

**IN THE COURT OF CIVIL JUDGE**

**AIZAWL JUDICIAL DISTRICT,**

**AIZAWL, MIZORAM**

Declaratory Suit No. 17 of 2014

1. Smt Lalmawizuali  
D/o Kawlhnuna  
R/o North Serzawl  
Aizawl District, Mizoram .... Plaintiff No 1

2. Shri Kawlhnuna  
S/o Tlanglianthanga(L)  
R/o Chanmari West, Aizawl  
Aizawl District, Mizoram .... Plaintiff No 2

-Versus-

Shri Lalremruata  
S/o Lalchhuana  
R/o North Serzawl  
Aizawl District, Mizoram .... Defendant

BEFORE

H. LALDUHSANGA Civil Judge –II  
Aizawl

Suit filed on	: 02.06.2014
Judgment pronounced on	: 02.08.2017
Judgment & order delivered on	: 02.08.2017
Counsel for Plaintiffs	: Shri H Lalremsanga, Advocate
Counsel for Defendant	: Shri Saihmingliana Sailo, Advocate

**No of Total Pages of Judgment & Order: 9 (Nine)**

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2. Shri Kawlnuna
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## **JUDGMENT & ORDER**

**Dated 02.08.2017**

1. This is a Declaratory suit No 17 of 2014 filed on 02.06.2014 by Smt Lalmawizuali D/o Kawlnuna R/o North Serzawl, Aizawl District, Mizoram and Shri Kawlnuna S/o Tlanglianthanga (L) R/o Chanmari West, Aizawl, Aizawl District, Mizoram against Shri Lalremruata S/o Lalchhuana R/o North Serzawl, Aizawl District, Mizoram. The instant suit is filed under Section 34 of the Specific Relief Act, 1963 for declaration of title of ownership over a land and its building which was occupied by the defendant. The house on which the Plaintiffs claimed ownership is House No.13 located at Serzawl Village, Mizoram.
2. The Plaintiff No 1 submitted *inter alia* that the Plaintiff No. 1 and the Defendant were married in the year 1993. They had two children namely Lalbiakzuala (20) and Zionrempuii (18) out of wedlock. In 2002, the Plaintiff No 2 (father of the Plaintiff No 1) gave Plaintiff No 1 a small plot of land situated adjacent to the Plaintiff No. 2's main house (Inpui) at Charchhawn Veng, North Serzawl, Mizoram. The same was previously used for a kitchen by the Plaintiff No. 2. The

Plaintiff No. 1 and her family built a house (House No.13) in the said land given to her by her father and resided in that house. The marriage of the Plaintiff No. 1 and the Defendant started deteriorating as the Defendant developed a drinking habit and refused to work on many occasions. As a result, the Plaintiff No. 1 had to work to sustain her family. They eventually divorced each other in 2011. The Plaintiff had no other choice but to leave the house with her children as the Defendant refused to look after their children. The Defendant had illegally taken possession of the Plaintiff No.1's land and the house (House No.13) standing therein till date. The Plaintiff No 2 also submitted that the action of the Defendant was wrong, illegal and improper. The Defendant was not given ownership of the land in issue and its building at any point of time. It was an illegal attempt to gain it.

#### WRITTEN STATEMENT

3. The Defendant submitted *inter alia* that the Plaintiff No 2 Shri Kawkhuma (biological father of the Plaintiff No 1) had given him a small plot of land located at North Serzawl which was antecedently used for a kitchen by the Plaintiff No. 2. The Plaintiff No 2 did not give it to the Plaintiff No. 1. The Defendant and the Plaintiff No. 1 built a house in the said small patch of land. In the year back in 1994, the Defendant alongwith his wife, i.e, the Plaintiff No. 1 including their children were living separately and independently in their own house which was built and constructed by themselves at Vengthar, North Serzawl. However, four to five years later, the Plaintiff No 2 frequently and earnestly requested the Defendant to build a house and to live with them on a small patch of land which was adjacent to the main building and the same would be given by him since they were of old-aged persons and even their sons were not living with them. So, the Plaintiff No. 2 needed the Defendant to live near them even in case of any hardships and physical deficiency that might exist ahead. The Plaintiff No 2 and his wife were of physically weak, antique and old-aged persons. But the Defendant could make no immediate decision. So, on being requested by him, the Plaintiff No 2 and his wife approached and met his (Defendant) parents two or three times in their house and discussed the matter. The Defendant's parents requested the Plaintiff No 2 to make some written documents pertaining to the subject matter so as to prevent problems and controversy that might happen in future. But, the Plaintiff No 2 answered that it would not be necessary to make it

and problem would never arise between them in future. So, after assurance and guarantee given by the Plaintiff No 2, the Defendant accepted the request, dismantled and demolished his house at Vengthar, North Serzawl which was constructed by spending all his strength, money and efforts, and then shifted to the Plaintiff No 2's plot of land in which the Defendant again constructed another house adjacent to the house of the Plaintiff No 2. The kitchen of the Plaintiff No. 2 was demolished and another house on the place was built. The Defendant's family had been living there since 2002. The Defendant had been paying Revenue/Tax to the Land Revenue & Settlement Department, Government of Mizoram time date. The Plaintiff No 2 had sold the main house to Shri Lalrinhlua excluding the said kitchen area which was already given to the Defendant and not to the Plaintiff No. 1. After sometime, Shri Lalrinhlua resold it to Shri Lalhminghlua. The Plaintiff No. 1 was not ousted by the Defendant from their house. The fact is that on 26<sup>th</sup> October, 2011, after having meal, the Defendant went to the forest in search of logs to be used for making fire. In the evening, when the Defendant went back home from the jungle, he found their house locking from outside. The Defendant got surprised with it. Then he contacted his wife (Plaintiff No 1) through his mobile phone and the Plaintiff No 1 told that she went to Darlawn village and would not go home and stay for the night there. In the next day, the Plaintiff No. 1 sent some persons to the Defendant that she would divorce the Defendant by way of "Sumchhuah" as per Mizo Customary Law. Despite his best effort by the Defendant, he could not stop her. The Defendant never scolded the Plaintiff No. 1 to be ousted from their house till the day of the Plaintiff No. 1 voluntarily stepped out from the Defendant's house. The Defendant never illegally occupied and wrongfully possessed the house and land which was adjacent to the house of the Plaintiff No. 2. The Defendant used to live a happy life with his own family since 1994. But, as per and only the frequency cordial request and guarantee made by the Plaintiff No. 2, the Defendant demolished his house, shifted to the said small patch of land, and then constructed a house adjacent to the Plaintiff's house. There was no wrong and illegal action on the part of the Defendant in construction and occupying of the said house. All these things happened after the Defendant got permission, assent, assurance and guarantee from the Plaintiff No. 2. The fact is that the Defendant crushed and destroyed his house after getting an enticement and guarantee from the Plaintiff No. 2 so as to build another

house on the place of the demolished kitchen and even the Plaintiff No. 2 told the Defendant to have all the houses, buildings, land etc. after their demise. No man has a right to reclaim his property which he had already given to another man or if he had abandoned it by himself. Hence, strongly objected.

#### ISSUES

4. The predecessor Court had framed the issues as follows on 15.09.2014.

- (1) Whether the suit is maintainable in its present form and style.*
- (2) Whether the Plaintiffs are entitled to the lawful ownership of the land and its building therein i.e House No 13 located at North Serzawl, Charchhawn Veng, Mizoram*
- (3) Whether the Plaintiffs are entitled to any other relief/reliefs. If so, against whom and to what extent?*
- (4) Whether the Plaintiffs have Locus Standi to file the present case.*
- (5) Who has constructed the suit property (House No 13) located at Charchhawn, North Serzawl village.*

#### DECISIONS AND REASONS THEREOF

5. I have heard the rival submissions made by the Ld. Counsels for both the Parties and received a written argument from the Plaintiff. I have also given my anxious consideration.

##### **Issue No 1**

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

6. The predecessor Court had maintained the suit, no further travel is required.

##### **Issue No 2**

*Whether the Plaintiffs are entitled to the lawful ownership of the land and its building therein i.e House No 13 located at North Serzawl, Charchhawn Veng, Mizoram*

7. The Plaintiff No 1 (PW 1) deposed that the said land in issue was given to her by her father Pu Kawlhnuna (Plaintiff No. 2). She deposed in her cross-examination that she could not produce any pass as no Pass was issued either by the Village Council or the Revenue Department at the time when the land was given to her.

She also denied that her father (Plaintiff No.2) had given the land in issue to the Defendant and not to her. She further denied that she no longer had a claim over the property in issue. PW 2, Shri Kawlhunna deposed that the Plaintiff No 1 was his eldest child and he had given her the immovable property in issue in the year 2002 (Ext. P-2). The plot of land was used by him for a kitchen before he had given it to her. The Defendant was a drunkard and a gambler resulting split of the family. The Plaintiff No 1 and her children were cast out from the house by the Defendant and eventually they divorced each other. He further deposed that he and the Plaintiff No.1 wanted to put the said immovable property in the name of Lalbiakzuala (born to the Plaintiff No. 1 and the Defendant) however, refused by the Defendant. PW 3 deposed that he was the son of the Plaintiff No 1 and the Defendant. His father was a drunkard and in habit of playing card. His father (Defendant) refused to look after and support them. The land in issue which was given to his mother by his grandfather was the only immovable property which they could claim as their own. He further deposed that whenever they faced financial difficulties like paying school fee etc, his father (Defendant) never helped him. The land in issue and the house therein had been given to his mother by his grandfather and not to his father. He was the only son and his mother had always proposed to put the said land and building in his name but his father refused it.

8. On the other hand, the Defendant (DW 1) deposed that when he married the Plaintiff No 1, they were living in a separate house as husband and wife. However the Plaintiff No 2 (father of Plaintiff No 1) frequently and earnestly requested him to build a house and to live with them on a small patch of land which was adjacent to the main building. The same would be given by him since they were of old-aged persons and even their sons were living outside North Serzawl Village. So, the Plaintiff No 2 needed him since the Plaintiff No 2 and his wife were of physically weak, antique and old-aged persons. Hence, he had dismantled his owned house and built the suit building and shifted. On his cross-examination, he admitted that the former owner of the property in dispute was the Plaintiff No 2 but had been given to them (Defendant & Plaintiff No 1). He further admitted that he had been residing in Dapchhuah village for the past three (3) years and not in North Serzawl. DW 2, Smt Lalbiakhlui on her cross-

examination deposed that the former owner of the property in dispute was the Plaintiff No 2.

9. Hence, from the evidences adduced by both sides and on perusal of the documentary evidences, it appeared that the Plaintiff No 2 used to be the actual possessor of the disputed land. The Plaintiff No 1 and the Defendant also deposed that the Plaintiff No 2 was the rightful owner of the plot of land. DW 2, Smt Lalbiakhlui on her cross-examination also deposed that the former owner of the property in dispute was the Plaintiff No 2.

10. However, in the instant case, the Plaintiffs claimed for declaration of title of ownership over a land and its building which was occupied by the defendant. It would therefore be stated that the term '*ownership*' is legally different from '*possession*'. It is well known that '*Title*' is a legal term which means the ownership right to property. Ownership is a fact that can be proved through title of the property. Actual possession is physical control of a thing whereas ownership is the name in the title deed. Ownership is a guarantee by law whereas possession is a physical control. *Hence, possession does not amount to Ownership.* From the evidence in the present case, *it appeared that Plaintiff No 2 used to be the actual possessor of the suit land but not the owner in the eyes of Law. No doubt, the land and building in issue are unregistered. Neither of the parties proves ownership of the land as the same has never been registered as per Law and none has ownership over the land. An unregistered document affecting immovable property required to be registered under the Registration Act, 1908 or the Transfer of Property Act, 1882.*

11. Furthermore, the Specific Relief Act, 1963 does not confer any Rights on itself. Sec 35 of the Specific Relief Act, 1963 says,

**"Effect of declaration.-** *A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees".*

12. The Specific Relief is only provided for the violation of a legal right. The declaration does not confer any new rights upon the Plaintiff. It merely declares what he had acquired before. On reading Sec 35 of the Specific Relief Act, 1963, it is obvious that Declaratory Decree is binding only on the parties to the suit and upon the representatives of the parties to the suit. Hence, declaratory decree is **"in personam"** and not **"in rem"**.
13. Again, even the Plaintiff satisfied all the conditions, passing of a declaratory decree is still a matter of discretion of Court and can not be claimed as a matter of absolute right. Sec 34 of the Specific Relief Act, 1963 says,

**"Discretion of court as to declaration of status or right.-** *Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the Plaintiff need not in such suit ask for any further relief: Provided that no Court shall make any such declaration where the Plaintiff, being able to seek further relief than a mere declaration of title, omits to do so".*

14. This Court drew inspiration from ***Shri Anil Bawri & ors Vs Shri Anil Chandra Sarma Adhyapak*** case decided on 19.01.2015. In this case, the **Hon'ble Gauhati High Court** has held that -

*"11. On the substantial question of law so formulated vis-avis, the provision under Section 34 of the Specific Relief Act, this Court is of the opinion that the discretion which the Court has to exercise under Section 34 is a judicial discretion".*

*"16. There is no gainsaying that to enable an order of declaration a plaintiff must establish (i) that he is entitled to any legal character or any right as to property; (ii) that the Defendants are denying or interested to deny, the plaintiff's title to such legal character or right, and (iii) the declaration sought is that the plaintiff is entitled to such legal character or right".*

15. It would be repeated that in the present case, the land and its building are unregistered. *An unregistered document affecting immovable property required to be registered under the Registration Act, 1908 or the Transfer of Property Act, 1882. In case of non-registration of the property documents, as per Section*



*49 of the Indian Registration Act, 1908, the document will not have any stance on the property and they do not grant any property rights over the property. For all the reasons stated, this Court does not find favour with the Plaintiffs in this issue. Further, in the light of the discussion and observation made in Issue No 2, the remaining issues were also not found in favour of the Plaintiffs and so for the sake of brevity, further journey would be made.*

16. Hence, the present suit stands dismissed.
17. The parties shall bear their own costs.
18. With the above Order, the present case stands disposed of.

**Given under my hand and Seal of this Court on this day of the 2<sup>nd</sup> August, 2017 Anno Domini.**

**(H. LALDUHSANGA)**  
Civil Judge - II  
Aizawl

Memo No.....: Dated Aizawl, the 2<sup>nd</sup> August, 2017.  
Copy to:-

1. Smt Lalmawizuali D/o Kawlhnuna R/o North Serzawl, Aizawl District through Counsel Shri H Lalremsanga, Advocate.
2. Shri Kawlhnuna S/o Tlanglianthanga(L) R/o Chanmari West, Aizawl through Counsel Shri H Lalremsanga, Advocate.
3. Shri Lalremruata S/o Lalchhuana R/o North Serzawl, Aizawl District, Mizoram through Counsel Shri Saihmingliana Sailo, Advocate.
4. i/c Judicial Section.
5. Case record.
6. Guard File.

**PESHKAR**