

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

*TITLE SUIT NO. 09 OF 2008*

*Plaintiff:*

Mr. K. Sanglawma  
S/o Kapduna (L)  
Bawngkawn, Aizawl

*By Advocates*

: 1. Mr. C. Lalramzauva, Sr. Adv.  
2. Mr. A. Rinliana Malhotra, Adv.  
3. Mr. Joseph Lalfakawma, Adv.  
4. Smt. Zothansangi Pachuau, Adv.  
5. Mr. T.J. Lalnuntluanga, 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. Lalzarliani  
D/o Lalhruaia (L)  
A-81, Thuampui, Aizawl

*By Advocates*

:

For the defendants no. 1-4 : 1. Mr. R. Lalremruata, AGA  
2. Miss Bobita Lalhmingmawii, AGA  
For the defendants no. 5 : Mr. L.H. Lianhrima, Adv.

Date of Arguments : 18-06-2012

Date of Judgment & Order : 27-06-2012

**BEFORE**

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

**JUDGEMENT & ORDER**

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**BRIEF STORY OF THE CASE**

The plaintiff in his plaint submitted that he had purchased a plot of land at Chaltlang Lily veng, Aizawl near Bawngkawn which is a portion of land covered by LSC No. 668 of 1976 issued in the name of Smt. Mangali Thapa (L) from Smt. Debu Thapani being the legal heiress by virtue of Heirship Certificate No. 293 of 1993. Although Civil Suit No. 5 of 1995, Declaratory Suit No. 1 of 1998 and RFA No. 18 of 2006 were decreed in favour of the plaintiff, the Revenue Department issued LSC in favour of the defendant no. 5 under LSC No. 103102/01/1281 of 2005 encroaching the land purchased by the plaintiff. However, by passing order under Memo No. 21011/39/07- DC (A)/206 Dt. 25/1/2008, the Revenue Department put kept in abeyance of settlement of the disputes as another cause of action is pending in the Reviewing court. Court fees at Rs. 5000/- is also paid. The plaintiff therefore prayed that (i) a decree in favour of the plaintiff and against the defendants declaring rights and title over the suit land after cancellation of LSC No. 103102/01/1281 of 2005 issued in the name of defendant no. 5 (ii) for modification of the order under Memo No. 21011/39/07- DC (A)/206 Dt. 25/1/2008 for effecting cancellation of LSC No. 103102/01/1281 of 2005 (iii) for settlement of the said land purchased by the plaintiff from Smt. Debu Thapani (L) in favour of the plaintiff by issuing necessary House Pass/LSC even before final settlement of the Review Case on the strength of the judgment & order passed by the court in connection with Declaratory Suit No. 1 of 1998 and RFA No. 18 of 2006 (iv) cost of the suit and any other relief which this court deems fit and proper.

The defendants 1-4 in their joint written statements stated that the suit is not properly verified in accordance with law and is bad for non joinder and also barred by law of limitation. The plot of land purchased by the plaintiff is not fully covered by LSC No. 668 of 1976 as reported by the Assistant Director of Survey (T). Even though LSCs No. 858 to 861 of 1993 were partitioned out from LSC No. 668 of 1976 as per their record, the original area of LSC No. 668 of 1976 still the same even after partition. The original holder of LSC No. 668 of 1976 therefore claimed a vast plot of land which was not fully covered by the said LSC. LSC No. 858 to 861 were made beyond the area of LSC No. 668 of 1976 without an authority and in the absence of prior permission of the Government. As per verification report of the Assistant Director of Survey (T), the plaintiff had purchased a vacant plot of land from Mangali Thapani located between the area of LSC No. 668 of 1976 and LSC No. 858 of 1993 and LSC No. 861 of 1993 which belonged to Mr. Rosiama and Mr. Lalzuiliana respectively. Therefore the said Smt. Mangali Thapa had sold the land to the plaintiff beyond her rights. The LSC issued in favour of Smt. Lalzarliani/defendant no. 5 covered some portion of

LSC No. 668 of 1976 which did not encroach the land purchased by the plaintiff as was shown in the boundary description and sketch map of the defendant no. 5 land under LSC No. 103102/01/1281 of 2005. As the exact area of the land purchased by the plaintiff is not demarcated from the very beginning, no LSC was issued to him till date. Thus, the suit land cannot be said to be encroached upon each other.

The defendant no. 5 in her written statements contended that the suit is bad in non-joinder of necessary parties and is barred by law of limitation. The civil court do not have subject matter jurisdiction to try the instant case as it falls under the purview of Revenue Court. Being the non-tribal, Smt. Debu Thapani has no legal and moral right to apply or obtain Heirship Certificate No. 293 of 1993 in respect of LSC No. 668 of 1976. Even though LSCs No. 858 to 861 of 1993 were partitioned out from LSC No. 668 of 1976, the original area of LSC No. 668 of 1976 still the same even after partition. The original holder of LSC No. 668 of 1976 therefore claimed a vast plot of land which was not fully covered by the said LSC. LSC No. 858 to 861 were made beyond the area of LSC No. 668 of 1976. Smt. Debu Thapani was not competent to execute Sale Deed as the suit LSC was not in her name at the time of execution of the said Deed. Failure to implead Mr. Baitea S/o Sene (L) of Bawngkawn who sold the suit land to the defendant no. 5 on Dt. 9/6/1999 for Rs. 6 lakhs is bad in law and is fatal for revealing factual matrix. In Declaratory Suit No. 1 of 1998 and Civil Suit No. 5 of 1995, the plaintiff was not arrayed as parties and does not called any effect on the plaintiff.

### **ISSUES**

The following issues were framed on 25.3.2009 and amended towards fructification of justice such as -

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiff has cause of action against the defendants
3. Whether the suit is barred by law of limitation, estoppels and acquiescence
4. Whether the civil court has jurisdiction to try the instant suit
5. Whether the suit is properly valued and whether the requisite court fees has been paid
6. Whether the suit is bad for non-joinder of necessary parties or not
7. Whether the suit land is within/or covered by LSC No. 668 of 1976
8. Whether the Sale Deed executed by the plaintiff and Smt. Debu Thapani in respect of the suit land is valid in the eye of law. If so, whether the area of the said land purchased by the plaintiff has been encroached upon by the LSC No. 103102/01/1281 of 2005 belonging to the defendant no. 5
9. Whether the claim of the plaintiff for cancellation of LSC No. 103102/01/1281 of 2005 belonging to the defendant no. 5 has connection with the other court proceedings in Review Case No. 1 of 2003 arising out of Civil Suit No. 5 of 1995
10. Whether the LSC No. 103102/01/1281 of 2005 issued in favour of the defendant no. 5 is legally valid or not

11. Whether the plaintiff is entitled to the relief claimed. If so, to what extend.

### **BRIEF ACCOUNT OF EVIDENCE**

#### For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. K. Sanglawma S/o Kapduna (L), Bawngkawn, Aizawl (Hereinafter referred to as PW-1)
2. Mr. T. Lawmthanga S/o Tualbawia, Bawngkawn, Aizawl (Hereinafter referred to as PW-2)
3. Smt. K.L. Rintluangi W/o K. Sanglawma, Bawngkawn, Aizawl (Hereinafter referred to as PW-3)
4. Mr. Khualluna S/o Thanseia (L), Chaltlang Lily Veng, Aizawl (Hereinafter referred to as PW-4)

The **PW-1** in his examination in chief deposed that he had purchased a plot of land at Chaltlang Lily veng, Aizawl near Bawngkawn which is a portion of land covered by LSC No. 668 of 1976 issued in the name of Smt. Mangali Thapa (L) from Smt. Debu Thapani being the legal heiress by virtue of Heirship Certificate No. 293 of 1993. While Smt. Debu Thapani (L) was keeping the LSC No. 668 of 1976 in her safe custody, her nephew Mr. Lalzuiliana (L) @ Budea S/o Gone Thapa had stolen out the said LSC and had got it partitioned into five LSCs namely-

(a) Suresh Thapa	LSC No. 668 of 1976
(b) Rosiama	LSC No. 858 of 1993
(c) Lila Thapa	LSC No. 859 of 1993
(d) Jamuna Thapa	LSC No. 860 of 1993
(e) Lalzuiliana	LSC No. 861 of 1993

The above partitioned were without authority and in the absence of prior approval of the government. As a result, on the complaint submitted by Smt. Debu Thapani to the defendant no. 3, the said five LSCs were recalled and suspended. Subsequently, Smt. Debu Thapani had filed Civil Suit No. 5/95. As approached by the said Smt. Debu Thapani, sale deed was executed in between them on Dt. 21/12/1995, the amount for the same @ Rs. 5 lakhs was also subsequently paid in full by the plaintiff by executing acknowledgement on Dt. 12/10/98 in the presence of witnesses. Declaratory suit No. 1 of 1998 was filed against Smt. Debu Thapani and the instant plaintiff. Declaratory Suit filed by Smt. Phulmaya Thapa and others against Smt. Debu Thapani and himself was finally disposed on Dt. 17/1/2006. Although Civil Suit No. 5 of 1995, Declaratory Suit No. 1 of 1998 and RFA No. 18 of 2006 were decreed in favour of the plaintiff, the Revenue Department issued LSC in favour of the defendant no. 5 under LSC No. 103102/01/1281 of 2005 encroaching the land purchased by the plaintiff. However, by passing order under Memo No. 21011/39/07- DC (A)/206 Dt. 25/1/2008, the Revenue Department put kept in abeyance of settlement of the disputes as another cause of action is pending in the

Reviewing court. Court fees at Rs. 5000/- is also paid. The plaintiff therefore prayed that (i) a decree in favour of the plaintiff and against the defendants declaring rights and title over the suit land after cancellation of LSC No. 103102/01/1281 of 2005 issued in the name of defendant no. 5 (ii) for modification of the order under Memo No. 21011/39/07- DC (A)/206 Dt. 25/1/2008 for effecting cancellation of LSC No. 103102/01/1281 of 2005 (iii) for settlement of the said land purchased by the plaintiff from Smt. Debu Thapani (L) in favour of the plaintiff by issuing necessary House Pass/LSC even before final settlement of the Review Case on the strength of the judgment & order passed by the court in connection with Declaratory Suit No. 1 of 1998 and RFA No. 18 of 2006 (iv) cost of the suit and any other relief which this court deems fit and proper. He further continued that-

*Ext. P-1 is a copy of Heirship Certificate No. 293 of 1993*

*Ext. P-2 is a copy of LSC No. 668 of 1976*

*Ext. P-3 is a copy of Order Dt. 11/12/1995 passed by the then SDM (J), Aizawl District*

*Ext. P-4 is a copy of Sale Deed Dt. 21/12/1995*

*Ext. P-5 is a copy of Ram Inleina Man Pektlakna Dt. 12/10/1998*

*Ext. P-6 is a copy of Ramri Siamfel leh Chhinchhiahna Dt. 16/9/1998*

*Ext. P-7 is a copy of Judgment & Order Dt. 27/3/2003 passed in Civil Suit No. 5 of 1995*

*Ext. P-8 is a copy of Judgment & Order Dt. 17/1/2006 passed in Declaratory Suit No. 1 of 1998*

*Ext. P-9 is a copy of Judgment & Order Dt. 21/8/2007 passed in RFA No. 18/06*

*Ext. P-10 is a copy of LSC No. 103102/01/1281 of 2005 issued in favour of the defendant no. 5*

*Ext. P-11 is a copy of representation submitted by the plaintiff to the ASO-I*

*Ext. P-12 is a copy of Order Dt. 25/1/2008 issued by defendant no. 4*

*Ext. P-13 is a copy of Legal Notice u/s 80 of CPC*

During cross examination by learned AGA, he stated that he resided at Bawngkawn since 1988. He admitted as a fact that he purchased the land from Mangali Thapani through her daughter Debu Thapani. He admitted as a fact that the Sale Deed Dt. 21/12/1995 was not registered before Notary Public or before any concerned authority. He admitted as a fact that at the time when he purchased the suit land, its measurement was not taken, they merely based on their own description in their sale deed. Due to pending court case, he remained fails to mutate the suit land in his name.

In his cross examination by learned counsel for the defendant no. 5, he further deposed that Late Debu Thapani filed Review application against the order Dt. 25/3/2003 passed by Mr. Saingura Sailo, the then Asst. to Deputy Commissioner in connection with Civil Suit No. 5 of 1995. As directed by the court, the Asst. Director of Survey, LR & S Department conducted spot verification and thereafter forward the same to the court. As a result, judgment & order was passed in his favour. Appeal was again preferred by Mr. Rosiama in the court of District Judge, Aizawl and is still pending. No criminal case was registered against Mr. Lalzuiliana @ Budea

S/o Gone Thapa in respect of alleged stolen out of LSC No. 668 of 1976 from the custody of Smt. Debu Thapani till date. The original area of land covered by LSC No. 668 of 1976 was 2108 Sq. ft. When he purchased the suit land, Civil Suit No. 5 of 1995 was already pending in the court of Asst. to Deputy Commissioner, Aizawl.

The **PW-2** stated in his examination in chief that he witnessed the transaction of the plaintiff and Smt. Debu Thapani. He also involved physically for demarcation of the purchased land of the plaintiff performed on 16/9/1998 with Smt. Debu Thapani and Mr. P. Lianzama made on the basis of the Sale Deed Dt. 21/12/1995. After Assam type building was dismantled by heavy storm in 2005, the defendant constructed simple Assam type building exceeding her boundary. Ext. P- 6 (a) is his signature.

During cross examination, he deposed that except sale deed he was not shown any other documents on the suit land. No officials or surveyors were employed for demarcation of the land of the plaintiff made on the basis of their Sale Deed.

The **PW-3** stated in her examination in chief that she witnessed the transaction of the plaintiff and Smt. Debu Thapani acted as the witness in their Sale Deed. Demarcation of the purchased land of the plaintiff was performed during June, 1998 on the basis of the Sale Deed Dt. 21/12/1995. After Assam type building was dismantled by heavy storm after four to five years past from sale deed, the defendant constructed simple Assam type building exceeding her boundary. Ext. P- 4 (b) is her signature. Ext. P- 4 (c) is the signature of Mr. K. Sanglawma. Ext. P-4 (d) is the signature of Smt. Debu Thapani (L). Ext. P- 6 (b) is the signature of Smt. Debu Thapani (L) and Ext. P- 6 (c) is the signature of Mr. K. Sanglawma who put their signatures in her presence.

During cross examination by learned AGA, she deposed that she firstly put signature in the sale deed as a witness but denied without knowing the facts and contents thereof. At the time of purchased of the land by the plaintiff, the defendant no. 5 has not yet obtained her LSC. Just before the plaintiff purchased the land, she saw the LSC the covers the purchased land. So far as her knowledge concerned, for obtaining LSC by the defendant no. 5, she did not obtain no objection from Smt. Debu Thapani (L).

In her cross examination by learned counsel for defendant no. 5, she further deposed that the plaintiff is her husband married in 1984 according to Mizo customary laws. In the Sale Deed Ext. P-4, no pass or LSC no of their purchased land was mentioned. She was not acted as witness in Ext. P-5 and Ext. P-6. In the sale deed Ext. P-4, no stamp was affixed and no registration was made. As they could not clear the amount for purchase of land, they could not construct a house in the suit land. Later they paid the total amount in 1998. The LSC of the suit land is not yet mutate in the name of the plaintiff. Baihtea is the relative of Smt. Debu Thapani who is the house maid of the said Smt. Debu Thapani. She knows that the defendant no. 5 had purchased the land below their purchased land. The defendant no. 5 later put the area exceeding her purchased area in her LSC.

For the defendants 1-4:

The defendants 1-4 had produced the following witnesses namely-

1. Mr. K. Sangthuama, Under Secretary, LR & S Department  
(Hereinafter referred to as DW-1 for defendants 1-4)
2. Mr. K. Lalhmuakliana, Asst. Director, LR & S Department  
(Hereinafter referred to as DW-2 for defendants 1-4)

The **DW-1 for defendant no.1-4**, in his examination in chief deposed that on spot verification over L.S.C. No. 668/76 conducted by Pu Dawngkima, Asst. Director of Survey(T), it was found that the land claimed to have purchased by Pu Sanglawma, the plaintiff, falls outside the area of LSC no. 668/76. Also the defendant No.5 L.S.C. No.10310/01/1281 of 2005 issued in the name of Pi Lalarliani did not encroach or overlap the land claimed to have purchased by the plaintiff. He further stated that-

*Ext D-1 is a copy of the written statement.*

*Ext D-1(a) is the signature of Pi Rokimi, the then Under Secretary to the Govt. of Mizoram, Revenue Dept.*

*Ext D-2 is a copy of the verification report on land dispute of Mangali Thapani.*

During cross examination, he stated that he started working in the Revenue Department since January 2009 as Under Secretary and has been continuing the same capacity till date. He deposed that he has not visited the disputed land at the site and has no knowledge as to the demarcation or vacancy of the land. He stated that he had no knowledge as to whether the land allotted in favour of the defendant No.5 has encroached upon the land of the plaintiff and confesses as a fact that he had not produced a copy of the Verification Report of Pu Dawngkima, Asst. Director of Survey in connection with the L.S.C. No.668/76. He denied fabricating the said statement purportedly made in the said Verification Report. Further he stated that he has no knowledge as to the location and area of the site where B. Thapa's house building was located and that redemption fee had been paid for extension of the original L.S.C. so as to cover the area which was then lying vacant. Not dealing with matters pertaining to land in his capacity as Under Secretary, LR & S Dept., DW-1 said that he is unaware whether the government had rightly or wrongly taken its stand against the claim of the plaintiff.

The **DW-2 for defendant no.1-4** stated in his examination in chief that he is working as Asst. Director, Directorate of Land Revenue. As per the report of the Asst. Director of Survey (T), a plot of land claimed by the plaintiff is not covered by L.S.C. No. 668 of 1976. The original holder of L.S.C. No. 668 of 1976 has claimed a vast plot of land which was not fully covered by her L.S.C. and that L.S.C. No. 858 to 861 of 1993 were made beyond the area of L.S.C. No. 668 of 1976 without any authority and in the absence of prior approval of the Government. On spot verification by the Asst. Director of Survey (T), it was reported that Smt. Mangali Thapani sold land covering the area of L.S.C. No. 858 of 1993 and L.S.C. No. 861 of 1993

which belonged to Sh. Rosiama and Sh. Lalzuiliana respectively, thus selling land to the plaintiff beyond the rights.

In his cross examination by counsel for the plaintiff, DW-2 deposed that he started working as Asst. Director, Directorate of LR & S, Mizoram with effect from the month of March, 2009. He was unaware of how and on what basis, whether VC Pass or house site pass or any other document or authority defendant No. 5 was issued her said L.S.C. as it was made prior to his posting in the said department. He denied as a fact that the L.S.C. No. 1281 of 2005 had overlapped and encroached upon the land of the plaintiff. He was unable to ascertain in whose name L.S.C. No. 858-861 of 1993 and L.S.C. No. 668 of 1976 were issued and where the same are located. He deposed that it is not a fact that the department had processed the application of the defendant No.5 for issuance of L.S.C. without giving any attention to the orders passed by the court of Sh. Singlura Sailo, ADC, Aizawl vide his judgment & order dt.27/3/03 in C.S. No. 5/95. Neither did the department violate the norms and practices or the provisions of Land Revenue laws applicable for such matters.

For the defendant No.5

The defendant No.5 had also produced the following witnesses namely-

1. Smt. Lalzarliani d/o Lalruaia(L), R/O A-81, Thuampui, Aizawl (Hereinafter referred to as DW-1 for defendant No.5)
2. Smt. Thangpuuui d/o C.L.Thanga, Dinthar, Aizawl (Hereinafter referred to as DW-2 for defendant No.5)
3. Mr. Thamaia s/o Lalenga, Chaltlang, Lily Veng (Hereinafter referred to as DW-3 defendant No.5)
4. Mr. Lalenga s/o Lalnela(L), Chaltlang, Lily Veng (Hereinafter referred to as DW-4 defendant No.5)

The **DW-1 for defendant No.5** in her examination in chief stated that she bought a plot of land from Mr. Lalzuiliana on 9<sup>th</sup> June, 1999 in the presence of witnesses and obtained a pass and LSC No. 103102/01/1281 of 2005 from the Revenue Department. If Mrs. Debu Thapani had any objections as to the transaction she should have filed a case against her under Civil Suit No. 5 of 1995. However, no steps have been taken to this effect. DW-3 further denied that Shri Lalzuiliana (L) had stolen L.S.C. No. 668/76 from Smt. Debu Thapani(L). Further she stated that Debu Thapani was not in possession of L.S.C. or pass at the time of execution of the Sale Deed. Moreover, Debu Thapani and Mangali Thapani not being tribals, the sub District Council Court is not competent to issue Heirship Certificate. She further states that-

*Ext D. 5-1 is a copy of written statement submitted by her.*

*Ext D. 5-1(A&B) are her signatures.*

*Ext D. 5-2 is a copy of Sale Deed dt 9/6/99.*



On cross examination by counsel for the plaintiff, **DW-1** for deft no. 5 deposed that she had no knowledge whether the LSC was under the name of Mr. Lalzuiliana or not. She said that she was unaware that complaint was filed by Mrs. Debu Thapani against the four L.S.C.'s made from L.S.C. 668/76 in 1993. She also states that L.S.C. No. 103102/01/1281 of 2005 was made on the basis of Sale Deed (*Ext. D. 5-1*).

She further stated in her cross examination by counsel for the defendant No. 5 that she also obtained NOC from the neighbouring land owners.

The **DW-2 for defendant No. 5** in her examination in chief stated that she witnessed the transaction between Mr. Lalzuiliana and Smt. Lalzarliani. She also stated that-

*Ext D. 5-2A is her signature.*

During her cross examination by the learned counsel for plaintiff, she stated that she and defendant No. 5 are friends. Sale Deed Ext D5-2 is a sale transaction and the buyer being Smt. Lalzarliani. However she stated that she had no knowledge when Sale Deed Ext D5-2 was executed and the location of the land in dispute. She also stated that the plaintiff had not been occupying the suit land was not true.

The **DW-3 for defendant No.5** stated in his examination in chief that he witnessed the transaction between the plaintiff and defendant No.5. He further continued that-

*Ext D5-2B is his signature.*

In his cross examination by the learned counsel for the plaintiff, he deposed that defendant No.5 is the daughter of his father's eldest sibling. He is not aware of how vast the land is and is no longer certain of the contents of Sale Deed Ext. D5-2. The contention that defendant No.5 never stayed in the suit land is not true.

The **DW-4 for defendant No. 5** stated in his examination in chief that he witnessed the transaction between the plaintiff and defendant No.5 on 9<sup>th</sup> June, 1999. He further continued that-

*Ext D5-2© is his signature (objected on the ground that no original is produced)*

During his cross examination by the learned counsel for the plaintiff he deposed that he purchased his land from Smt. Nguri(L) w/o Lalzuiliana(L). He stated that he was unaware whether Lalzuiliana had stolen the original L.S.C. No. 668/76 from the possession of Debu Thapani(L) and he had partitioned the same into a number of L.S.C.'s and the L.S.C. which was issued in the name of Lalzuiliana i.e. 861/93 was purchased by him after his death from his wife. He further stated that he did not read the contents of the said sale deed nor was he present when the boundary of the land was measured for the purpose of the said sale deed. He does not have any knowledge as to who Baitea is/was and whether he

had any right or title in respect of the said land proposed to be sold by Baitea to Lalzarliani.

## **FINDINGS**

### **Issue No. 1**

#### **Whether the suit is maintainable in its present form and style**

A requisite court fees at Rs. 5000/- is paid by the plaintiff in his plaint. Meanwhile, simple affidavit is made by the plaintiff but not specified as paragraph wise. 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. For that purpose, 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 9<sup>th</sup> 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. 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.”

Meanwhile, prior legal notice is also served to the state defendants by the plaintiff. However, this issue is therefore decided in favour of the defendants due to lack of paragraph wise verifications of the plaint as held in **Sinnamani & Anr. vs G. Vettivel & Ors.** (supra.).

## **Issue No. 2**

### **Whether the plaintiff has cause of action 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 admitted by the PWs, the case of the plaintiff is mainly based on Ext. P- 4 viz. alleged Sale Deed but which is not registered under the Registration Act and is also not with requisite stamp duty. Whilst the plaintiff sued the instant suit on the basis of Ext. P-4, this itself does not create any right to sue as recently held in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.** decided on 11<sup>th</sup> 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.”

The plaintiff further relied in the “*Ram Inleina Man Pektlakna*” (Deed for full payment of sale of land) marked as Ext. P- 5 which is neither registered instrument nor with requisite stamp duty.

The plaintiff also relied in Ext. P- 6 which is “*Ramri Siamfel leh Chhinchhiahna*” (Marking of boundary and description of boundary) which is undisputedly done by the plaintiff and the deceased Smt. Debu Thapani in accordance with their Ext. P-4 without the interference of Revenue and Survey Experts of the Land Revenue and Settlement Department but made in the presence of Mr. P. Lianzama and Mr. T. Lawmthanga.

Inevitably, no cause of action in favour of the plaintiff is found as the claimed Heirship Certificate No. 293 of 1993 marked as Ext. P-1 was also undisputedly issued to the non-tribal like Smt. Debu Thapani by the Subordinate District Council Court, Aizawl which is constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, (No. DLC 14/53 dated April, 7th, 1953). Law on that point is already settled in the case of **Union Territory of Mizoram and Anr. v. Shri Lal Than Para and Anr.**, reported in (1983) 2 GLR 269, Hon’ble Gauhati High Court has held that-

“... The subordinate District Council Court had no jurisdiction to try any action in respect of the property belonging to the Government of Mizoram, in view of the bar imposed by Rule 23(1)(b) of the Rules.

... According to the commands of the Rules the District Council Courts can try suits when all the parties belong to Scheduled Tribe. However, the Courts are incompetent to try any action or case in which one of the litigants does not belong

to a Scheduled Tribe. The cases in which a party does not belong to a Scheduled Tribe must be tried under the Rules for the Administration of Justice, 1937. There cannot be any dispute in this regard.

.... As a result of the foregoing discussions, we reach the conclusion that the State is not a natural person, the Rule 23(1)(b) of the Rules includes only natural person belonging to a Scheduled Tribe, that the State is a legal or juristic person which can sue or be sued but they cannot be termed as "person belonging to a Scheduled Tribe" and that the District Council Courts can try cases between natural persons all of whom belong to the Scheduled tribes and cannot try the cases wherein one of the parties does not belong to a Scheduled Tribe.... We hold that suit is exclusively triable by the Deputy Commissioner and/or the Additional Deputy Commissioner, Aizawl under the Rules for the Administration of Justice, 1937....”

Rules 5 and 14 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, (No. DLC 14/53 dated April, 7th, 1953) specifically delineated the jurisdiction of Courts established under the said Rules stating that in which both parties belong to a Scheduled Tribe or Tribes. Sub- rule (1) clause (b) of Rule 23 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, (No. DLC 14/53 dated April, 7th, 1953) also specifically barred the Subordinate District Council Court or an Additional Subordinate District Council Court to entertain the case in which one of the parties is a person not belonging to a Scheduled Tribe. For that purpose, rule 24 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 stipulated the competent forum for trial of cases of non-tribal involvement in the lis, the ratio laid down in **Food Corporation Of India & Anr vs Yadav Engineer & Contractor** decided on 6 August, 1982 reported in 1982 AIR 1302, 1983 SCR (1) 95 is relevant to close examine the incompetency of Subordinate District Council Court in respect of Heirship Certificate No. 293 of 1993.

As the above is the administration of justice in the region, whether the instant Heirship Certificate No. 293 of 1993 marked as Ext. P-1 issued to the non-tribal Smt. Debu Thapani by the Subordinate District Council Court, Aizawl is executable or not is also another moot point. Whilst the plaintiff till arguments mainly relied on such Heirship Certificate No. 293 of 1993 marked as Ext. P-1 whilst the suit land viz. LSC No. 668 of 1976 issued in the name of Smt. Mangali Thapa (L) and remains in her name till execution of the alleged Sale Deed in between the plaintiff and Smt. Debu Thapani. Thus, inevitably, the plaintiff has no cause of action to file the instant suit.

### **Issue No. 3**

#### **Whether the suit is barred by law of limitation, estoppels and acquiescence**

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. However, as clearly mentioned under paragraph no. nine (9) of the plaint that the cause of action had arisen when the LSC of the defendant no. 5 was issued on 1/9/2005 whilst the PW No. 3 also clearly deposed that when issuance of their challenged L.S.C. No. 103102/01/1281 of 2005. Thus, this issue is shortly decided in favour of the plaintiff. No applicability of doctrine of estoppels and acquiescence is found whilst the plaintiff timely filed the suit with prior legal notice to the state defendants.

#### **Issue No. 4**

#### **Whether the civil court has jurisdiction to try the instant suit**

Undisputedly, as per the provision of the Mizoram Civil Courts Act, 2005. The instant suit being a title suit having valuation more than two lakhs rupees, this court is competent to entertain and dispose of the suit on merit. However, In the case of **Noor Mohd. Khan Ghouse Khan Soudagar & Anr. vs Fakirappa Bharmappa Machena Halli & Ors.** decided on 28 April, 1978 reported in 1978 AIR 1217, 1978 SCR (3) 789, it was held that-

“It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be lightly inferred. Such exclusion must either be explicitly expressed or clearly implied. The law was laid down by the Privy Council in 67 Indian Appeals (page 222) and has been since affirmed by this Court in several decisions. In *Dhulabhai vs. State of M.P.*, (1) this Court held that exclusion of jurisdiction of the Civil court is not to be readily inferred. This view was followed in the *State of West Bengal Vs. The Indian Iron & Steel Co. Ltd* [1971] 1 S.C.R. 275. and affirmed in the *Union of India Vs. Tara Chand Gupta & Bros.*, [1971] 3 S.C.R. 557. The Privy Council in 67 I.A. 222 approving of the principles laid down in the well-known judgment of Willes J. in *Wolverhampton New Water Works Co. vs. Hawkesford* which was approved of in the House of Lords in *Neville vs. London "Express" Newspaper* stated the law thus:

"Where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it with respect to that class it has always been held that the party must adopt the form of remedy given by the statute."

In order to determine whether the jurisdiction of the Civil Court was expressly or by necessary implication excluded, the provisions of the relevant enactments will have to be considered."

And in **Dayaram vs Sudhir Batham & Ors.** decided on 11 October, 2011 in connection with Civil Appeal No.3467 of 2005, the Supreme Court has held that-

“19. It is therefore clear that the jurisdiction of the civil court to entertain any suit of a civil nature arising under a

statute can be excluded only when cognizance is expressly or impliedly barred by the statute which gives rise to such suits.”

Law on that point is also clearly laid down in **Dhulabhai & Ors. v. State of M.P. & Anr.** reported in 1969 AIR 78, 1968 SCR (3) 662 in similar terms. If it be so, either the existing Mizo District (Land and Revenue) Act, 1956 or the Mizo District (Land and Revenue) Rules, 1967 fails to barred proceedings of land disputes like the instant case in the civil court by constituting Revenue Tribunal or other authority. Thus, this issue is adjudicated in favour of the plaintiff as clearly answered in **Food Corporation Of India & Anr vs Yadav Engineer & Contractor** decided on 6 August, 1982 reported in 1982 AIR 1302, 1983 SCR (1) 95, it was held that-

“Ordinarily as provided in s. 9 of the Code of Civil Procedure all suits of a civil nature except suits of which cognizance is either expressly or impliedly barred would be triable by the courts set up for the purpose. If the dispute is of a civil nature the forum is one or the other court set up for the purpose. The State courts have been set up for an easy access by persons who seek resolution of their disputes. They must be disputes of civil nature and the cognizance of which is not either expressly or impliedly barred. Civil courts set up by the State having defined jurisdiction will be the forum for resolution of such disputes. Ordinarily, therefore, whenever a dispute of a civil nature arises the party claiming relief would approach the court having jurisdiction to resolve the dispute. The party against whom relief is sought will be informed of the cognizance of the dispute being taken by the court and it must come forth and either concede that the dispute is genuine in whole or in part or defend the action. Sometimes a dispute as to jurisdiction, territorial or pecuniary, is raised but apart from such specific exclusions claimed by a party civil courts are set up with the object of resolving civil disputes. A forum thus may readily be available and presumed to be easily accessible. This is the prescribed mode of access to justice.”

#### **Issue No. 5**

#### **Whether the suit is properly valued and whether the requisite court fees has been paid**

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”

Law on valuation of the suit is sum up In **Commercial Aviation & Travel Company & Ors. vs Vimal Pannalal** decided on 13 July, 1988 and reported in 1988 AIR 1636 = 1988 SCR Supl. (1) 431=1988 SCC (3) 423 = JT 1988 (3) 41=1988 SCALE (2)1, the Supreme Court has noted that-

“.....Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively.”

Under paragraph no. 10 of the plaint, valuation of the suit was claimed as Rs. 5 lakhs as elicited by Ext. P- 4 and Ext. P-5, court fees at Rs. 5000/- is also paid as indicated under paragraph no. 12 of the plaint. Thus, this issue is indispensably decided in favour of the plaintiff.

### **Issue No. 6**

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

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

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

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

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

As claimed by the defendants, the defendant no. 5 exclaimed that she had purchased the suit land from Mr. Lalzuiliana but in the written statement of the defendant no. 5 under paragraph no. 10, the said Mr. Lalzuiliana @ Budea S/o Gone Thapa appears already died as put as (L). In the light of the above settled laws, even without impleadment of the said Mr. Lalzuiliana @ Budea S/o Gone Thapa, this suit can also be effectively adjudicated and fructified in accordance with law. No other names of persons arrayed in the pleadings as necessary parties in the instant lis. This issue is therefore again decided in favour of the plaintiff.



### Issue No. 7

#### Whether the suit land is within/or covered by LSC No. 668 of 1976

As admitted by PWs in their oral evidence adduced therein, the plaintiff relied in Ext. P- 6 which is “Ramri Siamfel leh Chhinchhiahna” (Marking of boundary and description of boundary) which is undisputedly done by the plaintiff and the deceased Smt. Debu Thapani in accordance with their Ext. P-4 without the interference of Revenue and Survey Experts of the Land Revenue and Settlement Department but made in the presence of Mr. P. Lianzama and Mr. T. Lawmthanga. Meanwhile, Ext. D-2 viz. Verification report on land dispute of Mangali Thapari, Chaltlang verified by Mr. Dawngkima, Assistant Director of Survey (T) Dt. 29-08-2003 embodied that at the time of spot verification, the plaintiff, Mr. Rosiama and representative of Mr. K. Lalenga were present on the spot. It further elicited that “..... *The claimed land of Mr. K. Sanglawma was just outside the area covered by LSC No. 668 of 1976 and the building with the said LSC was purchased by Smt. Lalzarliani. The identification of Mr. K. Sanglawma for his claimed land is within the fencing area of Mr. Rosiama. Whether the version of Mr. K. Sanglawma is correct or not, he had purchased the land after issuance of the LSC of Mr. Rosiama. Mr. K. Sanglawma was wrongly showed the land at the time of their sale deed*”

However, the plaintiff simply relied in their sale deed and their boundary description which was done without the technical hands of Revenue Department. No other clear cut evidence is adduced in favour of the plaintiff.

Whilst the plaintiff himself was present on the spot when the said Assistant Director of Survey (T) performed verification on Dt. 29-08-2003 and no pleadings and evidence is adduce to prove the arbitrariness of the said verification report, decisions of Hon’ble Supreme Court in the case of **Mig Cricket Club vs Abhinav Sahakar Edn. Society & Ors.** decided on 5 September, 2011 in connection with Civil Appeal No. 2047 of 2007 is relevant, the Supreme Court has held that-

“14. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable.

We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of State Government to which the advise of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same.”

In a nutshell, the plaintiff failed to prove that his suit land is within/or covered by LSC No. 668 of 1976 by taking reliance in the case of **Mig Cricket Club vs Abhinav Sahakar Edn. Society & Ors.** (supra.).

#### **Issue No. 8**

**Whether the Sale Deed executed by the plaintiff and Smt. Debu Thapani in respect of the suit land is valid in the eye of law. If so, whether the area of the said land purchased by the plaintiff has been encroached upon by the LSC No. 103102/01/1281 of 2005 belonging to the defendant no. 5**

Findings under issues no. 2 and 7 above already answered this issue negatively for the plaintiff and is no need of further elaboration.

#### **Issue No. 9**

**Whether the claim of the plaintiff for cancellation of LSC No. 103102/01/1281 of 2005 belonging to the defendant no. 5 has connection with the other court proceedings in Review Case No. 1 of 2003 arising out of Civil Suit No. 5 of 1995**

As revealed by Ext. P- 7, Civil Suit No. 5 of 1995 was filed by Smt. Debu Thapani but not arrayed the plaintiff or defendant no. 5 parties in the said case, it was decreed in favour the plaintiff Smt. Debu Thapani. But the proceeding records of Review Case No. 1 of 2003 was not produced and exhibited in the court like a copy of Review Petition etc., so is the lethargy of the plaintiff. Non production of certain documents is held as irregularities in the case of **Indira Nehru Gandhi Vs. Raj Narain** reported in [1975 Supp SCC 1]. Thus, for this issue, the plaintiff fails to clear up the onus of proof which lies on him.

#### **Issue No. 10**

**Whether the LSC No. 103102/01/1281 of 2005 issued in favour of the defendant no. 5 is legally valid or not**

LSC No. 103102/01/1281 of 2005 issued in favour of the defendant no. 5 is marked as Ext. P-10, it was issued in accordance with the approval of the Government under No. K. 24011/15/03- REV Dt. 1/9/2005 as partitioned out from LSC No. 668 of 1976. At the time of Mr. C. Lalramzauva, Senior learned counsel for the plaintiff argued that it was made on the basis of alleged Sale Deed Dt. 9<sup>th</sup> June, 1999 in between Smt. Lalzarliani/defendant no. 5 and Mr. Baitea but the DW for defendant no. 5 also admitted that whether the said Mr. Lalzuiliana @ Baitea was competent to execute such sale deed or not was beyond the knowledge of DWs for defendant no. 5. Thus, Mr. C. Lalramzauva concluded that the origin of the said LSC No. 103102/01/1281 of 2005 was bad in law and is liable to null and void.

In this catena, undisputedly, the defendants 1-4 are usually acted on the basis of their laws and regulations for transfer of the land and partition out of the land including the instant LSC No. 103102/01/1281 of 2005.

Howsoever, as per the findings already reached under issues no. 2 and 7 above whilst the claimed land of the plaintiff is outside the boundary description of LSC No. 668 of 1976, the plaintiff has no cause of action to challenge the validity of the said LSC No. 103102/01/1281 of 2005.

**Issue No. 11**

**Whether the plaintiff is entitled to the relief claimed. If so, to what extend.**

As per the findings of various issues of the above, no entitlement of the plaintiff in his plaint can be granted.

**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 27<sup>th</sup> 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/9/2008, Sr. CJ (A)/

Dated Aizawl, the 27<sup>th</sup> June, 2012

Copy to:

1. Mr. K. Sanglawma S/o Kapduna (L), Bawngkawn, Aizawl through Mr. C. Lalramzauva, Sr. 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. Lalzarliani D/o Lalhruaia (L) A-81, Thuampui, Aizawl through Mr. L.H. Lianhrima, Adv.
7. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR