

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

TITLE SUIT NO. 04 OF 2007

Plaintiff:

Mr. Chalzika
Bungkawn Nursery 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.

Versus

Defendants:

1. The State of Mizoram,
Through the Chief Secretary to the Govt. of Mizoram
Aizawl
2. The Secretary to the Govt. of Mizoram,
Land Revenue and Settlement Department
Govt. of Mizoram, Aizawl
3. The Director,
Land Revenue and Settlement Department
Govt. of Mizoram, Aizawl
4. The Assistant Settlement Officer –I
Land Revenue and Settlement Department
Aizawl District: Aizawl
5. Smt. Kapliani
W/o. Thanluaia
Tuikual 'S', 'B' Mual, Aizawl.
6. Ms. Lalzawmthangi
D/o. H. Thanzama (L)
Bungkawn, Aizawl.
7. Ms. Lalthanpuui
D/o. H. Thanzama (L)
Maubawk, Aizawl.

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. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra, Adv.
3. Mr. Haulianthanga, Adv.

Date of Arguments : 27-06-2012

Date of Judgment & Order : 28-06-2012

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 Mr. Thanzama (late) was the owner of the immovable property covered under LSC No.386 of 1976. In the year 1992 the said Pu Thanzama late gave a portion of the land to his wife Pi Kapthangi (L) and the same was put as LSC No. Azl 722 of 1992, however in the year 1995 the said LSC No. Azl 722 of 1992 was put in the name of deceased H. Thanzama and the LSC No.386 of 1976 was put in the name of the deceased Kapthangi. Kapthangi (L) sold the LSC no.386 of 1976 which was put in her name by her husband and the said LSC was sold to the plaintiff by the deceased Kapthangi with the consent of her husband H. Thanzama (L) on 28.3.02 and H. Thanzama also put his signature in the said sale letter and the said LSC was transferred in the plaintiff's name on 28.3.02 itself. Mr. C. Lianmawia and Mr. H. Zosangliana witnessed the sale letter. In this connection the appellant states that Pu Thanzama (L) married Pi Kapthangi (L) as per Mizo Custom and Practices after the death of his first wife. Unfortunately, the Pi Kapthangi did not bear any child during the subsistence of marriage between them.

Later in the year 1995 at the instance of the respondents Pi Kapliani and other children of the deceased Pu Thanzama the LSC no.722 of 1992 was transferred in the name of the deceased Pu Thanzama and the LSC No.386 of 1976 in the name of the deceased Pi Kapthangi vide order no.R.20011/6/95-DC(A)/95 dt.27.3.1995 dt. 27.3.1995.

The plaintiff further submitted that since 1995 the owner of the land covered under LSC No.386 of 1976 was Pi Kapthangi (L). Though Pi Kapthangi(L) was the owner of the land and building covered under LSC No.386 of 1976, when she sold the said plot of land with the building to the plaintiff on 28.3.2002 she did so with the consent and permission of Pu Thanzama (L). The said sale was placed in writing and the said sale letter was witnessed by Shri C. Lianmawia and Shri H. Zosangliana, Ex-VCP

Bungkawn Nursery Veng. After the said sale was complete the plaintiff applied to the Revenue department and the Revenue department transferred the said Land and building covered under LSC no.386 of 1976 in the name of the plaintiff vide order no.S.11016/3/02-LSC/DTE(REV) dt.28.3.2002.

Meanwhile, when the plaintiff's house was gutted by fire, the original LSC No.386 of 1976 was also burnt to ashes. As the original LSC was burnt, the plaintiff applied to the revenue department for issuing the LSC in lieu of original. On the basis of the application, the Revenue department directed the plaintiff to publish in the newspaper. Accordingly, it was published in the newspaper on 19.10.2004 and when it was published it was mentioned that if any one has objection to the issuance of the fresh LSC, he or she should submit their complaint to the Revenue department, but nobody submitted complaint and the Revenue department issued original duplicate in lieu of original one on 6.12.2004.

The plaintiff also submitted that the plaintiff is the legal owner of the LSC no.386 of 1976 since the sale letter was prepared and the said LSC was transferred in the name of the plaintiff way back on 28.3.2002. The said LSC no.386 of 1976 was transferred in the name of the plaintiff during the lifetime of the deceased persons namely Thanzama and Kapthangi. The defendants nos.5,6 & 7 have no right to interfere with the transfer of the said LSC in the name of the plaintiff.

During the later part of February 2007 when the plaintiff approached the revenue authorities, the revenue authorities informed the plaintiff that the defendants nos.5 to 7 obtained the Heirship Certificate in respect of the land covered under LSC no.386 of 1976. When enquired from the lower court, the plaintiff came to know that the Heirship Certificate No.235 of 2005 was issued vide Memo No. SDCC/ HC-235/05/1517-22 dated 18th July 2005. Thereafter, with great difficulty the plaintiff obtained a Xerox copy of the said Heirship Certificate. On perusal of the said heirship certificate it is clear that the defendants nos. 5 to 7 along with Nunmawii (L) have obtained the said H.C. by suppressing the fact that the said LSC was transferred in the name of the plaintiff way back in the month of March 2002. As mentioned earlier the said LSC was transferred in the name of the plaintiff during the lifetime of H. Thanzama. When the plaintiff approached the revenue department for requesting them not to do any act detrimental to the interest of the plaintiff, the plaintiff came to know that without the order of defendants nos. 2 and 3 the defendant no.4 had issued the letter/order Memo no. R. 21011/71/92-DC(A) VOL-I/391 dated 23rd Feb /07 showing that the LSC no.386 of 1976 was declared invalid on the basis of the Government Order No.18016/27/2002 of 2.5.2005. In this connection the plaintiff would like to state that though the letter/order MEMO no. R. 21011/71/92-DC (A) VOL-I/391 dated 23rd Feb /07 was issued on 23rd Feb/07 it was signed by the defendant no.4 on 22.2.07. Since the defendant no.4 made a mention of the order of the Government dated 2.5.2005, the plaintiff approached the revenue authorities in the Directorate to find out as to what is mentioned in the said order. On perusal of the said order, the plaintiff came to know that the said order only cancelled the LSC No.722 of

1992. In this connection the plaintiff states that the said LSC NO.722 of 1992 never was in the name of the plaintiff at any point of time.

The plaintiff also stated in his plaint that the cause of action for the suit arose when the defendants 1 to 4 issued the letter Memo no. R. 21011/71/92-DC (A) VOL-I/391 dated 23rd Feb /07 thereby declaring the LSC to be invalid and also issuing a fresh LSC in the name of H. Thanzama (L) on the basis of the said order and it arose in the month of February and it continues till the said orders are cancelled and the LSC issued in the name of the plaintiff is declared valid.

The value of the suit land and building is estimated by the plaintiff at Rs.20,00,000/- and the plaintiff is an house tax paying native of Mizoram and the maximum amount of court fee of Rs.5000/- is paid.

The plaintiff also claims that the suit is not barred by Limitation or any other law for the time being in force. The plaintiff therefore prays that (i) Let the decree be passed declaring that the plaintiff is the legal and rightful owner of the land and building covered under LSC No.386 of 1976 and has title, interest and possession of the said land covered under the said LSC. (ii) Let the decree be pass declaring that the order issued vide Memo no. R. 21011/71/92-DC(A) VOL-I/391 dated 23rd Feb /07 is illegal and to be set aside and declare that the LSC No.386 of 1976 in the name of the plaintiff is valid. (iii) Let a decree be passed declaring that the fresh LSC issued by the defendant nos. 1 to 4 in the name of H. Thanzama (L) at the instance of the defendants' nos. 5 to 7 is invalid and void. (iv) By way of permanent and mandatory injunction the defendants especially the defendants nos. 5 to 7 be restrained from dispossessing the plaintiff from the suit land and the plaintiff be allowed to enjoy peaceful possession. (v) By way of permanent and mandatory injunction the defendants from doing anything detrimental to the interest of the plaintiff. (vi) Let any other relief to which the plaintiff is entitled according to justice, equity and good conscience be decreed in favour of the plaintiff.

The suit was contested by the Defendants No. 1-4 by submitting their Written Statement. Apart from various preliminary Objections, the Defendants No.1-4 stated that on 23/4/07, the ASO-I issued letter/Order Memo No. R. 21011/71/92-DC (A)/Vol-I/391 declaring the LSC No.386/76 as invalid. Although the Order issued by Govt. of Mizoram, Revenue Department vide letter No.C.18016/27/2002-REV dt.2/5/05 mentioned the cancellation of LSC No.722/1992 belonging to Chalzika, it is clear from the Director's letter No. C. 13016/3-11/02-DISP/DTE (REV)/145 dt.15/4/05 addressed to the Secretary to the Government of Mizoram, Revenue Department that after thorough examination of the case, there were some foul play in connection with partitioning of LSC No. 386/76. Further, the Director's letter proposed the cancellation of LSC No. 722/1992 so that the original LSC bearing No. 386/76 would be restored back to the first and original owner i.e. Pu Thanzama. Thus the Order issued by Government of Mizoram, Revenue Department vide letter No.C.18016/27/2002-REV dt.2/5/05 mentioning the cancellation of LSC No.722/92 made it clear that the proposal of the Director, Land Revenue & Settlement was approved by

the Government. On the basis of the two letters mentioned above the letter No.R.21011/71/92 DC(A)/Vol-I/391 dt.23/2/07 was issued to the Plaintiff informing him and declaring that the LSC No.386/76 as invalid.

The Defendants No.5-7 also contested the suit. In their joint written statement, apart from preliminary objections, they submitted that their late father, H. Thanzama met with an accident on 31/1/92 by rolling down the slope below his house and had remained unconscious for sometime for which he was admitted at the Aizawl Civil Hospital for a number of days. After his discharge from the said Hospital he was taken home by them for further treatment at home where he continued to lie on bed for a long time. During this period his late wife Smt. Kapthangi, thinking that late H. Thanzama would not survive, had clandestinely taken out his LSC No.386/76 and had caused transfer of the said LSC to her name and sliced out LSC No.AZL.722/92 from the said LSC No.386/76. She had transferred both the LSCs to her name without the knowledge and consent of H. Thanzama (L). Thereafter, the Plaintiff, who is brother of Kapthangi (L) had claimed that he had bought the LSC No.386/76 from Kapthangi (L) on the strength of an alleged Sale Deed. Since they (the Defs.No.5-7) continued to be present with their late father who was on his sick bed all the time, there was no occasion for H. Thanzama (L) for giving his consent or witnessing any transaction in respect of the alleged sell of the said LSC No.386/76 by Kapthangi (L) to the Plaintiff. The veracity of the said Sale letter alleged to have been executed in respect of the suit land was earlier examined by the authorities of the Revenue Deptt. and it was found that the signature alleged to be the signature of H. Thanzama (L) found on the said document (Annexure C to the plaint) was proved to be forged/fake and the same was intimated to the Plaintiff vide letter Memo No.V.13016/S-11/02-DISP/DTE (REV) dt.13/5/05. Further, the presence of the signatures of Mr. C. Lianmawia and Mr. H. Zosangliana in the document at Annexure – C as witnesses of the alleged transfer was not in anyway known or authorized/consented by H. Thanzama (L). The fact that the said LSC No.386/76 was taken out and partitioned into two LSCs as stated above at the instance and initiative of Kapthangi (L) was known only after her death on 16/7/04. As soon as the said illegal act for transaction was known by H. Thanzama (L), he had immediately submitted his complaint/representation dt.21/9/04 addressed to the Director, LR&S for transferring the said LSCs back to his name after canceling the illegal transfer in the name of his late wife. Accordingly, after all necessary formalities were done the LSC No.386/76 was restored back to his name after canceling the illegal transfer/bifurcation. The said LSC No.722/92 which was made from the original LSC No.386/76 which was transferred in the name of Kapthangi (L) and then to H. Thanzama (L) was also cancelled for the purpose of restoring the whole land under the original LSC No.386/76 to the name of late H. Thanzama. Thereafter, Heirship Certificate No.235/05 was issued to the Defendants No.5-7 in respect of the said land under LSC No.386/76. The suit land under LSC No.386/76 belonging to H. Thanzama (L) has to be inherited by his surviving daughters, the Defendants No.5 -7. In fact, the Plaintiff being the brother of Kapthangi (L) wife of H. Thanzama (L), he is not in the line of inheritance of the said property. Further, the Plaintiff having claimed to have bought the stolen property belonging to H. Thanzama (L)

from Kapthangi (L), he could not have any right or title over the said land even if he had actually bought it. The said Sale Deed was concocted/fabricated by the Plaintiff and Kapthangi (L), his sister, in order to illegally deprive H. Thanzama (L) and the Defendants No.5-7 of their said landed property. As a result, the Plaintiff cannot derive any title or right over the suit land under LSC No.386/76.

ISSUES

The following issues were framed on 31-03-2008 such as-

1. Whether the suit is maintainable in its present form and style.
2. Whether there is any cause of action in favour of the Plaintiff against the defendants.
3. Whether the Plaintiff has any locus standi to file the present suit.
4. Whether Thanzama (L) had given the portion of his land under LSC No.386 of 1976 to his wife Smt. Kapthangi (L).
5. Whether the LSC No.AZL-722 of 1992 issued in the name of Smt. Kapthangi (L) was valid in the eye of law.
6. Whether LSC No.386 of 1976 was rightly/validly transferred in the name of the deceased Smt. Kapthangi (L).
7. Whether Smt. Kapthangi (L) had sold the LSC No.387 of 1976 to the Plaintiff with the consent of her husband Shri. H. Thanzama (L).
8. Whether the decision of the Govt. for restoration of the LSC No.386 of 1976 (Original) in the name of Shri. H. Thanzama vide letter dt.23/2/07 is valid or not.
9. Whether the Plaintiff is entitled to the reliefs claimed. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Chalzika, Maubuang (Hereinafter referred to as PW-1)
2. Smt. Lalnunziri D/o Chalzika, Maubuang (Hereinafter referred to as PW-2)
3. Mr. Chalthangvunga S/o Lalsiamliana (L), Luangmual (Hereinafter referred to as PW-3)
4. Mr. C. Lianmawia S/o Thatchhunga, Nursery Veng (Hereinafter referred to as PW-4)
5. Mr. H. Zosangliana (Ex. VCP), Nursery (Hereinafter referred to as PW-5)

The **PW-1** exhibited the following documents namely-

Ext.P-1 is a copy of LSC No.386 of 1976.

Ext.P-3 is a copy of 'Inhmun Ram In Leina'.

Ext.P-4 is a copy of LSC No.386 of 1976.

Ext.P-5 is an application sent by Kapliani W/o Thanluai to the Magistrate First Class SDCC, Aizawl District.

Ext-P6 is copy of order dated 20th May 2006 passed by magistrate SDCC Aizawl district Aizawl in connection with CS No. 32/06.

Ext.P-7 is a copy of order passed by District Council Court, dated 1st November 2006 in connection with FAO No. 4/06

Ext.P-8 is a copy of letter dated 2nd May 2005 sent by V/S to the Govt. of Mizoram I.C. Revenue deptt.

Ext.P-9 is a copy of letter dated 23rd Feb 2007 sent by ASO-1 Land Revenue & Settlement to the plaintiff.

Ext.P-10 is a copy of heirship certificate 235/05 issued by SDCC in favour of Kapliana, Lalzawmthangi and Nunmawii

Ext.P-11 is a copy of order passed by DCC in connection with review case No. 2/07

Ext.P-12 is a letter send by Kapliana to the plaintiff dated 25/2/07.

Ext.P-13 is a copy of notice sent by counsel for the plaintiff to Pi Kapliani.

For the defendants 1-4:

The defendants 1-4 produced only one witness namely- Mr. R.L. Rindika, Superintendent, Directorate of Land Revenue and Settlement (Hereinafter referred to as DW for defendants 1-4). He exhibited that Ext. D-5 is written statement of defendants 1-4, Ext. D-5 (a) is the signature of the then Under Secretary to the Govt. of Mizoram, Revenue Department.

For the defendants 5-7:

The defendants 1-7 had also produced the following witnesses namely-

1. Smt. Kapliani W/o V. Thanluaia D/o H. Thanzama (L), Tuikual South (Hereinafter referred to as DW-1 for defendants 1-7)
2. Smt. Lalthanpuui W/o Lalmachhuana D/o H. Thanzama (L), Maubawk (Hereinafter referred to as DW-2 for defendants 1-7)
3. Mr. K.C. Thuama S/o Laia (L), Nursery Veng, Aizawl (Hereinafter referred to as DW-3 for defendants 1-7)

The **DW-1 for defendants 1-4** exhibited the following documents namely-

Ext-D-1 is a copy of Discharge Certificate of Thanzama issued by the Civil Hospital, Aizawl, Mizoram.

Ext-D-2 is a copy of letter dt.21/9/04 submitted by Thanzama to the Director, Land Revenue & Settlement Department.

Ext-D-3 is a copy of Show Cause Notice dt.13/5/05.

Ext-D-4 is a copy of LSC No.AZL.386 of 1976 issued in the name of Thanzama.

TERMS OF ARGUMENTS

Mr. W. Sam Joseph, learned counsel for the plaintiff submitted in respect of putting the suit LSC in the name of the plaintiff that the order which the ASO-I has relied while passing the said order does not show that either the Government of Mizoram or the Director, LR& S gave order for canceling the said LSC No. 386 of 1976, hence the said order cannot be said to have been issued under the authority. The defendants nos. 5 to 7 have not made any counter claim when they filed their written statement. He also relied in the deposition of the lone witness of the defendants nos.1 to 4 during his cross examination. More so, LSC to be reverted in the name of the dead person is not possible. As the property was mutated in the name of the plaintiff during the life time of the deceased Thanzama. As per the decision of the Honourable Gauhati High Court Aizawl Bench in the RSA 8 of 2001 **Lalkhuma (L) Vs. Lungtiawii** in para 12 of the said Judgment and order it was clearly mentioned that “Another important point here is that there is an attempt by the courts at original level to direct recording the properties in the name of the a deceased person which cannot be accepted as a sound principle of law and equity, Inheritance, once opened, will naturally devolve downwards and cannot be reverted back to the deceased or non-existent person.” Hence the issue no. 8. The Court of Senior Civil Judge - I while functioning as District Council Court, in the case of Revision Case no.02 of 2007 had already set aside the Heirship Certificate No. 235 of 2005 and forthwith quashed.

Mr. W. Sam Joseph concluded his arguments that from the evidence on record it is clear that the immovable property covered under LSC No. Azl-386 of 1976 was put in the name of the deceased Kapthangi way back on 27.3.1995 and the said LSC was put in the name of the plaintiff on 28.3.2002. Hence the cancellation of the LSC in the name of the plaintiff on the basis of the Heirship certificate no. 235 of 2005 is illegal. Hence the court has no other option but to set aside the order passed by the ASO - I exhibited as Exhibit P-9 letter Memo No. R. 21011/71/92-DC(A) Vol-1/391 dated 23.2.2007.

On the other hand, Mr. C. Lalramzauva, Senior Counsel for the defendants 5-7 argued that the Plaintiff, though has claimed to have purchased a portion of the land covered by LSC No. 386 of 1976 from his sister Smt. Kapthangi (L). The said portion claimed to have been purchased by him was originally in the name of late H. Thanzama from which LSC No. AZL. 722 of 1992 was sliced out. According to him, the said land was purchased by him from Kapthangi (his late sister) wife of H. Thanzama with the knowledge and consent of late H. Thanzama and in the presence of two witnesses such as Mr. C. Lianmawia and Mr. H. Zosangliana. However, at the time of cross examination of Mr. H. Zosangliana he had stated that late H. Thanzama did not put his signature (Pu Zama hian Sale Deed ah khan a hming a sign lo). Similarly, Mr. C. Lianmawia also stated in his cross examination that he did not know whether Pu Thanzama's signature was

there on Ext P – 3 and that he did not know whether Pu Thanzama had put his signature or not on the said Ext P- 3. Both the witnesses (PW No.4 & 5) had clearly testified that they did not see the Plaintiff handing over any amount of money for purchase of the said land and that both of them had clearly stated that at the time of putting their signature on Ext P – 3 Pu Chalthangvunga was not present. As stated by the Defendants, during the lifetime of late H. Thanzama, a complaint was made by him against the illegal transfer and partition of his said LSC No.386/76 without his knowledge and consent. The fact that at the time of making an application for transfer of the said LSC No.386/76 to the name of Smt. Kapthangi (L), the signature of late H. Thanzama was forged was verified by comparing his own signature with the signature appearing on the body of the transfer application. As a result, the Revenue Authorities had come to the conclusion that the said transfer of the said LSC and its subsequent partition were without authority and the same were declared to be invalid. In fact, it was duly proved during the course of evidence that the said illegal and unauthorized transfer of the said original LSC No.386/76 was affected by his wife Smt. Kapthangi (L) while late H. Thanzama was in Hospital due to the accident met by him.

Mr. C. Lalramzauva thereby sum up of his arguments so advanced that on the basis of what has been stated by the witnesses and on perusal of the documents, it is crystal clear that the land of late H. Thanzama under LSC No.386/76 was unauthorizedly taken out by his wife Smt. Kapthangi (L) while he was hospitalized. Thereafter, the same was partitioned into two LSCs such as LSC No.386/76 and LSC No.AZL.722 of 92 in the name of Smt. Kapthangi. While the owner of the said land late H. Thanzama was undergoing treatments in the Hospital and at home, the said land under LSC No.AZL.722/92 was restored to the name of late H. Thanzama at the instance of Smt. Kapthangi. At the same time, she had transferred the other portion covered by LSC No.386/76 in the name and in favour of the Plaintiff illegally claiming that the same was purchased by the Plaintiff from her with the knowledge and consent of late H. Thanzama which ultimately was discovered by late H. Thanzama after the death of his wife Smt. Kapthangi. No amount of evidence in favour of the Plaintiff can brush aside the claim of late H. Thanzama during his lifetime and the decision already made by the Revenue Authorities for restoration of the said LSC as it stood prior to the said illegal transfer and bifurcation. Now that the owner of the said land covered by the said original LSC No.386/76, though had subsequently died, there is no reason for interfering with the decision of the Revenue Authorities for restoration of the said lands under the two LSCs to LSC No.386/76 in the name of late H. Thanzama. In fact, the Plaintiff who had made a bogus claim of purchasing it from Smt. Kapthangi cannot be upheld in any manner as Smt. Kapthangi did not have titled over the same on the principle that a buyer does not have better title than what the seller had. Further, the alleged Sale Deed not being registered under the Registration Act, which is applicable in this matter, the said transaction, even if presumed to have taken place, cannot be acted upon for conferring any right or title in favour of the Plaintiff. In this connection, it has been well settled by the Apex Court in the case of *State of UP – vrs – Amar Singh & Ors reported in (1997) 1SCC 734* that “it is a settled law that mutation

entries are only for the purpose of enabling the State to collect the land Revenue from the person in possession but does not confer any title to the land. The title would be from an instrument executed by the owner in favour of an alienee in as per the stamp act and registered under the Registration Act.” In view of this settled possession of law, the claim made by the Plaintiff in the connected suit stands without any merit and the same is liable to be dismissed with costs.

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, verification supported by affidavit is made by the plaintiff in terms of the provisions of sub- rule (4) of rule 15 under Order VI of the CPC. Meanwhile, exemption order from prior legal notice was also passed on 12.3.2007 due to urgency of the case. Thus, this issue is decided in favour of the plaintiff.

Issue No. 2

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

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.”

As the suit LSC marked as Ext. P-4 was already put in the name of the plaintiff and later cancelled the same as revealed by Ext. P-9 viz the impugned letter under Memo No. R. 21011/71/92-DC(A) Vol-1/391 dated 23.2.2007. Cause of action also is in favour of the plaintiff.

Issue No. 2

Whether the Plaintiff has any locus standi to file the present suit.

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.”

In view of the above terms and as the suit LSC marked as Ext. P-4 was already put in the name of the plaintiff and later cancelled the same as revealed by Ext. P-9 viz the impugned letter under Memo No. R. 21011/71/92-DC(A) Vol-1/391 dated 23.2.2007. Locus standi also is in favour of the plaintiff.

Issue No. 3

Whether Thanzama (L) had given the portion of his land under LSC No. 386 of 1976 to his wife Smt. Kapthangi (L).

No documentary evidence was made for revealing the gifted of some portion of land under LSC No.386 of 1976 to his wife Smt. Kapthangi by late Thanzama whilst undisputedly, the original holder/owner of LSC No.386 of 1976 was late Thanzama. The defendants 5-7 till arguments alleged that during hospitalized of the late Thanzama as met accident on 13/1/1992 and thereby nursed in his bed during three months as deposed by DW-1 for defendants 5-7, his second wife clandestinely took of the copy of LSC No.386 of 1976 and thereby manipulated in her favour.

The PW-1 also admitted during his cross examination that Mr. Thanzama was hospitalized due to accident on 13/1/1992 by rolling down in the slope below his house which is the version of the defendants 5-7. DW-1 for defendants 5-7 deposed that her late father Mr. Thanzama was not in a position to give consent for mutation of the suit LSC No.386 of 1976 in the name of Smt. Kapthangi as he was seriously ill health and being a daughter, she looked after her father and stayed with the said Mr. Thanzama. During her cross examination, she denied that LSC No.386 of 1976 was partitioned and mutated with the consent of Mr. Thanzama. Her version is corroborated by other DWs of defendants 5-7. In this issue, the plaintiff failed to prove that LSC No.386 of 1976 was given to Mr. Thanzama to his wife Smt. Kapthangi as the witnesses of Plaintiff silent on such issue by mainly delving on the crux on transfer of the suit land to Chalzika from Smt. Kapthangi.

Issue No. 4

Whether the LSC No.AZL-722 of 1992 issued in the name of Smt. Kapthangi (L) was valid in the eye of law.

Admittedly, although LSC No.AZL-722 of 1992 was firstly issued in the name of Smt. Kapthangi and thereafter reverted back into the name of Mr. Thanzama. Whether the said LSC No.AZL-722 of 1992 was issued in the name of Smt. Kapthangi validly or not is already answered by the findings under Issue No. 3.

Issue No. 5

Whether LSC No. 386 of 1976 was rightly/validly transferred in the name of the deceased Smt. Kapthangi (L).

The plaintiff relied in the alleged Sale Deed marked as Ext. P- 3 which was executed by the plaintiff and Smt. Kapthangi witnessed by Mr. H. Thanzama, Mr. C. Lianmawia and Mr. H. Zosangliana. Admittedly it is neither register under the Registration Act nor with sufficient stamp. As argued by Mr. C. Lalramzauva that the law on that point alone is well settled in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.** decided on 11th October, 2011 in connection with SLP (C) No.13917 of 2009, the Supreme Court has explicitly held that-

“It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.”

In that Ext. P-3, the amount for purchasing the suit land is not mentioned. The PW-3 deposed that the plaintiff paid a sum of Rs. 10,000/- to the said Smt. Kapthangi for consideration of the suit land. Meanwhile, although the said LSC No. 386 of 1976 was held by Smt. Kapthangi, as held in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.** (supra.), Ext. P-3 cannot be held as validly executed coping with law of the land.

Issue No. 6

Whether Smt. Kapthangi (L) had sold the LSC No. 386 of 1976 to the Plaintiff with the consent of her husband Shri. H. Thanzama (L).

During cross examination, the PW-3 admitted that Mr. Thanzama did not put his signature in the Ext. P- 3 (Sale Deed). The PW-4 also stated that although he put a signature in the said Sale Deed, he did not know that whether Mr. Thanzama put his signature in the said Sale Deed or not. He did not know that the plaintiff did not pay the amount for. The PW-5 who was also acted as witness appended in his signature in the said Sale Deed also deposed during his cross examination that Mr. Thanzama did not put his signature in the said Sale Deed. The PW-5 also did not the amount for purchasing the suit land by the plaintiff and also did not know whether the family of Mr. Thanzama received the said amount or not. Thus, very clear without the knowledge and consent of Mr. Thanzama, Smt. Kapthangi transferred the suit land to the plaintiff.

Issue No. 7

Whether the decision of the Govt. for restoration of the LSC No.386 of 1976 (Original) in the name of Shri. H. Thanzama vide letter dt. 23/2/07 is valid or not.

As admitted by the plaintiff as PW-1 and as ascertained by Ext. D-3, show cause notice was duly made by the Revenue Department to the plaintiff for promulgating the impugned letter under No. R. 21011/71/92-

DC (A) Vol-1/391 dated 23.2.2007 marked as Ext. P-9. The lone DW for defendants 5-7 clarified that due to finding out of foul play committed by the plaintiff and Smt. Kapthangi, the impugned letter was passed with prior approval of the government. During cross examination of DW for defendants 5-7, he further deposed that before the death of Mr. Thanzama, LSC No. 386 of 1976 was already mutated in the name of the plaintiff. DW for defendants 5-7 also admitted that government approval for cancellation was not LSC No. 386 of 1976 as elicited by Ext. P-8.

As evidence disclosed that the deceased Mr. Thanzama was weak due to serious ill health causing accident met on 13/1/1992. As revealed by Ext. D-1, Mr. Thanzama was admitted into Hospital on 30-01-1992 and discharged on 24.2.1992 and remain in the bed for sickness during another three months as deposed by DW-1 for defendants 5-7. During his ill health originality of LSC No. 386 of 1976 was changed by his second wife Smt. Kapthangi. Undisputedly, the defendants 5-7 are the sons and daughters of the said Mr. Thanzama with his first wife. At the time of oral arguments, learned counsels of both parties are not in disputed that the plaintiff is the brother of the said Smt. Kapthangi. It created strong suspicious on manipulation of the said LSC No. 386 of 1976.

In respect of discrepancy in Ext. P-8 viz. approval for cancellation of LSC No. 722 of 1992 and Ext. P-9 viz. letter for cancellation of LSC No. 386 of 1976. The transactions of LSC No. 386 of 1976 by partitioned into LSC No. 722 of 1992 is very confusing by adversely putting LSC No. 722 of 1992 in the name of Mr. Thanzama. In this arena, the intention of the government is very clear as no need of cancellation of LSC No. 722 of 1992 whilst initiative was taken on the basis of the complaint preferred by the defendants 5-7. This minor discrepancy may not vitiate the credibility of the impugned letter marked as Ext. P- 9. I therefore find no reasons to interfere in the impugned letter under No. R. 21011/71/92-DC (A) Vol-1/391 dated 23.2.2007 marked as Ext. P-9 and the circumstances elicited by evidences and factual matrix revealed that it was the initiative of Smt. Kapthangi, the second wife Mr. Thanzam even for transferring to the plaintiff without particularizing the amount for sale.

Issue No. 8

Whether the Plaintiff is entitled to the reliefs claimed. If so, to what extend.

In view of the findings of the above issue no. 7, the plaintiff will not entitle the relief sought in the plaint. The arguments of Mr. C. Laramzauva is acceptable stating that at the time of making an application for transfer of the said LSC No.386/76 to the name of Smt. Kapthangi (L), the signature of late H. Thanzama was forged was verified by comparing his own signature with the signature appearing on the body of the transfer application. As a result, the Revenue Authorities had come to the conclusion that the said transfer of the said LSC and its subsequent partition were without authority and the same were declared to be invalid. In fact, it was duly proved during the course of evidence that the said illegal and unauthorized transfer of the said original LSC No.386/76 was effected by his wife Smt. Kapthangi (L) while late H. Thanzama was in Hospital due to the accident met by him.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, the instant suit due to lack of merits is hereby dismissed but 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 28th 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. TS/4/2007, Sr. CJ (A)/

Dated Aizawl, the 28th June, 2012

Copy to:

1. Mr. Chalzika, Bungkawn Nursery Veng, Aizawl through Mr. W. Sam Joseph, Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer -I, Land Revenue and Settlement Department- Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
6. Smt. Kapliani W/o.Thanluaia, Tuikual 'S', 'B' Mual, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
7. Ms. Lalzawmthangi D/o. H. Thanzama (L), Bungkawn, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
8. Ms. Lalthanpuui D/o. H. Thanzama (L), Maubawk, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
9. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
10. Case record

PESKAR