. As such, the minutes and resolutions of Thingsulthliah VC in 1976 or thereafter has no legal validity. At the time of issuing the said P.Patta in 1982, the NH 54 had already passed thorough the Northern side of the claimed area and Changelmual Kawn is about 4 kms away of the northern side of Thuama's filling station. If this was the boundary of the north, the area completely covers the NH 54 and the area between Phaibawk lui in the south and Changel Mual kawn in the north is 10 times bigger than the area of the said P.Patta. Further, there are no names registered as Vanlianichunga having garden P.Patta in the eastern side and Thangliana on western side of his claimed land as recorded in his pass. On conducting spot verification by the ASO-II and Surveyors on 20.1.03, it was found that the claimed area completely overlapped the Shop Passes of the private defendants issued by the District Council authorities way back in 1059 along the road side of Aizawl-Lunglei Road while there is no space to accommodate an area of 15 bighas between Phaibawk Kawn Lui and NH 54. Therefore, it clearly reveals that the Plaintiff's claimed area of land cannot be accepted.

The report submitted by the surveyor during August, 2002 did not give a clear picture of the area in question, therefore, was not reliable for settlement of the disputes. The statement made by the plaintiff during the course of spot verification on 20.1.03 was found totally baseless and there can be no documentary proof. The passes of the private defendants are senior to the plaintiff's, thus, the plaintiff has no legal or moral right to claim the suit land. It is further stated that the shop pass holders had taken possession of their respective land by constructing Temporary Shop buildings. However, due to insurgency broke out in the year 1966, the private defendants were restricted from occupying their lands due to security reasons. Hence, it is not necessary to have amicable settlement between the pass holders and the plaintiff who had illegally made the P.Patta by misguiding and concealing material evidences from the Revenue Department. The plaintiff cannot claim the area of the Shop pass holders since the area of the plaintiff's land is to be corrected by 100 feet away from

the NH. As per the Govt. standing instruction, no person can claim any land bigger than the area of the passes held by them.

The defendants no. 5-7 in their joint written statement denied all the averments made in the plaint. The boundary description given in the said P.Patta is not correct and after being rectified by an order by the defendants no. 1-4, it was found that the boundary description falls within the Thingsulthliah Village Council area, whereas the land illegally claimed by the plaintiff is located at Sesawng Village Council Area. It is also clear from the record that the passes held by the answering defendants are much senior to that of the P.Patta of the plaintiff. As per the boundary description of the said P.Patta which is not corroborated with any sketch map the location mentioned in the said P.Patta covers huge portion of the National Highway NH 54 itself. In this connection the answering points out that before the plaintiff obtained the P.Patta the National Highway NH 54 was already in existence. Therefore, the plaintiff has no right to make any claim to the land covered under the Shop Pass Nos. 97 of 1959, 96 of 1959 and 91 of 1959. It appears to the answering defendants that the plaintiff has obtained the P.Patta by suppressing the actual position of the land. In fact, the Govt. of Mizoram by the notification No. DLR/G-1/73/81 of 14.5.73 restricted allotment of Agricultural land/jhuming within 60ft above NH 54 and 70ft below/down side of the NH 54 and that no land can be allotted for the purpose of Garden along the National Highway NH 54 within 100ft from both sides as per the Govt. notification No.LRR/Garden-10/84/71 of 25.9.90. The fact the plaintiff signed an agreement with the Proforma-Defendants proves that the plaintiff has admitted the fact of the existence of valid passes in favour of the answering defendants too. On an appeal by the answering defendants for the agreement signed by the Proforma-Defendants and the plaintiff, order memo No.R.14033/2/83-91/DC(A)/173-174 dt. 20.11.02 has already been stayed by the Order of the Deputy Director, for Director, Land Revenue & Settlement Mizoram. The Village Council has no authority to modify or change the passes issued by the erstwhile Mizo District Council. Moreover, the said P.Patta does not show the proper location of the land.

The defendant no.5 states that he purchased the said plot of land covered under Shop Pass no.97 of 1959 from Mr. Siliana in the year 1965 but due to the disturbances in Mizoram in the year 1966, he was not able to look after the said shop due to the actions of the security forces and when he tried to construct a building for the purpose of the shop, the plaintiff objected stating that the said land belongs to him. The defendant no.5, then, made a complaint to the Revenue authority and he was given the pass and order giving the vacant possession to the defendant no.5. Similarly, the plaintiff objected the defendant no.6 for the Shop Pass no. 96 of 1959 which was allotted to her brother Lalkhama by the erstwhile Mizo District Council. The answering defendant no.6's name was included in the list prepared for paying compensation for the shop destroyed due to the actions of the security forces and when the said brother Lalkhama died, the said land belonged to the defendant no.6 and was also acknowledged by the Government, thus the legal representative of the deceased Lalkhama. She was also given the pass and order for the vacant possession of the said Shop Pass after filing complaint to the Revenue authority. The defendant

no. 7 was also given the Shop Pass no. 91 of 1959 which he purchased from Tuahzika and another plot of land belonging to Pahanga. Therefore, the plaintiff has no right to claim the land belonging to the answering defendants and that the said agreement is not binding as it is illegal and not enforceable at law. The said order passed by the ASO-I vide Memo No.R.14033/2/83-91/DC (A)/173-174 dt. 20.11.02 was stayed and set aside. After finding out that the P.Patta was wrongly issued to the plaintiff through the verification of the authorities' two surveyors, the defendants no. 1-4 rightly passed the order directing the plaintiff to vacate from the land within three months from the date on which the order was passed vide. No.C.13016/A-10/93-DISP/DTE (REV) dt. Aizawl, 4th August 2003 and the said order is to be upheld. Therefore, the Passes held by the plaintiff are invalid and that he is to abide by the orders of the Revenue authorities.

ISSUES

The following issues were framed by the Court on 2.5.2008 –

1. Whether the suit is maintainable in its present form and style
2. Whether the Plaintiff has any Locus Standi to file the suit against the Defendants.
3. Whether there is any cause of action against the Defendant in favour of the Plaintiff.
4. Whether the suit is barred by limitation.
5. Whether the suit is barred for non-joinder of necessary parties.
6. Whether the suit is barred for insufficient values of Court Fees.
7. Whether the land under Periodic Patta No. 278 of 1982 issued by the Defendant No. 2, 3 and 4 in favour of the Plaintiff is legal and valid.
8. Whether the lands claimed by the Defendant No. 5, 6 and 7 on the basis of Passes said to be issued in their favour by the Revenue Authority are located within the Land of the Plaintiff under Periodic Patta No. 278 of 1982. If so, whether such Passes claimed to have been issued in their names are valid or not.
9. Whether the orders dt. 17/4/02 and dt. 4/8/03 were legal and valid in the eye of law.
10. Whether the plaintiff is entitled to the relief claimed

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Shri Lalruatkima S/o Ngursiama, Seling Tlangnuam (Hereinafter referred to as PW-1)
2. Shri P. Zoliana S/o Thanmawia, Seling (Hereinafter referred to as PW-2)
3. Shri Lalngilneia S/o Lalngama (L), Sesawng. (Hereinafter referred to as PW-3)

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

Ext. P-1 is the Periodic Patta No. 278 of 1982 issued in the name of the plaintiff.

Ext. P-2 is the Tax Payment Receipt for the period from 2001-03 in respect of Periodic Patta No. 278 of 1982

Ext. P-3 is the Certificate issued by the VCP of Seling.

Ext. P-4 is a Xerox copy of "Inremna" dt. 8/8/02, the original of which is in the custody of the Revenue Dept.

Ext. P-4 (a) is the signature of his late father, the Plaintiff.

Ext. P-4 (b) is the signature of VCP, Seling.

Ext. P-5 is a copy of Order dt. 20/11/02 which was made on the basis of and in accordance with the agreement "Inremna".

Ext. P-6 is a copy of Order dt. 17/4/03 passed by the Defendant no.3 which was made in contravention of the agreement and the order dt. 20/11/02

Ext. P-7 is the Order dt. 4/8/03 passed by the Defendant no.3 in supersession of the previous order dt. 17/4/03 which is also not accepted by the Plaintiff.

Ext. P-8 is a certificate issued by Lalngama S/o Tuahzika (L) certifying that the Shop Pass No. 91/59 in the name of Tuahzika (L) was never within the land claimed by the Plaintiff.

During cross examination, the PW-1 stated that he was born at Thingsulthliah in the year 1973 and his family shifted to Tlangnuam, Seling Area in the year 1974. He knows the defendants 5-7 personally. When his father, the plaintiff, filed the suit on 7.8.03, the P.Patta No. 278 of 1982 relied by his father was not valid. He has knowledge of the location of the plot of land as mentioned in the P.Patta. He also knows that the P.Patta shall be treated as cancelled automatically within 6months from the date of its expiry and that he did not find the validity of the P.Patta as renewed after its expiry in 1984. When the said P.Patta was issued, it was given for garden and the validity was for a period of two calendar years. He denied the fact that his father/himself had paid tax for the land only for the period of 2001-03 and had not paid the tax prior to 2001 or subsequent to 2003. He also denied the fact that the Defendants 5, 6 & 7 have not signed the agreement. He was present when the two surveyors Pu Lalmachhuana ASO-II and Pu Zokhuma Surveyor-II went for allocation of land covered under the said P.Patta but he did not see the verification report of the ASO-II. He received the order dt 17.4.03 vide Ext. P-6. He admitted that the contents of Ext. P-8 is not completely false. He denied the fact that the Govt. of Mizoram, Revenue Dept. passed the Order Ext. P-6 & 7 in conformity with the land laws and that the said orders to be upheld. He admitted the fact that the Defendants no. 5-7 were included as they did not agree to the agreement proposed by him as Ext. P-4. He denied the fact that Govt.'s decision of declaring the title of Defendant no.5-7 over the disputed land is correct. Apart from the said P.Patta, he himself or his father do not have any Pass/Patta/LSC in respect of the suit land. He is of the knowledge that the passes issued in favour of the defendants no. 5-7 are senior in time

than the P.Patta issued in favour of his father. He is also of the knowledge that as per the revenue norms, passes issued earlier in time used to be declared as valid over the passes issued later in time if the land overlapped each other. He denied the fact that Orders 17.4.03 and 4.8.03 passed by Revenue authorities are legal and valid in the eyes of law.

The **PW-2** in his examination in chief stated that he was the VCP Seling for the year 2001-03. He was the witness for the plaintiff when the surveyors went for verification ordered by the Revenue authorities dt. 8/8/02 and also for the agreement made between the plaintiff and the Defendants no. 5-7. According to this agreement, the defendants no. 5-7 are to pay the plaintiff a sum of Rs. 1000/- each within 3months time, failing of which would amount to non-compliance of the agreement. Accordingly, the said defendants no. 6 & 7 signed the agreement but defendant no. 5 did not put his signature. However, the defendant no. 5 was allotted the best part of the plot of land by the revenue authorities and the plaintiff and the wife of the defendant no. 5 was informed about this since the defendant himself was not present at the time. Thereafter, the defendant no.5 gave his allotted plot of land to Pu Khawvelthanga who made LSC for the land and later sold it to Pu Kuangzawna, Seling (Phaibaw Kawn). Even before the agreement was signed, the plaintiff and the defendants no. 5-7 were each allotted a plot of land and the Revenue authorities had also rectified each of the land. Therefore, I do not believe that anyone acting against the agreement made should be given the plot of land.

During cross examination the PW-2 admitted the fact that Ext. P-4 was not executed in non-judicial paper of sufficient value and the same was not registered with registrar of documents. He also admitted the fact that there was no signature found on the page in which the alleged agreement was written and that the signatures were found in a blank paper. He has the knowledge of the following persons being issued with Shop Pass by the erstwhile District Council –

1. Pu Thazuala of Ramhlun 'N' Pass no. 97/59 plot no.1
2. Pu Lalhlira of Sesawng P/no. 94/59 plot no.2
3. Pu Pahnuaia of Sesawng P/no. 95/59 plot no.3
4. Pu Lalkhama of Dinthar P/no. 96/59 plot no.4
5. Pu Rothawmliana of Seling P/no. 93/59 plot no.6
6. Pu Khawvelthanga of Sesawng P/no. 92/59 plot no. 6
7. Pu Tuahzika of Thingsulthliah P/no. 91/59 plot no.7
8. Pu Darchhuma of Sesawng P/no. 99/59 plot no.8

He further stated that Seling Village Council was formed afresh in the year 1985 since the already existing VC was amalgamated with Thingsulthliah VC in the year 1966. As far as he knows, the above mentioned 8 passes issued were not cancelled and the P.Patta was issued to the plaintiff in the year 1982 and the boundary description mentioned in the P.Patta was not clear and did not tally with the boundary description. He admitted the fact that the validity of the P.Patta was not renewed beyond 31.12.02 and that it had expired when the suit was filed. When the said P.Patta was issued, Seling VC was not formed and further admitted the fact that from the contents of the agreement, the location of lands belonging to

the plaintiff and the defendants cannot be ascertained. He also admitted the fact that he was not present at the spot verification of the land before he had signed the agreement and that he had no knowledge of the order passed by the authorities before institution of this suit.

However, the PW-2 in his re-examination stated that he had accompanied the party during the spot verification and is of the knowledge of the whole proceedings. He also stated that the parties had discussed the matter and only after an amicable settlement that they had put their signatures on the agreement.

The **PW-3** in his examination in chief stated that his father Lalngama has made a letter on 6.11.02 stating clearly the location of the plaintiff's land at 'Phaibawk Kawn' which was claimed by the defendant no.7 who claimed that he is the inheritor of the Shop Pass no. 91/59 owned by Pu Tuahzika (L). He stated that the said Shop Pass was located at Sesawng and that Pu Tuahzika never had any plot of land within the plaintiff's land to the best of his knowledge. He further stated that his father is not of the knowledge that the defendant had ever bought the said Shop Pass from Pu Tuahzika. This statement was sealed with his signature and witnessed by Sesawng VCP Pu C. Lalramliana. I do not believe that the defendant no.7 should be entitled to his claimed portion of the land since he did not put his signature into the agreement made by the plaintiff and the other defendants.

During cross examination, the PW-3 admitted the fact that he has not seen the pass of the plaintiff and that of the Shop Pass no. 91/59. He admitted the fact that the plaintiff was issued the P.Patta in the year 1982 along the road Lunglei – Aizawl road NH 54. He is not of the knowledge of the land purchased by the defendant no.7 from Pu Tuahzika and Pu Pahanga or any of the construction of huts within the said land. He also admitted the fact that his father had not made any statement in the form of an affidavit.

The PW-3 in his re-examination stated that the sketch map shown to him during his cross-examination appeared to be incorrect. What was shown as North should have been east and south should have been west.

For the defendants nos 1-4:

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

1. Shri R.L Rindika, Superintendent, LR & S Dept. 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 stated that the in spite of the location of the land which is under the VC area of Thingsulthliah, the area and location claimed by the plaintiff falls within the jurisdiction of Sesawng VC near Thuama's filling Station/ Petrol Pump at Phaibawkkawn along Aizawl-Seling Road. At the time of issuing the P.Patta in 1982, the NH 54 had already passes through in the northern site of the claimed area. To fit his pass area within the claimed site below NH 54, there can only be 13.56 bighas of land between NH 54 and Phaibawk kawn Lui

while the plaintiff was allotted 15 bighas. It was found from the surveyors that the claimed area completely overlapped the Shop Passes of the defendants granted by the District Council authorities way back in 1959 which clearly reveals that the plaintiff claimed cannot be fitted. As per spot verification report, the land pass holdernof the neighbouring land are Pu Varlianchhunga in the east and Pu Thangliana in the west. Whereas the Govt. in its notification no. DLR/G-1/73/81 of 14.5.73 restricted allotment of Agricultural land/jhumming within 60 feet above NH 54 and 70 feet below/down side of the NH 54. Again as per Govt. notification no. LRR/Garden-10/84/71 of 25.9.90, allotment of Agricultural land within 100 feet away from both sides of 54 NH and truckable roads cannot be considered. However, the plaintiff had already developed and looked after some area of his claimed land, Revenue Dept. on humanitarian ground, considered it necessary to fit and adjust the Garden land in favour of the plaintiff below 100 feet from the National Highway. Accordingly, order for re-demarcation of the Garden land was issued. Hence, the Department considered necessary to uphold the senior shop passes of defendant no. 5-11 to maintain the Administration of Justice. Since the agreement signed by the plaintiff and shop pass holders could not be accepted, the order passed by the ASO-I, Aizawl have already been set aside and superceded by the order passed by Director, LR&S, Deptt. After the Mizo District (Agricultural Land) Act, 1963 was passed and Rules thereunder was made in 1971, no Village Councils in Mizoram have power to make allotment of Agricultural land passes. As such, the meeting minutes and resolutions passed by Thingsulthliah VC in 1976 or thereafter has no legal validity.the report submitted by the verifying surveyor during August,2002 did not give a clear picture of the area and as such it was not reliable for settlement of the disputes. The plaintiff has not right to claim the ownership of land wherein other persons possessed valid passes and senior to the P.Patta held by the plaintiff and also by reason of his development or by length of unauthorized possession taken by him. Although the shop pass holders took possession of their respective land by constructing temporary shop building prior to disturbance of Mizoram in March, 1966, their further occupation of the buildings were restricted due to security reasons during and after disturbance of Mizoram. Hence, it is not necessary to have amicable settlement between shop pass holders and the plaintiff. The plaintiff cannot claim the areas of Shop Pass on the plea of their agreement dt. 8.5.02 as the area of land of the plaintiff is required to be corrected 110 feet away from the NH and in between Phaibawk lui in the south, Kawrte in the west ad Thangliana in the east so as to exclude Shop pass area. No person can claim land higher than the area of Pass/P.Patta held by him and the claim should be confined to the actual area for which land revenue is charged and paid. As such, the order issued by the then Revenue Director is sustainable under the provision of law. He further continued that

Ext. D-2 is Revenue order dt. 10.1.03

Ext. D-3 is verification report

Ext. D-4 is notification of LAD

Ext. D-5 is notification of Revenue deptt.

During cross examination, the DW-1 for the def. no. 1-4 admitted the fact that the said garden P.Patta was issued by the competent authority in accordance with the Revenue laws in force and that due to the conflicting claims between the plaintiff and the private defendants as well as the other land owners, joint spot verification was conducted on 8/8/02 in which the parties came to an amicable settlement in the presence of Seling VCP which was countersigned by PC. Lalmangaiha surveyor, LR&S and an order was passed by the ASO-I on 28.11.02. He admitted the fact that the said P.Patta in the name of the plaintiff had remained unaltered till date. He also admitted the fact that he had not visited the suit land at the spot and no knowledge as to how the same could possibly encroached upon the lands of the private defendants. He further admitted the fact that the Shop Passes issued in favour of the private defendants were without specific boundaries or locations, and it was mentioned in such passes that the VC concerned were to make necessary settlement regarding the locations and boundaries. The dispute had cropped up because of the belated claim made by the other land owners such as the private defendants after abandoning the lands allotted to them during the erstwhile District Council period for a number of years. He admitted the fact that the private defendants were not in possession of the suit lands and that they had raised their claims over the said land after a span of 20 years in the year 2002. He admitted the fact that the Revenue Deptt did not have and would not have any complaint against the Plaintiff as regards his garden land under the said P.Patta as the same was issued to him by the Dept. as per law. He further admitted the fact that the passes of the defendants 5-7 were senior as to the plaintiff's pass and that the P.Patta issued in favour of the plaintiff overlapped the Shop Passes of the def. no. 5-7. The passes issued in favour of def. 5-7 is valid till today as there is no specific time limit mentioned in the Pass.

For the defendant no. 5:

The defendant no.5 produced one witness namely-

1. Shri Lalthazuala S/o Khuma (L), Ramhlun 'N', Aizawl (hereinafter referred to as DW-1 for def. no. 5)

The **DW-1 for def. no.5** in his examination in chief reiterated the contents of the written statement being the defendant himself and further continued that-

Ext. D-1 is a copy of order passed by the Director, LR&S Dept., Govt. of Mizoram vide Memo No.C.13016/A-10/93-DISP/DTE(REV) dt. 4.8.03

During his cross examination, the DW-1 for def. no.5 stated that after he had purchased the said Shop Pass no. 97 of 1959 from Pu Siliana in the year 1965, he mutated the pass only after the disturbance in Mizoram i.e 1966. He admitted the fact that the document submitted in this Court had Pu Siliana of Seling as the Pass holder and that no receipt of tax payment is available to the Court. However, he denied the fact that since there is no evidence of letter for the purchase of the said Shop pass and that no receipt of tax payment is available, he has no right to claim the said Shop Pass. He admitted the fact that he did not have the said Shop pass before and during

the disturbance in Mizoram till today. He denied the fact that he has no claim over the Shop Pass since there is no clear mentioning of the said land and thus, he did not take care of the land. He admitted the fact that there is no proof of document of Ext. D-1 but denied the fact that it is false. He also denied the fact that he was issued the said Shop pass from the Revenue authorities by fraud.

In his re-examination, the DW-1 for def. no.5 stated that it was due to his misunderstanding that he admitted that there was no proof of Ext. D-1 and that a copy of it was enclosed within the written statement.

For the defendant no. 6:

The defendant no.6 produced one witness namely-

1. Smt. Lalnghaki, representative of Lalkhama, Dinthar, Aizawl (hereinafter referred to as DW-1 for def. no.6)

The **DW-1 for def. no.6** in her examination in chief reiterated the contents of her written statement being the defendant no. 6 herself.

During cross examination, the DW-1 for def. no.6 stated that they started living in Phaibawk kawn in the year 1961 and left around 1966. She admitted the fact that the plaintiff is the owner of the said P.Patta no.278 of 1982. She further stated that her brother Lalkhama (L) did not leave any documents in writing stating that the def. no 6 inherited the said Shop pass. She is not of the knowledge of the law that whoever left Thingsulthliah before 1976 cannot repossess their land on their return. She admitted the fact that she was present when the agreement was made and that she had also put her signature on behalf of her brother Lalkhama (L). In the year 1978, the VC had considered the said dispute land for Garden Colony and made an announcement that whoever had a land within it could declare it to the VC, but since they had no knowledge of it, they did not mentioned it during the time. The plaintiff had taken care of the said P.Patta from the year 1982 and that they had planned on protecting it only after 20years. She admitted the fact that she did not have any documents for tax payment of the said land.

In her re-examination, the DW-1 of def no.6 stated that since the agreement made and the actual situation of the dispute was very different, she did not pay the plaintiff Rs. 1000/- and that since the said land was owned by her brother, she took care of the land only after she was told to do so.

For the defendant no. 7:

The defendant no.7 produced two witnesses namely-

1. Shri Zathangvunga, thingsulthliah, Mizoram (hereinafter referred to as DW-1 for def. no.7)
2. Shri Lalsawmliana S/o Zathangvunga, Electric Veng, Aizawl (hereinafter referred to as DW-2 for def. no.7)

The **DW-1 for def. no.7** in his examination in chief stated that he had purchased the Shop Pass no.91 of 1959 from Pu Tuahzika in the year 1959 and constructed a building in 1960. Due to the disturbance in Mizoram, they had shifted to Thingsulthliah. In regards to the said disputed land, they were called to the Revenue Office, Aizawl and made an agreement. However, the agreement was that they would be given lands in other places and since he wanted the said land, he did not pay Rs.1000/- to the plaintiff even though he had put his signature on it. Being aggrieved, he went to the Revenue Director and he, then, made an order and thus, the plaintiff went to the Court. He admitted the fact that the Revenue Director ordered the plaintiff to demolish his construction since the P.Patta issued to the plaintiff included the land of the Defendants no. 5-7. Moreover, the land of the defendants no. 5-7 were senior to the pass of the plaintiff and that it was issued by the District Council. It was due to the disturbance in Mizoram that they could not take care of the land and during this period, the plaintiff had claimed over the said land and the Seling VC had issued the land without their knowledge.

The **DW-2 for def. no.7** in his examination in chief reiterated the contents of the examination in chief of the DW-1 for def. no.7.

ARGUMENTS

Mr. C. Lalramzauva, learned senior counsel for the plaintiff argued that although the private defendants may obtained Shop Passes, they betrayed their landed properties and the issuance of their passes is also arbitrary as no exact location by leaving the area and boundary to the concerned village councils. More so, at the time of spot visits, the private defendants could not point out their landed properties which itself clearly indicated that their ground is baseless and purposeless. He further submitted that after reaching amicable settlement by parties as Ext. P-5 on Dt. 28th Nov., 2002, the subsequent impugned orders which detriment the plaintiff were liable to set aside.

On the other hand, Mr. W. Sam Joseph contended that from the evidence on record it is clear that the defendants nos.5 to 7 were allotted Shop Passes along the Aizawl - Lunglei road and due to disturbances in Mizoram the buildings were to be removed and it has also come in evidence that Periodic Patta for the agricultural purposes could be allotted only over the land 100ft below the road. Further, the agreement which the plaintiff exhibited as Exhibit P-4 is not a valid documents as the same was neither stamped nor registered. Further, the DW Rindika clearly stated that the said agreement was not accepted by the parties. As per the provisions of the Sections 17 & 18 of the Registration Act, the Exhibit P-4 relates to immovable property worth more than Rs.100 and is to be registered compulsorily. The provision of section 49 of the said act says about the Effect of non-registration of documents required to be registered. Further Indian Stamp Act as applicable to Mizoram the instrument such as the exhibit P-4 is liable to be duly stamped. The effect of unstamped documents is mentioned in the provisions of S. 35 of the Indian stamp Act. Further, the area of the passes issued to the defendants nos. 5 to 7 covers area of about 32'x50' respectively. By allowing the defendants to continue to enjoy the

land allotted legally to them would not deprive the plaintiff of his vast area of land. It has come in evidence that the passes of the defendants nos.5 to 7 were issued much before the land was allotted to the plaintiff under Periodic Patta. Further, the Periodic Patta was not renewed as required by law. In fact as per the terms and conditions made under the S.4(3) of the Mizo District(Agricultural Land) Act, 1963 para 10 says clearly that “The Periodic Patta shall be treated as cancelled automatically, if it is not renewed on application within 6(six) months from the date of its expiry.” It has come in evidence that the said Periodic Patta was not renewed after it expired on 31.12.2002. It is clear from the evidence on record that the Periodic Patta of the plaintiff exhibited as Exhibit P-1 was not valid when he filed the suit in the year 2003. Hence the plaintiff has no locus standi to file the suit. The suit is liable to be dismissed with cost.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

Before dealing with factual matrix, holistic guidelines set forth is a must to close look as held in the case of **Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria (Dead) through L.Rs.** (2012) 3 SCALE 550, the Supreme Court had laid stress on purity of pleadings in civil cases. I deem it appropriate to set out paras 61 to 79 of that judgment dealing with broad guidelines provided by the Court which are equally relevant in this case:-

“61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63. Possession is important when there are no title documents and other relevant records before the Court, but, once the documents and records of title come before the Court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

65. A suit can be filed by the title holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts – first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- a) who is or are the owner or owners of the property;
- b) title of the property;
- c) who is in possession of the title documents
- d) identity of the claimant or claimants to possession;
- e) the date of entry into possession;
- f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;
- g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;
- h) if taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;
- i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

77. XXXX XXXX XXXX

78. The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

79. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.”

In the light of the above, the instant plaint may be exonerated. However, the plaint is merely accompanied by simply verification without 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 which is before filing of the instant suit. 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 any Locus Standi to file the suit against the Defendants.

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. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. The leading case in which this rule was enunciated and which marks the starting point of almost every discussion on *locus standi* is *Ex parte Sidebotham* (1980) 14 Ch D 458. There the Court was concerned with the question whether the appellant could be said to be a 'person aggrieved' so as to be entitled to maintain the appeal. The Court in a unanimous view held that the appellant was not entitled to maintain the appeal because he was not a 'person aggrieved' by the decision of the lower Court. James, L. J. gave a definition of 'person aggrieved' which, though given in the context of the right to appeal against a decision of a lower Court, has been applied widely in determining the standing of a person to seek judicial redress, with the result that it has stultified the growth of the law in regard to judicial remedies. The learned Lord Justice said that a 'person aggrieved' must be a man "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." Thus definition was approved by Lord Esher M. R. in *In Re Reed Bowen & Co.* (1887) 19 QBD 174 and the learned Master of the Rolls made it clear that when James L. J. said that a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something, he obviously meant that the person aggrieved must be a man who has been refused something which he had a right to demand. There have been numerous subsequent decisions of the English Courts where this definition has been applied for the purpose of determining whether the person seeking judicial redress had *locus standi* to maintain the action. It will be seen

that, according to this rule, it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who can bring an action for judicial redress. Now obviously where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the applicant. This rule in regard to *locus standi* thus postulates a right-duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years.”

So is the well settled legal principle, whether the plaintiff has legal leg to stand upon for filing the instant suit is the main task. For that purpose, sub- rule (7) of rule 2 of the Mizo District (Agricultural Land) Rules, 1971 says that-

““Periodic Patta” means a prescribed land settlement document settling the Agricultural land periodically under these Rules whereby an individual or society has entered into an engagement with the District Council to pay land revenue, taxes, cesses and rates legally assessed or imposed in respect of the land so settled.”

Under condition no. 19 in the facet of the Periodic Patta, it was stringently imposed that-

“This Periodic Patta shall be treated as cancelled automatically, if it is not renewed on application within 6 (six) months from the date of its expiry.”

The instant Periodic Patta No. 278 of 1982 marked as Ext. P-1 is admittedly already expired more than six months at the time of institution of the suit on 11/8/2003, in view of its entity as mentioned above, the plaintiff have no cause of action to institute a suit in respect of the said Periodic Patta No. 278 of 1982.

Issue No. 3

Whether there is any cause of action against the Defendant in favour of the Plaintiff.

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.”

Findings remain the same as the instant Periodic Patta No. 278 of 1982 marked as Ext. P-1 is admittedly already expired more than six months at the time of institution of the suit on 11/8/2003, in view of its entity as mentioned above, the plaintiff have no cause of action to institute a suit in respect of the said Periodic Patta No. 278 of 1982.

Issue No. 4

Whether the suit is barred by limitation.

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. 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 case at hand, the impugned order marked as Ext. P-7 is issued on 4th August, 2003, there is no question of limitation in the instant case except no cause of action and locus standi

Issue No. 5

Whether the suit is barred for non-joinder of necessary parties.

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.”

Till arguments, no point of non-joinder of necessary parties is heard, in the light of the above well settled law, this issue cannot be held against the plaintiff.

Issue No. 6

Whether the suit is barred for insufficient values of Court Fees.

Being claiming declaratory suit, court fees at Rs. 30/- is paid by the plaintiff. It is therefore attracted the provisions of Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) vis. '*Consequential relief*'. The 44 years old precedent in the case of **Chief Inspector Of Stamps, U.P., Allahabad vs Mahanth Laxmi Narain And Ors.** decided on 29 October, 1969 reported in AIR 1970 All 488, Full Bench of the Allahabad High Court observed in respect of '*Consequential relief*' that-

“24. In Suit No. 83 of 1953, out of which the special appeals arise, both the Civil Judge as well as the learned Single Judge in appeal have held that the suit was for a declaratory decree in which the consequential relief of injunction was prayed for and was, therefore, governed by Sub-section (iv) (a). This finding is correct. The consequential relief sought was for an injunction, restraining the defendants from obstructing the plaintiffs from using the hall belonging to the Mandali. The Civil Judge held that the relief of injunction was in respect of immovable property, that it was incapable of valuation and, therefore, must be valued at the market value of the immovable property (hall) which was Rs. 12,000/-. The learned Single Judge held that the relief of injunction was not in respect of any immovable property and that the court-fee was payable on the amount at which the two reliefs were valued in the plaint, i.e., Rs. 5,200/-. Both these views are erroneous. The injunction is clearly in respect of immovable property, i.e., the hall, and this relief is capable of valuation. As held above, the suit has to be valued according to the value of the relief of injunction and the relief of injunction has to be valued in accordance with the provisions of Sub-section (iv-B).”

In the instant case, the manner relief sought clearly indicates that it is within the ambit of consequential relief. Bearing mind the above legal notions and principles, Rs. 30/- only as court fees stamp (affixed in the instant suit) is not enough and insufficient in the instant case where consequential relief is prayed for and the requisite court fees in terms of the suit valuation in the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is required to make up by the plaintiff.

Furthermore, no specific valuation of the suit is found in the submissions in the plaint. It is a well settled law that valuation of the suit is not only for the purpose of court fees but also meant to determine the pecuniary jurisdiction of court. In respect of improper valuation of the suit, valuation of the suit is not only for the purpose of paying the Court Fees but it also plays an important role for determining the pecuniary jurisdiction of the Civil Court in the light of S. 15 of the CPC as held in the case of **Ratan Sen alias Ratan Lal Vs. Suraj Bhan & Ors.** AIR 1944 All 1. Furthermore, in **Sri Rathnavarmaraja Vs. Smt. Vimla**, AIR 1961 SC 1299, the Supreme Court has held that whether proper court fee has been paid or not, is an issue between the plaintiff and the state and that the defendant has no right to question it in any manner. The said judgment of the Apex Court was re-

considered and approved in **Shamsher Singh Vs. Rajinder Prashad & Ors.** AIR 1973 SC 2384, observing as under:-

“The ratio of that decision was that no revision on a question of court fee lay where no question of jurisdiction was involved”

The recent observation of Hon’ble Apex Court clearly solicited to follow/comply the procedure set forth in the Code of Civil Procedure, 1908 in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), the Supreme Court has held that-

“70..... However, in our view, its applicability to the adjudicatory process for determination of ‘civil disputes’ governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience.”

The instant issue is therefore decided in favour of the defendants as procedure is meant for the end of justice, equity and good conscience.

Issue No. 7

Whether the land under Periodic Patta No. 278 of 1982 issued by the Defendant No. 2, 3 and 4 in favour of the Plaintiff is legal and valid.

One paradox in the instant case is that whilst before issuance of Agriculture Periodic Patta to the plaintiff, Shop Pass was issued to the private defendants is arbitrary which the Revenue Officials did not answer in the instant proceedings. Generally speaking, Shop Pass will be issued in the residential areas and the agricultural Periodic Patta will be issued in the non-residential areas. As this issue is in favour of the plaintiff, without cause of action and sufficient court fees, this issue is left without close elaborations.

Issue No. 8

Whether the lands claimed by the Defendant No. 5, 6 and 7 on the basis of Passes said to be issued in their favour by the Revenue Authority are located within the Land of the Plaintiff under Periodic Patta No. 278 of 1982. If so, whether such Passes claimed to have been issued in their names are valid or not.

Till arguments, the undisputed and admitted facts in this task is that the passes of the private defendants are located in the similar land of the plaintiff as claimed by the plaintiff. As this issue is also in favour of the plaintiff, without cause of action and sufficient court fees, this issue is left without elaborations.

Issue No. 9

Whether the orders dt. 17/4/02 and dt. 4/8/03 were legal and valid in the eye of law.

Without cause of action and sufficient court fees, this issue is again left without elaborations. Pertinently, as seeking possible settlement, the action taken in the impugned orders dt. 17/4/02 and dt. 4/8/03 are rather appreciated by taking responsibilities in the disputes.

Issue No. 10

Whether the plaintiff is entitled to the relief claimed

Without locus standi and cause of action meaning thereby right to sue/claim of the disputed land as already adjudicated in the afore issues, no entitlement of the plaintiff can be found.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, the suit is inevitably dismissed due to no cause of action/locus standi in favour of the plaintiff against the defendants and insufficient court fees in the plaint.

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 12th 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

Copy to:

1. Shri Ngursiama S/o Vawmbika (L) R/o Seling Tlangnuam through Mr. C. Lalramzauva, Sr. Adv.
2. The State of Mizoram Represented by the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department- Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue & Settlement- Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer – I, Land Revenue & Settlement , Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
6. Shri. Lalthazuala S/o Khuma R/o Ramhlun 'N', Aizawl through Mr. W. Sam Joseph, Adv.
7. Smt. Lalnghaki representative of Lalkhama R/o Dintar, Aizawl through Mr. W. Sam Joseph, Adv.
8. Shri Zathangvunga R/o Thingsulthliah, Mizoram through Mr. W. Sam Joseph, Adv.
9. Shri Lalhnuna representative of Shri Lalhlira R/o Armed Veng, Aizawl
10. Shri Rochungnunga representative of Shri Pahnuaia R/o Chanmari, Aizawl
11. Shri Khawvelthanga R/o Ramthar Veng, Aizawl
12. Shri Lalbiaknunga representative of Rothawmliana R/o Seling, Mizoram
13. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
14. Case record

PESKAR