

**IN THE COURT OF CIVIL JUDGE
AIZAWL DISTRICT, AIZAWL**

Civil Suit No. 21 of 2007

Master Lalthuammawia
Represented by his Legal Guardian
Smt Lalsangluri
W/o Shri C Laldingliana (L)
R/o Maubawk Sikul Veng, Aizawl
Aizawl District

... Plaintiff

-Vrs-

1. The Manager
AIRTEL Company (Bhasti Nextcom Ltd)
Tuikual, Aizawl
Mizoram

2. Smt Thangdailovi
W/o Vanlalduha
R/o Reiek
Mamit District, Mizoram

3. Shri Vanlalduha
R/o Reiek
Mamit District, Mizoram

... Defendants

BEFORE
H LALDUHSANGA, CIVIL JUDGE-II

Suit filed on	:	07.06.2007
Counsel for the Plaintiff	:	Shri C Lalramzauva Sr Advocate & ors
Counsel for the Defendant No 1	:	Shri T Lalnunsiamia, Advocate
Counsel for the Defendant No 2 & 3	:	Shri H Laltanpuia, Advocate & ors
Judgment pronounced on	:	26.10.2018
Judgment & Order delivered on	:	26.10.2018

No of Total Pages of Judgment & Order: 14 (Fourteen)

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PLAINTIFF'S WITNESSES

1. *PW 1 : Smt Lalsangluri*
2. *PW 2 : Smt Malsawmi*
3. *PW 3 : Shri Thangluaia Sailo*
4. *PW 4 : Shri Lalduhawma*

PLAINTIFF'S EXHIBITS

1. *Exhibit P – 1: A copy of Heirship/Guardianship Certificate No. 221 of 2007.*
2. *Exhibit P – 2: A copy of VC Pass Dt.25/3/2007 Objected by Ld. Counsel for Defendant No 2 and 3.*
3. *Exhibit P – 3: Letter dt. 09/04/2007.*
4. *Exhibit P – 4: A copy of representation dt.16/04/2007*
5. *Exhibit P – 4 (a) is the signature of Lalthuammawia.*
6. *Exhibit P – 5 : A copy of Legal Notice dt.23/05/2007.*
7. *Exhibit P – 5 (a): Postal receipt of Notice dt.23/05/2007.*
8. *Exhibit P – 6 : A copy of House Tax payee Certificate.*

DEFENDANT WITNESSES

- DW 1 : Dipenkar Deka*
DW 2 : Smt C Zomuanthangi
DW 3 : Shri Valalduha

DEFENDANT No 1's EXHIBITS

- Exhibit D – 1 : A written statement filed by Defendant No 1*
Exhibit D - 2 : Village Council Pass No 23 of 2007 issued to Defendant No 3
Exhibit D - 3: Non-encumbrance certificate in respect of Village Council Pass No 23 of 2007 issued by Shri C Lalrozama, President, Reiek Village Council/Court.

DEFENDANT No 2 & 3 ANNEXURES

- Annexure 1 : Copy of Order Dt 7th June, 2007 passed by Shri Michael Lalrinsanga Sailo, Magistrate, Additional Subordinate District Council Court, Aizawl*

JUDGMENT & ORDER

Dated 26.10.2018

1. This is a Civil Suit No. 21 of 2007 filed by the Plaintiff against the Defendants on 07.06.2007. The Plaintiff being a minor is represented by his mother and legal guardian Smt. Lalsangluri W/o Shri C Laldinglana (L) R/o Maubawk Aizawl. The Defendant No 2 passed away and her daughter Smt C Zomuanthangi substituted her.

2. The Plaintiff submitted *inter alia* that she was the wife of Shri C Laldingliana. They had three issues namely Lalruatfela, Lalthuammawia and Lalthuamkimi. After the death of her husband, she had been declared his legal heir vide Heirship/Guardianship Certificate Memo No. SDCC/Hon'ble Court/G.C-221/07/347-9 dt.7/5/07. As the Plaintiff was still a minor, she had been appointed as his legal guardian. Her husband Shri C Laldingliana during his lifetime had purchased a plot of land at Reiek Village from Smt Lalsangliani (L) W/o Shri Laltluanga Sailo (L) in the year 1979. Subsequently, on shifting to Aizawl in the year 1981 her husband requested the Defendant No. 2 to look after his said plot of land. After the death of her husband on 26.12.2005, the Defendant No. 2 & 3 illegally represented themselves as the owners of the land belonging to Shri C Laldingliana at Reiek Village and made an agreement with the Defendant No. 1 in pursuance of which the Defendant No. 1 started construction of a tower within the land belonging to the Plaintiff. On gaining knowledge of the tower being constructed by the Defendant No. 1, she immediately approached Reiek Village Council/Court to help her protect the said plot of land belonging to the Plaintiff. The Reiek Village Council/Court after verifying their records in their Sitting No. 48 held on 25/3/07 issued a Village Council Pass to the Plaintiff with the following boundary description: 1) East : Pu Bawihbanga Ram 2) North : Pi Sangchhingpuii leh Pu Ramhluna Ram 3) South : Tourist Resort Ramchin 4) West : Pi Roluti Ram. Thereafter, the President, Reiek Village Council/Court had also written a letter Dt.9/4/07 to the Defendant No. 1 stating that he had mistakenly recommended the Defendant No. 3 believing him to be the owner of the land but he found out that the land belonged to the Plaintiff namely Lalthuammawia and requested the Defendant No. 1 to approach the Plaintiff. However, the Defendant No. 1 failed to approach the Plaintiff. The Plaintiff had submitted a Representation Dt.16/4/07 to the Defendant No. 1 wherein he requested the Defendant No. 1 to cancel any agreement made with the Defendant No. 2 & 3 and to stop further construction of the tower until fresh lease agreement was made with the rightful owner of the land. In spite of having received the Representation Dt.16/4/07 from the Plaintiff, the Defendant No. 1 had failed to make a lease agreement with the Plaintiff and not stopped construction of the tower within the Plaintiff's land. Thereafter, the Plaintiff through his lawyer served the Notice Dt.23/5/07 upon the Defendants calling upon them to cancel the lease agreement executed between them and to stop further construction of the tower within the suit land. However, the Defendants paid no heed. Hence, prayed for a decree declaring

that the Plaintiff is the rightful owner and legal owner of the suit land located at Reiek which is covered by the Reiek Village Council Pass Dt. 25.03.2007 issued in favour of the Plaintiff by the Reiek Village Council in its sitting No. 48 of 25.03.2007. Also, for a decree declaring that the lease agreement executed between the Defendant No 1 and the Defendant No 2 & 3 being illegal is null and void.

3. The Defendant No. 1 in *Written Statement* submitted *inter alia* that the present suit was not maintainable for bad for non-joinder of necessary parties, no cause of action arose and the Plaintiff had no locus standi to file the present case. Further, the Defendant No. 1 Company entered into an agreement with Defendant No 3 for a period of 20 years only after receiving a Village Council Pass No. 23 of 2007 Dt. 21.02.2007 issued by the President, Reiek Village Council/Court and a non-encumbrances certificate from the said President. Another Pass after 21.02.2007 issued to the Plaintiff was doubtful. The Village Council Pass No. 23 of 2007 Dt. 21.02.2007 issued by the President, Reiek Village Council/Court was not cancelled. Denied that the Letter Dt. 09.04.2007 regarding mistaken recommendation of the Defendant No. 3 as the owner of the said plot of land was received. Received the said Representation Dt. 16.04.2007 but whilst inquiring into the matter, the present case had been filed. Hence, prayed the Court to dismiss the present case in *limeline* and award in favour of the Opposite Party.
4. The Defendant No. 2 & 3 in joint *Written Statement* submitted *inter alia* that the present case was barred by *Res Judicata*. The answering Defendants had filed a Title Suit No. 8 of 2007 which was disposed of on 06.06.2007 by the Hon'ble Additional Subordinate District Council in which the Plaintiff fully contested the case. They denied that Shri C Laldingliana during his lifetime had purchased a plot of land from Smt. Lalsangliani (L) and when they shifted to Aizawl he requested the Defendants to look after it. Also, denied that the Defendant No. 2 & 3 illegally represented themselves as the owners of the land. It was a mere allegation. It was that in the year 1975 Shri Kawlkhenga sold a plot of land to Smt Ngurthanchhingi (mother of the Plaintiff's father's mother) for Rs 500/- (five hundred) which was witnessed by Shri Laldawla. The said Shri C Laldingliana used to sell some portion of his mother's land to Shri HL Muankima H/o Hmingthanzami of Reiek for Rs 25,000/- in 1986. Such being a character of his son, Smt Ngurthanchhingi was in opinion of distributing her plots of land. Accordingly, her son Shri C Laldingliana also received his share portion.

However, he had sold the same to Shri R Zamawia S/o KL Hnema of Reiek in 1990 for Rs 25,000/- only. As such, being a rightful owner, the said agreement was signed with the Defendant No 1 Company. The Plaintiff in order to misguide approached the village authority for issuance of permit to make it that her deceased husband during his lifetime had purchased the suit land. Due to her repeated request, the village authority after issuance of Pass No 23 of 2007 to them issued Pass No 48 of 2007 to the Plaintiff. In fact, the land was never be neither in the name of her late husband nor son prior to issuance of Pass No 23 Dated. 21.02.2007. A Pass No 48 Dated 25.03.2007 was issued on being requested by the Plaintiff. As such was the situation, without knowing the fact, the President, Reiek Village Council/Court wrote a letter to the Defendant. The Plaintiff never be the owner of the suit land and the Defendant No 2 and 3 used to occupy the suit land by planting Tea and looked after since the lifetime of Smt Ngurthanchhingi. The Plaintiff or his father never interfered with the suit land as he had already sold his portion/share to Shri R Zamawia S/o L Hnema of Reiek in the year 1990 for Rs 25,000/-. The said deceased Shri C. Laldingliana also knew very well that the suit land belonged to the Defendant No 2 and 3 who were his sister and brother-in-law. Hence prayed the Court to dismiss the case with costs.

5. The Ld. Predecessor Court has framed the following issues.

- (1) Whether the suit is maintainable in its present form and style.*
- (2) Whether the present suit is barred by Res-Judicata as the Defendants No. 2 & 3 have filed Title Suit No. 8 of 2007 before the Additional Subordinate District Council Court, Aizawl on the same subject matter*
- (3) Whether the suit land belongs to the Plaintiff or the Defendant No. 2 & 3.*
- (4) Whether the Plaintiff is entitled to the reliefs claimed, if so, to what extent.*

DECISIONS AND REASONS THEREOF

6. **ISSUE No 1 & 2:** The two issues (1) Whether the suit is maintainable in its present form and style and (2) Whether the present suit is barred by Res-Judicata as the Defendant No 2 & 3 have filed Title Suit No. 8 of 2007 before the Additional Subordinate District Council Court, Aizawl on the same subject matter are taken together for consideration as being about maintainability of the case. Perused the Case Record and found that the Ld. Civil Judge vide Order Dt.10/4/2013 had closed the case/matter. Being highly aggrieved by the impugned Order Dt. 10/4/2013, the Plaintiff had preferred Appeal and the Hon'ble Gauhati High Court, Aizawl Bench observed that the Parties involved in the Declaratory Suit No. 8/2007 and in the Civil Suit No. 21/2007 were different inasmuch as the Airtel Company was not a party in

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Declaratory Suit No. 8/2007. The issue involved in Declaratory Suit No. 8 of 2007 was regarding Village Council Pass issued by Reiek Village Council/Court, vide Sitting No. 18 Resolution No. 5/1998 and the VC Pass No 23 of 2007 but the issue involved in Declaratory Suit No 21 of 2007 was with regard to VC Pass Dated 25.03.2007. Hence, the Hon'ble Gauhati High Court, Aizawl Bench by Order Dated 19.08.2014 set aside and quashed the impugned Order Dt.10/4/13 passed by the Ld. Civil Judge and remanded back the matter to the trial court to consider the matter afresh. Apart from the above, the Ld. Predecessor Court had heard the Parties and held maintainable the present case, no further journey is required at this belated stage.

7. **Issue No 3:** Whether the suit land belongs to the Plaintiff or the Defendant No. 2 & 3. The Plaintiff examined as many as four (4) witnesses including herself whilst the Defendants examined three witnesses.

8. *To the evidences adduced in favour of the Plaintiff.* PW 1 Smt Lalsangluri claimed ownership of the suit land. She deposed that her husband Shri C Laldingliana during his lifetime had purchased a plot of land at Reiek Village from Smt. Lalsangliani (L) W/o Shri Laltluanga Sailo (L) in the year 1979. Subsequently, on shifting to Aizawl in the year 1981 her husband requested the Defendant No. 2 to look after his said plot of land. After the death of Shri C Laldingliana on 26.12.2005, the Defendant No. 2 & 3 illegally represented themselves as the owners of the land belonging to Shri C Laldingliana and made an agreement with the Defendant No. 1. As such, the Defendant No. 1 started construction of a tower within the land belonging to the Plaintiff. On gaining knowledge of the tower being constructed by the Defendant No. 1, she immediately approached Reiek Village Council/Court to help her protect the said plot of land belonging to the Plaintiff. The Reiek Village Council/Court after verifying their records in Sitting No. 48 held on 25/3/07 issued a Village Council Pass to the Plaintiff with the following boundary description: 1) East : Pu Bawihbanga Ram 2) North : Pi Sangchhingpuui leh Pu Ramhluna Ram 3) South : Tourist Resort Ramchin 4) West : Pi Roluti Ram. Thereafter, the President, Reiek Village Council/Court had also written a letter Dt.9/4/07 to the Defendant No. 1 stating that he had mistakenly recommended the Defendant No. 3 believing him to be the owner of the land but he found out that the land belonged to the Plaintiff namely Lalthuammawia and requested the Defendant No. 1 to approach the Plaintiff. The Plaintiff submitted a Representation Dt.16/4/07 to the Defendant No. 1 wherein he

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requested him to cancel any agreement made with the Defendant No. 2 & 3 and also to stop further construction of the tower until fresh lease agreement was made with the rightful owner of the land. Despite receiving the Representation Dt.16/4/07, the Defendant No. 1 failed to make a lease agreement with the Plaintiff and not stopped construction of the tower within the Plaintiff's land. During her cross-examination, she admitted that there was no valid Pass in respect of the suit land prior to issuance of VC Pass No 48 dated 25.03.2007 to her son Lalthuammawia. Admitted that she had no document to prove that her husband had purchased the suit land from Smt Lalsangliani. Admitted that no Pass or Permit was issued in the name of her deceased husband.

9. PW 2 Smt Malsawmi deposed that she was earlier married to deceased Shri C Laldingliana in the year 1971 but got divorced in the year 1983. During the life time of her deceased husband, they purchased different plots of land including the suit land where AIRETL TOWER was constructed from Smt Lalsangliani (L) W/o Shri Laltluanga Sailo (L) (the then Reiek Mizo Chief) in the year 1975 for Rs 200/-. With her husband C Laldingliana, they also purchased the present house occupied by Smt. Thangdailovi W/o Vanlaiduha next to the Reiek Hall from Shri Sangkunga R/o Chanmari West, Aizawl. Before she was married to Shri C Laldingliana (L), she was given a Shop Pass by Village Council/Court at Thlersei Veng, Reiek next to the house of Shri Ringa (L), Pharmacist. In the said plot of land, she with her husband constructed the house that was later sold by her deceased husband to Smt Hleitali. Presently, the said house was in possession of Smt Hmingthanzami D/o Smt Hleitali (L) who was married to Shri HL Muankima. Before she married Shri C Laldingliana, his mother Smt Ngurthanchingi (L) had only one plot of land which was purchased by Shri R Zamawia S/o L Hnema R/o Reiek. During cross-examination, she admitted that Smt Lalsangluri had no valid Pass when they purchased the land from her. She believed that the Defendants might have maintained the suit land since the year 1985. She believed that Shri C Laldingliana sold some portions of land to Shri HL Muankima of Reiek in the year 1986. She admitted that there was no document to prove that she and Shri C Laldingliana had purchased the suit land.

10. PW 3 Shri Thangluaia (younger son of Smt Lalsangliani Sailo (L) and Laltluanga Sailo (L) the then Mizo Chief, Reiek) deposed that his late mother sold the plot of land (where Airtel Tower was constructed) called Lal thingpui huan (Tea Garden) to Shri C
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Laldingliana (L) in the year 1979. However, during cross-examination, he admitted that there was no Sale Deed. He denied that Smt Ngurthanchhingi purchased the suit land from Shri Kawlkhenga.

11. PW 4 Shri Lalduhawma deposed that he had held the post of Secretary, Reiek Village Council/Court in between February 2002 to February 2008. When the Plaintiff knew that Airtel Company was going to construct a signal tower within the suit land without their permission, the Plaintiff immediately approached Reiek Village Council/Court. The Reiek Village Council/Court had after verifying the matter learnt that the suit land initially belonged to the then Reiek Chief, Shri Laltluanga Sailo and after his death his wife Pi Lalsangliani (L) had sold the suit land to Smt Malsawmi and Shri C Laldingliana (L) (the Plaintiff's father). Thereafter, Reiek Village Council/Court in their Sitting No. 48 held on 25/3/07 decided to issue a Pass for the suit land in favor of the Plaintiff and accordingly a Pass was issued with the following boundary description: a) East : Pu Bawihbanga Ram b) North : Pi Saichhingpuii leh Pu Ramhluna ram c) South : Tourist Resort ram chin d) West : Pi Roluti ram. PW 4 further deposed that the then President of Reiek Village Council/Court had issued the Pass No. 23 of 2007 Dt.21/2/07 in favor of the Defendant No. 3 on his own initiative without informing and consulting the other members of the Reiek Village Council/Court. He identified Exhibit P – 2 (A) as his signature. During cross-examination, he admitted that his knowledge about the purchase of land by Shri C Laldingliana from Smt Lalsangliani Sailo was hearsay. He knew that as the Defendant No 3 surrendered some portion of the disputed land as claiming himself the rightful owner, Reiek Village Council/Court had made allotment to the Defendant No 3 at Khawnhnuai, Reiek. After issuance of Pass No 23 of 2007 to the Defendant No 3, another Pass to the Plaintiff on the same site was issued not for disclosing the previous Pass. The said Pass No. 23 of 2007 Dt 21.02.2007 issued to Defendant No 3 was cancelled by the said President as it was done without Village Council/Court sitting. The letter containing about the cancellation of land allotted to Shri Vanlalduha issued by Shri C Lalrozama, the then President, Reiek Village Council/Court was kept in the Meeting minute of Reiek Village Council/Court.

12. *Now, to the evidences adduced in favour of the Defendants.* Shri Dipankar Deka deposed that he was authorized to depose on behalf of the Defendant No 1. The

Defendant No. 1 Company has been entering into leave and license agreement with Defendant No 2 & 3 for a period of 20 years only after receiving a Village Council Pass No. 23 of 2007 Dt. 21.02.2007 issued by the President, Reiek Village Council/Court in the name of the Defendant No 3 and after receiving non-encumbrances certificate from the said President. The Village Council Pass issued to the Defendant No 3 was senior to the Plaintiff's. The Airtel Company denied that they received Letter Dt. 09.04.2007 regarding mistaken recommendation of the Defendant No. 3 as the owner of the said plot of land from the President, Reiek Village Council/Court. They received the Representation Dt. 16.04.2007 from the Plaintiff but whilst inquiring into the matter, the Plaintiff had filed the present case. There was no objection from the Plaintiff whilst entering into the said agreement and even during installation of the said Tower. Hence, prayed the Court to dismiss the present case.

13. The Defendant No 2 Smt C Zomuanthangi and the Defendant No 3 Shri Vanlaiduha deposed that in the year 1975 Shri Kawlkhenga had sold a plot of land to Smt Ngurthanchhingi (mother of the Plaintiff's father's mother) for Rs 500/- (five hundred) which was witnessed by Shri Laldawla. The said Shri C Laldingliana used to sell some portion of his mother's land to Shri HL Muankima H/o Hmingthanzami of Reiek for Rs 25,000/- in 1986. Such being a character of his son, Smt Ngurthanchhingi distributed her landed properties. Accordingly, her son Shri C Laldingliana also received his share portion but sold it to Shri R Zamawia S/o KL Hnema of Reiek in 1990 for Rs 25,000/- only. The Plaintiff in order to misguide approached the village authority for issuance of permit to make it that the land was purchased by her late husband from Smt Lalsangliani. After the death of her husband, she obtained Heirship Certificate/Guardianship Certificate to inherit all the properties left by the said Shri C Laldingliana as they kept no formal Pass. The Plaintiff repeatedly requested the village authority to give a Pass for a formal document and on such situation, the village authority after issuance of Pass No 23 Dt.21.02.2007 to the Defendant No 3 once again issued another Pass for a formal document on 25.03.2007 to the Plaintiff. The land was never be neither in the name of her late husband nor son prior to issuance of a Pass No 23 Dt. 21.02.2007. On being requested by the Plaintiff, the President, Reiek Village Council/Court had written a letter to the Defendant No 1 as he did not know the fact. The Plaintiff never be the owner of the suit land and the Defendant No 2 and 3 used to occupy the suit land by planting Tea and looked after since the lifetime of Smt Ngurthanchhingi. The Plaintiff or his father never interfered
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with the suit land as he had already sold his portion/share to Shri R Zamawia S/o L Hnema of Reiek in the year 1990 for Rs 25,000/-. The said deceased Shri C. Laldingliana also knew very well that the suit land belonged to the Defendant No 2 and 3 who were his sister and brother-in-law respectively. Hence, prayed the Court to dismiss the case with costs.

14. *To analysis of evidences.* Both the Plaintiff and the Defendant No 2 & 3 claimed ownership of the suit land. DW 2 and DW 3 deposed that the suit land belonged to the Defendant No 2 and the Defendant No 3 who are the sister and brother-in-law of the said Shri C Laldingliana. It appeared that Reiek Village Council/Court issued two Village Council Passes on the same plot of land to two different persons. It also appeared from the evidence that neither the Plaintiff nor the Defendants had Documentary evidence to prove that they were the true purchasers of the suit land from the rightful/original owner. Hence, preference or greater weight of evidence solely based on document either Sale Deed or Sale Letter could be given to neither the Plaintiff nor the Defendants and so we have to travel to Oral evidence. When the Defendant No 3 produced Village Council Pass No 23 of 2007, the Plaintiff produced Village Council Pass No 48 of 2007. The Village Council Pass issued to the Defendant No 3 was senior to the Pass issued to the Plaintiff. The Documents (Pass) granted earlier by the competent authority in those days might have a superior right in preference to the one granted later. Simply, first in time may prevail over the others. *The Maxim says, "Qui prior est tempore potior est jure (he who is earlier in time is stronger in law).* It is a *principle of natural justice* that if rights are created in favour of two or more persons at different times, the one who has the advantage in time should also have the advantage in Law. In the meanwhile, the Plaintiff alleged the Defendant No 2 & 3 to have got the said Village Council Pass No. 23 of 2007 in violation of Law and vehemently argued that there was irregularity in issuance of it. In this regard, PW 4 Shri Lalduhawma who had held the post of Secretary, Reiek Village Council/Court in between February 2002 to February 2008 deposed that the Reiek Village Council/Court had after verifying the matter learnt that the suit land initially belonged to the then Reiek Chief, Shri Laltluanga Sailo. After his death, his wife Pi Lalsangliani (L) sold the suit land to Smt Malsawmi and Shri C Laldingliana (L) (Plaintiff's father). Thereafter, as decided by Reiek Village Council/Court in their Sitting No. 48 held on 25/3/07, a Pass was issued to the Plaintiff. PW 4 further deposed that Shri C Lalrozama the then President of Reiek Village Council/Court had
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issued a Pass No. 23 of 2007 Dt.21/2/07 to the Defendant No. 3 on his own initiative without informing and consulting other members. After issuance of Pass No 23 of 2007 to the Defendant No 3, another Pass to the Plaintiff on the same site was issued not for disclosing the previous Pass. The said Pass No. 23 of 2007 Dt. 21.02.2007 issued to Defendant No 3 was cancelled by the said President as it was done without Village Council sitting. The letter containing about the cancellation of land allotted to Shri Vanlalduha issued by Shri C. Lalrozama, the then President, Reiek Village Council/Court was kept in the Meeting minute of Reiek Village Council/Court. The Plaintiff Smt. Lalsangluri (PW 1) also deposed that her late husband Shri C. Laldinglana purchased the suit land in the year 1979 from Smt. Lalsangliani (L) W/o Laltluanga Sailo (L). PW 2 Smt Malsawmi also deposed that she was earlier married to Shri C Laldinglana in the year 1971 but got divorced in the year 1983. During the life time of her deceased husband Shri C Laldinglana, they purchased different plots of land including the suit land where AIRETL TOWER was constructed from Smt Lalsangliani (L) W/o Shri Laltluanga Sailo (L) (the then Reiek Mizo Chief). PW 3 Shri Thangluaia (younger son of Smt Lalsangliani Sailo (L) and Laltluanga Sailo (L) the then Mizo Chief, Reiek) also deposed that his late mother sold her plot of land called Lal thingpui huan/tea garden (where Airtel Tower was being constructed) to Shri C Laldinglana (L) in 1979. It appeared that PW 3 was the younger son of the Mizo traditional Chief of Reiek village and PW 2 (Formal Secretary, Reiek Village Council/Court) was also not the relative of either the Plaintiff or the Defendants.

15. Having heard the Ld. Counsels during oral argument at length and perused the written arguments and the entire evidence, this Court considers that the Village Council/Court is a local form of Government. It is to administer/render justice, expected to work for the welfare of the people and maintain equality, impartiality and avoid favouritism and any kinds of discrimination among the citizens within its administrative jurisdiction. It is highly expected to tell the truth and stand on the truth even when a dispute on land came up between two or more persons within its jurisdiction. Accordingly, the Village Council Pass issued and the Records that have been kept and maintained by Reiek Village Council/Court are also expected to be correct and true. The Reiek Village Council/Court is competent to issue a Village Council Pass. Accordingly, they had issued a VC Pass No 23 of 2007 to the Defendant No 3 and a VC Pass No 48 of 2007 to the Plaintiff on the same plot of land. However, PW 4 who was the Secretary, Reiek Village Council/Court in the year 2007
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ascertained that the then President, Reiek Village Council/Court Shri C Lalrozama issued Pass No. 23 of 2007 Dt 21.02.2007 to Defendant No 3 on his own initiative without informing and consulting the other members of Reiek Village Council/Court. Thereafter, Pass No 48 of 2007 was issued to the Plaintiff on the same site. The said Pass No. 23 of 2007 Dt 21.02.2007 issued to Defendant No 3 was cancelled by the said President as it was done without VC sitting. The letter containing about the cancellation of land allotted to Shri Vanlalduha issued by Shri C Lalrozama, President, Reiek Village Council/Court was kept in the Meeting minute of Reiek Village Council/Court and available to be seen. Hence, this Court considers that all these acts such as entries made in Reiek Village Council/Court Record Book etc are Public Records and done by Reiek Village Council/Court in performance of their official duty.

Section 35 of the Indian Evidence Act, 1872: Relevancy of entry in public 1 [record or an electronic record] made in performance of duty.- *An entry in any public or other official book, register or 1 [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or 1 [record or an electronic record] is kept, is itself a relevant fact.*

16. In order to rebut the evidence adduced by PW 4, the said Reiek Village Council/Court Record Book wherein about cancellation of VC Pass No 23 of 2007 issued to Defendant No 3 was written was not asked to be produced before the Court and so no adverse inference could be drawn in favour of the Defendants.

The Hon'ble Supreme Court in Union of India Vs Ibrahim Uddin & Anr on 17th July, 2012 *has held that Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case, one Party has asked the Court to direct the other side to produce the document and other side failed to comply with the Court's order, the Court may be justified in drawing the adverse inference.*

In Mahendra L. Jain & Ors Vs Indore Development Authority & Ors., (2005) 1 SCC 639, *the Hon'ble Supreme Court held that mere non-production of documents would not result in adverse inference.*

17. It is well known that in civil case, satisfied on a preponderance of possibilities does not mean that satisfied beyond reasonable doubt. Therefore, due to the all reasons stated in above and after much thought and careful consideration and weighing carefully the evidences adduced by both the Parties, it is the considered view of this Court that the evidences adduced in favour of the Plaintiff are more convincing, probable truth, accuracy and in greater weight of evidence. Accordingly, this issue is decided in favour of the Plaintiff.

18. ISSUE No 4: Whether the Plaintiff is entitled to the reliefs claimed, if so, to what extent. As discussed in the above, the Plaintiff is entitled to the reliefs claimed for declaring him as the rightful owner of the sui land and also the lease agreement executed between the Defendant No 1 and the Defendant No 2 & 3 is null and void.

ORDER

19. In the light of the above observation, the Plaintiff is hereby declared as the rightful owner and legal owner of the suit land located at Reiek which is covered by Reiek Village Council/Court Pass Dated. 25.03.2007 issued in favour of the Plaintiff by Reiek Village Council/Court in its sitting No 48 of 25.03.2007.

20. Consequently, it is declared that the lease agreement executed between the Defendant No 1 and the Defendant No 2 & 3 being illegal is null and void.

21. Parties shall bear their own costs.

22. With this order, the present case stands disposed of.

**Given under my hand and seal of this Court on this day of the 26th
October, 2018 Anno Domini.**

(H. LALDUHSANGA)

Civil Judge - II

Aizawl, Mizoram.

Memo No.....:

Dated Aizawl, the 26th October., 2018.

Copy to:

1. Master Lalthuammawia Represented by his mother Smt Lalsangluri W/o Shri C Laldingliana (L) R/o Maubawk Sikul Veng, Aizawl, Aizawl District through Counsel Shri C Lalramzauva Sr Advocate & ors.
2. The Manager, AIRTEL Company (Bhasti Nextcom Ltd) Tuikual, Aizawl, Mizoram through Counsel Shri T Lalnunsiana, Advocate
3. Smt C Zomuanthangi D/o Vanlalduha R/o Reiek Mamit District, Mizoram represented her mother Smt Thangdailovi through Counsel Shri H Laltanpuia, Advocate & ors
4. Shri Vanlalduha R/o Reiek, Mamit District, Mizoram through Counsel Shri H Laltanpuia, Advocate & ors
5. The District Judge, Aizawl.
6. i/c Judicial Section.
7. Case record.
8. Guard File.

PESHKAR