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

RFA NO. 15 OF 2006

Appellant:

Mr. Chawngkunga
S/o Nuna (L)
Rangvamual, Aizawl

By Advocates : 1. Mr. W. Sam Joseph
2.Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalengliana
5. Mr. Francis Vanlalzuala

Versus

Respondents:

1. Smt. Hrangaii
   D/o Laikhama (L)
   Bawngkawn, Aizawl

2. Mr. C. Lalramthara
   S/o Laikhama (L)
   Bawngkawn, Aizawl

By Advocates : 1. Mr. Robert L. Hnamte
2.Mr. H. Lalremruata

Date of hearing : 14-03-2012
Date of Judgment & Order : 16-03-2012

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

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being

pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a *sine quo non* to vanish.

BRIEF STORY

This appeal is directed against the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 23.08.2006 in Civil Suit No. 02 of 1998. Wherein, the learned Magistrate dismissed of the suit on merit as the plaintiff/appellant failed to prove his case for declaring him as the true owner of the property under LSC No. 18 of 1979. In the memorandum of appeal, the appellant stated that (i) the trial court erred in law as failed to appreciate the facts of the case (ii) the trial court was biased in arriving at the decision against the appellant whilst the appellant proved his case (iii) in the evidence on record, the portion of land was gifted by the respondent no. 2 to his late sister who was the wife of the appellant and remaining portion was purchased by the appellant (iv) the trial court should have accepted the documents admitted in evidence in favour of the appellant/plaintiff. Thus prayed to set aside the impugned judgment & order and therefore declare that the appellant is entitled to relief claimed in the plaint.

In their written objection, the respondents admitted that the respondents are the brother and sister of the deceased wife of the appellant and the respondent no. 2 is the absolute owner of the land cover under LSC No. 18 of 1979. The respondent no. 2 never executed Ext. P-1 and the statements of witnesses are contradictory in nature. In short, the respondents totally denied of purchased of the suit land by the plaintiff/appellant. The plaintiff therefore fails to prove of his case.

ARGUMENTS

At the time of arguments, Mr. W. Sam Joseph, learned counsel for the appellant relied in Ext. P-1 viz. “Inhmun Inleina Leh Sum inhlanna” which is also proved by evidences adduced therein. Mr. Robert L. Hnamte and Mr. H. Lalremruata, learned counsels for the respondent vehemently denied of such Ext. P-1 as lack of registration under the Registration Act and no authenticity is with the same. More so, they pointed out some contradictory statements of plaintiff witnesses about the said Ext. P-1.

FINDINGS

With respect of grounds of appeal saying that the trial court erred in law as failed to appreciate the facts of the case, in the impugned judgment & order, evidences adduced therein were appreciated in detail. The respondent no. 2 being defendant no. 2 also denied of the said Ext. P-1 and also clearly elucidated some contradictory statements of plaintiff witnesses like the PW-2 deposed that all the witnesses saw writing of Ext. P-1 by the plaintiff/appellant which was executed around 8:00 A.M., the PW-3 deposed

that it was executed at around 6:00 A.M. and he did not know the one who drafted the said document. The trial court also found that the allegation of handling over the LSC copy due to intervention of police was controvert by the alleged Sale Letter viz. Ext. P-1. I find that the trial court correctly appreciated and weight of evidences adduced therein.

With regards to another ground viz. the trial court was biased in arriving at the decision against the appellant whilst the appellant proved his case, for proving of biasness, the law is well settled in **State Of Punjab vs Davinder Pal Singh Bhullar & Ors.** decided on 7 December, 2011 in connection with Criminal Appeal Nos. 753-755 of 2009, the Supreme Court has held that-

> "16. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice, i.e., the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial coram non judice. Therefore, the consequential order, if any, is liable to be quashed. (Vide: Vassiliades v. Vassiliades, AIR 1945 PC 38; Parthasarathi v. State of Andhra Pradesh, AIR 1973 SC 2701; and Ranjit Thakur v. Union of India & Ors., AIR 1987 SC 2386).
>
> ...20. Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial coram non-judice
>
> ...25. Thus, from the above, it is apparent that the issue of bias should be raised by the party at the earliest, if it is aware of it and knows its right to raise the issue at the earliest, otherwise it would be deemed to have been waived. However, it is to be kept in mind that acquiescence, being a principle of equity must be made applicable where a party knowing all the facts of bias etc., surrenders to the authority of the Court/Tribunal without raising any objection. Acquiescence, in fact, is sitting by, when another is invading the rights. The acquiescence must be such as to lead to the inference of a licence sufficient to create rights in other party. Needless to say that question of

> waiver/acquiescence would arise in a case provided the person apprehending the bias/prejudice is a party to the case. The question of waiver would not arise against a person who is not a party to the case as such person has no opportunity to raise the issue of bias."

And in **Narinder Singh Arora vs State (Govt. Of Nct Of Delhi) & Ors.** decided on 5 December, 2011 in connection with Criminal Appeal No. 2184 of 2011 (Arising out of S.L.P. (Crl.) No. 2156 of 2011), the Supreme Court has held that-

> "5) It is well settled law that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias.
>
> ...16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial 'coram non judice'.
>
> 17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, `Am I biased?'; but to look at the mind of the party before him"

On perusal of the memorandum of appeal and hearing of learned counsels of both parties, no vital points to satisfy the above tests for proving biasness in the impugned judgment & order is found.

The other ground for appeal is that in the evidence on record, the portion of land was gifted by the respondent no. 2 to his late sister who was the wife of the appellant and remaining portion was purchased by the appellant. In this task, the admitted position of factum at the time of hearing was that the suit LSC was put in the name of the respondent/defendant no. 2, the wife of the appellant was the sister of the defendant no. 2. The wife of the appellant is already deceased and after the death of his wife, the appellant/plaintiff filed the suit. The appellant relied in Ext. P-1 viz. "*In Hmun Inleina leh Sum Inhlanna Lehkha*". For that purpose, one observations in **Pradeep Oil Corporation vs Municipal Corporation Of Delhi & Anr.** decided on 6 April, 2011 in connection with Civil Appeal Nos. 6546-6552 of 2003 is relevant, wherein, the Supreme Court observed thus-

> "24. It is well settled legal position that a deed must be read in its entirety and reasonably. The intention of the parties must also as far as possible be gathered from the expression used in the document itself."

To close look of the said Ext. P-1, it was mentioned that the house and its site of the defendant no. 2 sold to the plaintiff on 15.1.1993 by the defendant no. 2 in consideration of Rs. 30,000/- was for a period of ten years payment. All the price of the said land were received in full by the defendant no. 2 on 2nd April, 1996, it superseded the previous letter/deed Dt. 9-2-1996, it was alleged executed by the defendant no. 2 and two names of witnesses appeared on that deed. No documents of alleged deed Dt. 9-2-1996 was Exhibit in the trial court. The PW-1 viz. the plaintiff/appellant during cross examination deposed that he did not know the reason why he fails to put his signature in Ext. P-1 but he stated that Ext. P-1 was written by him in his own hand writing. The witnesses in such Ext. P-1 subscribed their signatures in his house at Rangvamual. His wife was also died in 1994. The PW-2 Mr. Rosiama also deposed during his cross examination that @ 8:00 A.M he put his signature in Ext. P-1 as witness whereas the PW-3 Mr. C.L. Zaia also deposed during his cross examination that @ 6:00 A.M., he put his signature in Ext. P-1 as witness. The said PW-3 further deposed that he knew nothing about the previous Deed Dt. 9.2.1996. He also admitted that previously, the plaintiff/appellant used to sell liquor. In his deposition as DW, the defendant no. 2 denied of Ext. P- 1 (b) alleged as his signature and also denying receiving of money for the cost of the suit property from the plaintiff. In short, a simple ball point pen writing not fulfilling the requisites for valid Sale Deed like swearing before Notary Public etc., how the law court can act on that basis without admission would be answered negatively.

Another memorandum of appeal is that the trial court should have accepted the documents admitted in evidence in favour of the appellant/plaintiff. In that crux, the law is again well settled in **State of Bihar and Ors. v. Sri Radha Krishna Singh & Ors**., AIR 1983 SC 684, the Supreme Court considered the issue in respect of admissibility of documents or contents thereof and held as under:

> "Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and the weight of its probative value may be nil."

And in the case of **Madan Mohan Singh & Ors. vs Rajni Kant & Anr.** decided on 13 August, 2010 in connection with Civil Appeal No. 6466 of 2004, the Hon'ble Supreme Court has held that-

> "14. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case."

The aforesaid legal proposition stands fortified by the judgments of the Hon'ble Supreme Court in **Ram Prasad Sharma Vs. State of Bihar** AIR 1970 SC 326; **Ram Murti Vs. State of Haryana** AIR 1970 SC 1029; **Dayaram & Ors. Vs. Dawalatshah & Anr**. AIR 1971 SC 681; **Harpal Singh & Anr. Vs. State of Himachal Pradesh** AIR 1981 SC 361; **Ravinder Singh Gorkhi Vs. State of U.P**. (2006) 5 SCC 584; **Babloo Pasi Vs. State of Jharkhand & Anr**. (2008) 13 SCC 133; **Desh Raj Vs. Bodh Raj** AIR 2008 SC 632; and **Ram Suresh Singh Vs. Prabhat Singh @Chhotu Singh & Anr.** (2009) 6 SCC 681. In those cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.

I therefore find no legal grounds to act on such filibusters on the trial court should have accepted the documents admitted in evidence in favour of the appellant/plaintiff.

Inevitably, I must hold that this appeal is devoid of merits and is liable to dismiss as no basis.

ORDER

Due to the aforesaid reasons, the instant appeal case being lack of rowlock is hereby dismissed as no interference on the findings of the learned Magistrate, Subordinate District Council Court is called for, no order as to cost.

Send back the lower court case record to learned Civil Judge-1, Aizawl.

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 16th March, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

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

Memo No. RFA/15/2006, Sr. CJ (A)/ Dated Aizawl, the 16th March, 2012

Copy to:

1. Mr. Chawngkunga S/o Nuna (L), Rangvamual, Aizawl through Mr. W. Sam Joseph, Adv.
2. Smt. Hrangaii D/o Laikhama (L), Bawngkawn, Aizawl through Mr. Robert L. Hnamte, Adv.
3. Mr. C. Lalramthara S/o Laikhama (L), Bawngkawn, Aizawl through Mr. Robert L. Hnamte, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Pesker to Mr. F. Rohlupuia, learned Civil Judge-1, Aizawl along with case record of the lower court.
6. Case record

PESKAR