

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

RFA NO. 35 OF 2009

Appellant:

Mr. V.L. Zawma
S/o V.L. Nghaka (L)
Electric Veng, Aizawl

By Advocates

: 1. Mr. R.C. Thanga
2. Mr. H. Lalmuankima

Versus

Respondents:

1. Smt. Lalchhanhimi
W/o V.L. Ngheta (L)
Chaltlang, Aizawl

2. Smt. Enghluni
W/o Biakchhunga (L)
Zarkawt, Aizawl

By Advocates

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

Date of hearing : 12-03-2012

Date of Judgment & Order : 14-03-2012

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 FACTS

This appeal is directed against the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 03.09.2008 in Civil Suit No. 14 of 2003. Wherein, the learned Magistrate ordered and directed that the suit property under LSC No. 213 of 1972 has become the property of the buyer Mr. Lalrivenga late as the plaintiff/appellant had also received their shares for the said transaction and further estopped the appellant from making any claim to the suit land. In the memorandum of appeal, the appellant submitted that (i) the impugned judgment & order was beyond the issues framed in the suit (ii) a vital issues like “Whether the respondents have locus standi to sell the suit properties or not” was also mistaken (iii) only small fragments of the sale proceeds by the defendant no. 1 and Mr. V.L. Chhuanawma was given to the appellant. Thus, prayed to set aside and quash the impugned judgment & order.

In his written objection, the respondents contended that as the impugned judgment & order was germinated solely on the basis of evidence adduced and available on record, the instant appeal is devoid of merit and liable to dismiss outright. In short, the respondents denied of all the grounds of memorandum of appeal by submitting the minutes of the factual history.

ARGUMENTS

At the time of hearing, learned counsel for the appellant admitted that the appellant had received some amount of sale proceeds of the suit land as presumed that Heirship Certificate for the same was issued in favour of Mr. V.L. Chhuanawma, soon after knowing that sale was made without Heirship Certificate, case was instituted. More so, being the surviving son of the deceased Mr. V.L. Nghaka, the appellant is entitled to ownership of the suit land as per Mizo customary laws, being the daughter in law, the respondent no. 1 did not have entitlement to transfer the sui land.

On the other hand, Mr. W. Sam Joseph, learned counsel for the respondents contended that just after the death of the youngest son Mr. V.L. Chhuanawma who will be entitled to inherit the suit property, the appellant moved to the court for titleship of the suit land. The act of the appellant is deserved to estopp from doctrine of estoppels even as admitted that he had received some amounts of the sale proceeds which he agreed at that time. Thus, prayed to dismiss of the appeal petition due to lack of merits and no basis.

FINDINGS

In the original plaint, it was found that the deceased Mr. V.L. Nghaka was the owner of LSC No. 213 of 1972 with a building consisting of 4 shops and 1 RCC and 1 Assam Type building located at New Market, Aizawl, when the said Mr. V.L. Nghaka died in 1976, his wife Smt. Chuaubawii was declared as his legal heiress under Heirship Certificate No. 180 of 1977 issued by learned Subordinate District Council Court, Aizawl. The said Smt. Chuaubawii was died on 14/1/1992. After that, the defendant Smt. Lalchhanhimi and Mr. Lalchhuanawma (L) sold the suit land. In the year of 1997, the plaintiff no.1/appellant was declared as the legal heir of the deceased Smt. Chuaubawii in respect of the suit land and building under Heirship Certificate No. 157 of 1997. In 2002, the appellant found that the said Smt. Lalchhanhimi and Mr. Lalchhuanawma (L) sold the suit land to Smt. Enghluni in consideration Rs. 20 lakhs done without the consent of the appellant.

The admitted position of factum at the time of hearing was that the appellant also received the amount of sale proceeds as his share, the said sale of the suit property was done by the respondent no. 1 and Mr. V.L. Chhuanawma (L) who was the younger son of the deceased Mr. V.L. Nghaka and Mrs. Chuaubawii. During the lifetime of the said deceased Mr. V.L. Chhuanawma, the appellant kept silent on the disputed property. It may be relevant to note the position of law on estoppel in **P.S. Gopinathan Vs. State of Kerala and Others** reported in (2008) 7 SCC 70, wherein, the Supreme Court held thus;

"44.Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992."

Per Lord Wright in **Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships Ltd.** (1946) 3 W.W.R. 759 at p. 764), it was observed that-

"The essential factors giving rise to an estoppel are, I think-

"(a) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation was made.

"(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made.

"(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, *Greenwood v. Martins Bank* (1933) A.C.51.) See also *Thompson v. Palmer*, 49 C.L.R. 547; *Grundt v. Great Boulder*, 59 C.I.R.675; *Central Newbury Car Auctions v. Unity Finance* (1957)1 Q.B.371SD.MN

Admitted facts clearly elicited that the doctrine of estoppel is applicable in the instant case where the said Mr. V.L. Chhuanawma was died to say the truth in the court process as held in **P.S. Gopinathan Vs. State of Kerala and Others (supra.)**. I therefore have no grounds to interfere in the findings and directions of the learned Magistrate, Subordinate District Council Court, Aizawl, ordered and directed that the suit property under LSC No. 213 of 1972 has become the property of the buyer Mr. Lalrivenga late as the plaintiff/appellant had also received their shares for the said transaction and further estopped the appellant from making any claim to the suit land.

As the truth is very clear, other allegations in irregularities like decreed beyond issues so framed and failure to frame relevant issues, the provisions under the proviso to sub- section (3) of section 1 of the Code of Civil Procedure, 1908 remains unchanged/unaltered, I agreed the learned trial court that due to backwardness of the riff raff in this isolated landlock hilly terrain, the rigour provisions of the Code of Civil Procedure, 1908 was exempted as the well settled law is that 'Procedure is the handmaid of justice' as held in **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719. The Apex Court also in the case of **M.S. Grewal v. Deep Chand Sood** reported in (2001) 8 SCC 151, held as under:

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

I therefore find that the said irregularities would not vitiate the proceedings and is immaterial like in the instant case where the admitted facts clearly depicted the scenario of the case and as enshrined under rule 48 of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953.

ORDER

Due to the aforesaid reasons, the instant appeal case being devoid of merits is hereby dismissed, 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 14th 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/35/2008, Sr. CJ (A)/ Dated Aizawl, the 14th March, 2012

Copy to:

1. Mr. V.L. Zawma S/o V.L. Nghaka (L), Electric Veng, Aizawl through Mr. H. Lalmuankima, Adv.
2. Smt. Lalchhanhimi W/o V.L. Ngheta (L), Chaltlang, Aizawl through Mr. W. Sam Joseph, Adv.
3. Smt. Enghluni W/o Biakchhunga (L), Zarkawt, Aizawl through Mr. W. Sam Joseph, Adv.
4. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
5. Pesker to Mr. F. Rohlupaia, Civil Judge-1, Aizawl along with case record of the lower court.
6. Case record

PESKAR