

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

Civil Suit No 19 of 2006

Smt. Darzami
W/o Ngura (L)
R/o Chanmari, Aizawl.

...Plaintiff

-Vs-

1. Shri. R. Lalrintluanga
S/o Rualkhuma (L)
R/o Champhai Vengthlang, Champhai
2. Smt. RTC Laltanpuui
W/o R. Lalrintluanga
R/o Champhai Vengthlang, Champhai
3. State of Mizoram
Represented by the Chief Secretary to the Govt. of Mizoram
4. The Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department,
Aizawl, Mizoram.
5. The Director,
Land Revenue & Settlement Department
Aizawl, Mizoram

...Defendants

BEFORE

**H. LALDUHSANGA
Civil Judge**

| | |
|---------------------------------|---|
| Counsel for Plaintiff | : Shri Victor L Ralte, Advocate & ors |
| Counsel for Defendant No 1 & 2 | : Shri W Sam Joseph, Advocate & ors |
| Counsel for Defendant No 3 to 5 | : Smt Lalrinpuui, Addl. Government Advocate |
| Date of Institution | : 01.03.2006 |
| Judgment Pronounced on | : 21.09.2018 |
| Judgment Delivered on | : 21.09.2018 |

No of Total Pages of Judgment & Order: 21 (Twenty one)

INDEX

PLAINTIFF'S WITNESSES

- (1) Smt Darzami
- (2) Smt Lyni Lalthanzuali
- (3) Smt Lalmangaihi
- (4) Shri Lalluaia
- (5) Shri RL Sangvunga

PLAINTIFF'S EXHIBITS

NIL

DEFENDANTS' WITNESSES

- (1) Shri R Lalrintluanga
- (2) Smt RTC Laltanpuui
- (3) Shri RL Thangluia
- (4) Shri Lalnunsanga
- (5) Shri T Vanlalhruaia

DEFENDANTS' ANNEXURES & EXHIBITS

- (1) Annexure 1: Document showing firewood 6 Trips of TMB delivered by Shri LHL Lalrinawma to the Plaintiff/Smt Sawmpuii
- (2) Ext D – 1 : Receipt showing Rs 80,000/- received and signed by KM Zakhuma on 08.01.1996.
- (3) Ext D – 2 : LSC No. AZL - 677 of 1996 (holder Smt RTC Laltanpuui).
- (4) Ext D – 3 : Receipt No 22, Rs 653 on account of LSC No 677 of 1996 from Smt RTC Laltanpuui.
- (5) Ext D – 4 : Receipt No 23, Rs 653 on account of LSC No 47 of 1997 from Shri R Lalrintluanga

JUDGMENT & ORDER

Dated 21.09.2018

1. This is a Civil Suit No. 19 of 2006 filed by the Plaintiff against the Defendant No 1 on 01.03.2006. The Ld. Predecessor Court of Civil Judge, Aizawl vide its Judgment & Order Dated 08.11.2012 had dismissed the suit. The Plaintiff being highly aggrieved and dissatisfied preferred an appeal before the Court of Additional District Judge, Aizawl by filing RFA No. 12 of 2013. The Hon'ble First Appellate Court after hearing the parties was pleased to set aside and quash the impugned Judgment & Order and remanded back the matter to the Ld. Trial Court with a direction to implead wife of the Defendant No 1 as a Party. Accordingly, the wife of the Defendant No 1 was impleaded and arrayed as Defendant No 2. At the same time, the State more particularly the Land Revenue & Settlement Department being a necessary party was also impleaded as party Defendants as the issue pertained to land dispute. This Court received the present case on 17.02.2016 for disposal.
2. The Plaintiff in her *Plaint* submitted *inter alia* that she was in need of a plot of land for establishment of school. Upon coming to know about the same, the Defendant No. 1

had taken her to Shri. KM Zakhuma who had a plot of land agreeing to sale for a price of Rs 1 Lakh. But, on negotiation he agreed to sale his land to the Plaintiff for a sum of Rs 80,000/-. The Plaintiff thus entrusted the Defendant No. 1 to hand over the price of the land to the land owner as she was unwell on the date fixed for payment. After the land was purchased, the Defendant No. 1 requested the Plaintiff to slice out a small portion of the land adjacent to the drain for the purpose of availing loan in the name of his wife (Defendant No. 2). The Defendant No. 1 agreed to pay the price of the suggested portion of land after taking the loan for a consideration of Rs 40,000/- alongwith interest @ Rs 400/- per Rs 10,000/- per month. The Plaintiff thus agreed to slice out small portion of the land adjacent to the drain for mutating into the name of Defendant No. 2. However, to the shock and surprise of the Plaintiff, the Defendant No. 1 got some portion of the land settled in his name besides his wife (Defendant No. 2). The Plaintiff further deposed that she sent her daughter Smt Lyni Lalthanzuali to the Defendant No 1 at Champhai and she requested him to give it back the LSC registered in the name of his wife Smt RTC Laltanpuui to the Plaintiff if he could not give the Plaintiff the amount of money that was agreed by the Defendant No 1 to be given back to the Plaintiff by the Defendant No 1. However, unexpectedly the Defendant No 1 told that he would never give the said amount of money and the said LSC also to the Plaintiff. Nobody knew that he had spent the Plaintiff's money for purchasing the suit land. There was nothing left in writing. Furthermore, the Defendant No 1 used to threaten her that as he was the one who had handed over the cost of the suit land to the land owner, he could be the owner of the land. Hence, prayed for getting back the two LSCs registered in the name of the Defendant No 1 and 2.

3. *On the other hand*, the Defendant No 1 and 2 submitted in their *written statement inter alia* that no cause of action arose. The suit was bad for non-joinder of necessary parties and mis-joinder of parties, barred by the principles of acquiescence, estoppels and delay.
4. *The Defendant No 1* further denied that Shri KM Zakhuma initially fixed the price of the land at Rs 1,00,000/- and thereafter reduced to Rs 80,000/-. He further denied that he requested the Plaintiff to give him a portion of the land for the purpose of taking loan by his wife. Also denied that his LSC and his wife's LSC exceeded the agreement made by the Plaintiff and the Defendant No 1. Also denied that he borrowed a loan from the Plaintiff at the rate of Rs. 400/- on Rs 10,000/- per month. He also denied that he

received Rs 80,000/- from the Plaintiff for payment made to the land owner for the price of the suit land and that on that day the Plaintiff was sick. He never threatened the Plaintiff or his daughter. He denied that there was any loan borrowed by him from the Plaintiff. As such, he had no reason to surrender his LSC and his wife's LSC to the Plaintiff. The Defendant No 1 stated that he received Rs 40,000/- from the Plaintiff for payment made to land owner Shri KM Zakhuma on 08.01.1996 for the price of the land. He further stated that he made payment of Rs. 80,000/- (including he received Rs. 40,000/- from the Plaintiff to Shri KM Zakhuma) to the land owner for the whole land. He divided the land which he bought from Shri KM Zakhuma into two parts, one part was owned by the Plaintiff and another part was owned by the Defendant. He had divided his part of land and LSC was made in the Revenue Department in his name and his wife's name. He came to know that his LSC No. AZL - 47 of 1997 was stolen from the Revenue Department. As such, he made a complaint to the Officer-in-charge, Aizawl Police Station. The Police Department seized the said LSC from the Plaintiff. In the meantime, the Plaintiff made a complaint to the Sub-District Council Court regarding title of the present suit. Hence, the Hon'ble Court by giving a direction to the Police Department had kept the said LSC in its custody. The Defendant in the month of March, 1996, on demand made by the Plaintiff gave firewood (6 trips of TMB) at the cost of Rs 48,000/- to Children's Training School, Chhangurkawn, Aizawl by hiring the motor vehicle bearing Registration No. MZ – 01 - 8770 owned by Shri. LHL. Lalrinawma S/o Laihuliana, Champhai Vengthlang. However, he received Rs 8,000/- only from the Plaintiff and Rs 40,000/- was still due to the Defendant No 1. Furthermore, the Plaintiff without his consent constructed road on the land covered by LSC No. AZL - 677 of 1996 owned by his wife. There was a heavy loss on the part of the Defendants.

5. *The Defendant No 2* submitted *inter alia* that her husband (Defendant No. 1) did not ask the Plaintiff to give him a portion of the land for the purpose of taking loan. Denied that her LSC and her husband's LSC exceeded the agreement made between the Defendant No. 1 and the Plaintiff. Her husband never approached the Plaintiff or her daughter for any loan. The Defendant No. 1 never threatened the Plaintiff or her daughter. The Defendant No. 1 never received a sum of Rs 80,000/- from the Plaintiff for payment to Shri KM Zakhuma as the cost of the suit land. As the Defendant No. 1 had not borrowed any money from the Plaintiff, there was no question of the Defendant No. 1 and the answering Defendant surrendering their LSCs. Her husband purchased the suit land from Shri KM Zakhuma for a sum of Rs 80,000/-. When the Defendant No. 1 purchased the

suit land, he handed over the entire cost of the land to the said Shri KM Zakhuma. When the Defendant No 1 purchased the suit land, it was covered under Village Council Pass. After purchasing the suit land, the Plaintiff requested the Defendant No. 1 to part with half portion of the land. Accordingly, the Defendant No 1 agreed to part with half portion of his land. The Plaintiff paid him a sum of Rs 45,000/- towards the cost of half portion of the land. On payment of the said sum of Rs 45,000/-, the portion belonging to the Plaintiff was also properly demarcated. As the Plaintiff hailed from Burma, she entrusted the job of converting the Village Council Pass into LSC to the Defendant No 1. Accordingly, Defendant No 1 approached the Land Revenue & Settlement Department and divided the entire portion of the land into four plots. One plot was put in the name of the Defendant No 1 and another plot in the name of Defendant No 2 and the remaining two plots in the name of the Plaintiff. Before the LSCs were ready, the Defendant No 1 and the answering Defendant shifted their abode to Champhai from Dawrpui, Aizawl. When the Defendants were away from Aizawl, the Plaintiff took out the LSCs registered in the name of the Plaintiff as well as the LSC registered in the name of the Defendant No 1 (LSC No. AZL - 47 of 1997). When the Defendant No 1 from the Revenue Department came to know that the Plaintiff had taken the LSC No. AZL - 47 of 1997 belonging to the Defendant No 1 and when asked she denied taking the said LSC at first subsequently she said that she had deposited in the Court. She refused to part with the said LSC till date. The answering Defendant would like to state that when the Defendant No 1 approached his previous Advocate, he had clearly mentioned that the said entire plot of land was purchased by him from Shri KM Zakhuma for Rs 80,000/- and he divided the said land and half portion was sold to the Plaintiff for a sum of Rs 45,000/- but the said Counsel while preparing the Plaint in English language made a mistake and told that he received Rs 40,000/- from the Plaintiff for payment made to Shri Zakhuma on 8.1.1996, in reality, the Defendant No 1 paid the entire cost of the land amounting to Rs 80,000/- to the said Shri KM Zakhuma and thereafter half portion of the land which he had purchased was sold to the Plaintiff for a sum of Rs 45,000/-. The answering Defendant was working in the Apex Bank and she did not go through the written statement submitted by the Defendant No 1 before it was submitted by the Counsel to the Court. If the answering Defendant would have gone through the said written statement, the discrepancy would have not occurred. The LSC issued in the name of the answering Defendant from the Revenue Department is LSC No. AZL - 677 of 1996 and the original is also kept with the answering Defendant. The answering Defendant is the legal owner of the immovable property covered under LSC No. AZL -

677 of 1996. In the absence of the answering Defendant from Aizawl, the Plaintiff had encroached upon the land and constructed road within the said land. The Plaintiff had no *Locus standi* to make any claim to the property covered under LSC No. AZL - 677 of 1996. The answering Defendant had the right to enjoy peaceful possession of the said immovable property. The Plaintiff could have claim only to the plots of land covered under LSC No. AZL - 30 of 1997 and LSC No. AZL - 31 of 1997.

6. The Plaintiff in her *replication* submitted *inter alia* the Defendant No 1 did not contribute Rs 40,000/- for purchasing the suit land. She purchased the suit land from the land owner on payment of Rs 80,000/- through the Defendant No 1. The Plaintiff treated the Defendant No 1 as nephew and so the Defendant No 1 introduced her to the land owner as well. The Defendant No. 1 requested the Plaintiff to slice out a small portion of the land adjacent to the drain for the purpose of availing loan in the name of his wife (Defendant No. 2) as Bank required it for security. The Defendant No 1 said that the said site would be good enough for him as his main purpose was for mere possession of LSC. He would construct a small shed which would not in any way obstruct the school sought to be established. Hence, they verbally agreed that *(i) the Plaintiff shall slice out a small portion of the land purchased by her adjacent to the drain/kawrkam (ii) the Defendant No 1 shall pay the price of the portion of the land sliced out to him after taking loan (iii) the Defendant No 1 shall pay as consideration for the land so sliced out to him a sum of Rs 40,000/- with an interest @ 400/- per Rs 10,000/- per month and (iv) all matters concerning conversion of the land into Patta/LSC shall be done by the Defendant No 1 as he required it urgently.* Accordingly, the Defendant No 1 immediately obtained one LSC viz LSC No. AZL – 677 of 1996 dt. 27.05.1996 in the name of his wife sometime in May/June 1996 and verbally informed the Plaintiff that as per their agreement, he had obtained one LSC. He also told her that as per requirement of law, her land was to be partitioned into four plots and the rest of the plots should be registered in her name and the same should be delivered to her later. However, to the shock and surprise of the Plaintiff, the Defendant No. 1 had fraudulently mutated the suit land into 4 LSCs i.e i) LSC No. AZL - 30 of 1997 in the name of Plaintiff ii) LSC No. AZL - 31 of 1997 in the name of Plaintiff iii) LSC No. AZL - 47 of 1997 in the name of Defendant No. 1 iv) LSC No. AZL – 677 of 1996 in the name of Defendant No. 2 (Wife of Defendant No. 1). The Defendant No. 1 got some portion of the land settled in his name besides his wife. However, she still continued to hold the opinion that as the said LSC No. AZL - 47 of 1997 registered in the name of the Defendant No 1 was delivered to her by the Defendant No 1, he would not

create any problem in future. Further, the portion of land mutated in the name of his wife too was not the land adjoining the drain but the hill top which was the best portion of the land. Further, in the month of February, 2006, the relatives of the Plaintiff and the Defendant No 1 intervened at the instance of the Defendant No 1 to amicably settle the dispute. At their instance, the Plaintiff, Defendant No 1, Smt Lyni Lalthanzuali, Shri Sangvunga, Shri Lalzidinga, Shri Lalluaia and Smt Hmangaihi gathered at the spot. The relatives of the Parties proposed that the agreed price Rs 20,000/- be accepted in lieu of the LSC No AZL - 47 of 1997 issued to the Defendant No 1 without interest and the Defendant No 1 should also return LSC No. AZL - 677 of 1996 to the Plaintiff. The Defendant No 1 accepted the same but the Plaintiff could not accept it. Hence, prayed for passing decree that *(i) the land of Shri KM Zakhuma was purchased by the Plaintiff through the Defendant No 1 on 08.01.1996 (ii) the Plaintiff and the Defendant No 1 had verbally agreed that a portion of the land near the drain/luikawrh shall be sliced out in favour of the Defendant No 1 on payment of Rs 40,000/- with an interest @ 400/- per Rs 10,000/- per month (iii) the Plaintiff entrusted the Defendant No 1 to get her land converted into LSC as per their agreement in good faith (iv) the Defendant No 1 against his agreement with the Plaintiff, fraudulently got one LSC No. AZL - 47 of 1997 dated 21.01.1997 issued in his name and another LSC No. AZL - 677 of 1996 dated 27.5.1996 in the name of his wife (Defendant No 2) (v) the Defendant No 1 failed to perform his part of agreement to pay the price of the land amounting to Rs 40,000/- and its interest (vi) the agreement between the Plaintiff and the Defendant No 1 as well as the consequent actions of the Defendant No 1 in getting two of the LSCs i.e LSC No. AZL - 47 of 1997 issued in his name and another LSC No. AZL - 677 of 1996 issued in the name of his wife is liable to be declared null and void (vii) the Defendant No 1 had fraudulently get one LSC No. AZL - 677 of 1996 issued in the name of his wife which covers an area beyond the terms of the agreement (viii) the Plaintiff is the rightful owner of the land covered by the LSC No. AZL - 677 of 1996 issued in the name of the Defendant No 1's wife as well as the LSC No. AZL - 47 of 1997 issued in the name of the Defendant No 1 (ix) that the Defendant No 1 is liable to pay the costs of the suit as well as damages Rs 1,00,000/- for his fraudulent actions.*

7. The State Government Defendant No 3 to 5 submitted in *written statement* inter alia that the present case was not maintainable in its present form and style. The Plaintiff had no *Locus Standi* to file it. The averments in the Plaint by the Plaintiff were categorically denied save and except those that were specifically admitted. The LSC was issued as

applied for as there was no objection at the time of processing the same. However, if some information were missing in the process of issuance of the Land Settlement Certificates, they may be traced out if the LSC No in question are furnished. However, the Defendant No 3 to 5 adduced no evidence

8. Based on the pleadings, the Ld. Predecessor Court had framed the following issues:

- (1) Whether the suit is maintainable in its present form and style.*
- (2) Whether there is any cause of action in favour of the Plaintiff and against the Defendant.*
- (3) Whether the suit is maintainable for non payment of requisite fees.*
- (4) Whether the suit is barred by the principles of acquiescence, estoppel and delay.*
- (5) Whether the suit is maintainable for non enclosure of documents.*
- (6) Whether the Plaintiff purchased land including the said land from Shri KM Zakhuma for a consideration of Rs 80,000/- and/or whether the Defendant contributed a sum of Rs 40,000/-.*
- (7) Whether the Plaintiff and the Defendant agreed that a portion of the purchased land adjoining the drain shall be sliced out in favour of the Defendant for a consideration of Rs 40,000/- with an interest @ 400/- per Rs 10,000/- per month and whether the Plaintiff entrusted the Defendant to take necessary action for obtaining patta for the land.*
- (8) Whether the Defendant violated his agreement with the Plaintiff by getting two portions of the land settled in the name of his wife and himself i.e LSC No. AZL-677 of 1996 dated 27.5.1996 in favour of Smt RTC Laltanpuui and LSC No. AZL-47 of 1997 dated 21.2.1997 in favour of Shri R.Lalrintluanga and whether the Defendant failed to make payment of the price of the land to the Plaintiff. If so the Plaintiff is entitled to the relief claimed if so, whether their agreement is liable to be declared void and whether the Plaintiff is liable to be declared as owner of the said land covered by two LSCs.*
- (9) Whether the Plaintiff is liable to pay Rs 40,000/- to the Defendant.*
- (10) Whether the Plaintiff is entitled to the reliefs claimed, if so to what extent?*

DECISION AND REASONS THEREOF

9. ISSUE NO 1 to 5: As the Ld. Predecessor Court had considered Issue No 1 to 5 and held the present suit maintainable, I would not move further.
10. ISSUE No 6, 7 and 8: For the sake of brevity, Issue No 6, 7 and 8 are taken together for consideration.
11. *To the evidences adduced in favour of the Plaintiff and its analysis.* The Plaintiff examined herself, Smt Lyni Lalthanzuali, Smt Lalmangaihi, Shri Lalluaia and Shri RL Sangvunga who all are her relatives. The Plaintiff deposed that she purchased a plot of land from Shri KM Zakhuma for a sum of Rs 80,000/- by sending the Defendant No 1 and handing over him Rs 80,000/- to make delivery of the price of the suit land to the land owner. The Defendant No 1 requested her before purchasing the said plot of land to slice out a small portion of the land adjacent to the drain for the purpose of availing loan in the name of

his wife (Defendant No 2). PW 2 Smt Lyni Lalthanzuali corroborated that her mother handed over Rs 80,000/- as said and the Defendant No 1 did not contribute even a single paise. However, PW 2 during cross-examination did not deny that she was not present at the time of alleged handing over money to the Defendant No 1 by her mother. The Plaintiff deposed that she agreed to slice out small portion of the land adjacent to the drain to the Defendant No 1 and the Defendant No 1 also promised to pay the price of the suggested portion of land after taking the loan for a consideration of Rs 40,000/- alongwith interest @ Rs 400/- per Rs 10,000/- per month. This was corroborated by the evidences adduced by PW 2, PW 3, PW 4 and PW 5. As the Defendant No 1 urgently required the LSC for obtaining the loan, he requested her and undertook to do all the needful for getting the land measured, apportioned and registered in the Revenue Department as per their agreement. However, the Defendant No 1 got some portion of the land settled in his name besides his wife (Defendant No 2) and the portion of land mutated in the name of his wife too was not the land adjoining the drain but the hill top which was the best portion of the land. The Defendant No 1 had fraudulently mutated the suit land into 4 LSCs i.e i) LSC No. AZL - 30 of 1997 in the name of Plaintiff ii) LSC No. AZL - 31 of 1997 in the name of Plaintiff iii) LSC No. AZL - 47 of 1997 in the name of Defendant No. 1 iv) LSC No. AZL – 677 of 1996 in the name of Defendant No. 2 (Wife of Defendant No. 1).

12. However, the Plaintiff produced no independent witnesses to prove her case. Despite claiming ownership of the suit land, none of the Plaintiff's witnesses saw the Plaintiff handing over the price of the land to the Defendant No 1 for purchasing the said suit land from the land owner. The Plaintiff could produce no documents to show that she did hand over the purchased money to the Defendant No 1. None of the witnesses could prove the Plaintiff's case by way of documents. The Plaintiff during cross-examination admitted that there was no eye witness when she handed over money to the Defendant No 1. It appeared that at the time of demarcation also, neither the Plaintiff nor her relatives were present. However, the Plaintiff on her re-examination deposed that on the day of survey by the Revenue Department, she was not on the spot as she was not informed by the Defendant No 1 that survey of the land was going to be conducted. Smt Lyni Lalthanzuali (PW 2) further deposed that she had gone to the Defendant No 1's house at Champhai as sent by her mother to recover Rs 40,000/- with interest @ Rs 400/- per Rs 10,000/- per month. This was denied by the Defendant No 1.

13. The Ld. Counsel for the Plaintiff submitted that the Defendant No 1's evidence rather corroborated the fact that it was the Plaintiff who purchased the suit land as the Defendant No 1 had deposed in his cross-examination, "It is a fact that Mrs. Darzami bought the landed property while it was still a V.C. Pass and had not been permanently settled". He also deposed, "It is a fact that the Plaintiff purchased the land for building a house". *However, this Court took the view that the above depositions did not prove that the Plaintiff was the one who purchased the suit land from the land owner. The Defendant No 1 alleged the Plaintiff to have purchased some portion of the suit land from him. Hence, it could also be taken to imply (as alleged by the Defendant No 1) that when the Plaintiff purchased the suit land from the Defendant No 1, it was still a VC Pass. The above depositions made by the Defendant No 1 did not sufficiently prove that the Plaintiff was the purchaser of the suit land.* Meanwhile, the submission made by the Ld. Counsel for the Plaintiff invited attention of this Court to the extent that the Plaintiff never met the land owner before she was introduced to him by the Defendant No 1 when the Defendant No 1 and the land owner had known well to each other. *If the Defendant No 1 could purchase the suit land from his own money from the land owner, he should have purchased it without taking and introducing the Plaintiff to the land owner.* In corroboration, the Plaintiff deposed that the Defendant No 1 introduced her to the land owner of the suit land. The Plaintiff further deposed that after she purchased the suit land, she sent the Defendant No 1 to the Land Revenue & Settlement Office for mutation and conversion of the VC Pass into LSC. In corroboration, the Defendant No 1 also deposed that he converted the said VC Pass into LSCs. Smt. Lalhmangaihi (PW 3) also deposed in her re-examination, "I was personally present when the Defendant No 1 told the Plaintiff that he would take steps for issuance of one LSC in the name of his wife urgently for the purpose of taking loan and for payment of the price of the land after obtaining the loan." It therefore appeared that the Plaintiff's version was still right and corroborated by the evidence adduced by the Defendant No 1 and PW 3. *Due to the reasons stated above, there was a probability that the Plaintiff sent the Defendant No 1 to the land owner to purchase the suit land on behalf of the Plaintiff on 08.01.1996.* The Plaintiff during her re-examination deposed that she was present when the negotiation for purchasing the suit land was held with the land owner. However, she could not present on the day of making payment of cost of the suit land. The Plaintiff during her cross-examination by the Ld. Counsel for the Defendant No 2 deposed that she did meet the Defendant No 1 on 08.01.1996. The Plaintiff during her cross-examination denied that the suit land was demarcated as per the agreement made between the Parties. She further

deposed that she had given information to the Revenue Department in respect of the present land dispute. However, the Revenue Department did not call them for settlement of the dispute.

14. *To the evidences adduced in favour of the Defendants and its analysis.* The Defendants' witnesses are also their relatives. The Defendant No 1 deposed that he purchased the suit land and handed over the entire cost of the land to the land owner Shri KM Zakhuma from his own money. After he purchased the suit land, the Plaintiff requested him to part with half portion of the land. He agreed the same and the Plaintiff paid him a sum of Rs 45,000/- towards the cost of half portion of his land. DW 2, DW 3 and DW 5 corroborated it. On payment of a sum of Rs 45,000/-, the portion belonging to the Plaintiff was also properly demarcated. The Plaintiff falsely raised allegation against him in the present case.
15. The Ld. Counsel for the Defendants also argued vehemently *inter alia* the Plaintiff's story did not sound probable. The available documents clearly proved that the land in question was purchased by the Defendant No 1 from Shri KM Zakhuma. The Defendant No 1 proved the documents relied by him and the documents were exhibited. All the documents were admitted in evidence without objection. After he purchased the said land, half of the land was sold to the Plaintiff for Rs 45,000/-. The Plaintiff is entitled to get the two LSCs put under LSC No. AZL - 30 of 1997 and LSC No. AZL - 31 of 1997 and the Defendants did not make any claim to those two properties. The Plaintiff had no *Locus standi* to claim the properties covered under LSC No. AZL- 677 of 1996 registered in the name of Defendant No 2 and the LSC No. AZL- 47 of 1997 registered in the name of the Defendant No 1. In absence of the Defendants from Aizawl the Plaintiff collected the LSC No. AZL - 47 of 1997 from the Revenue Department which the Defendants came to know from the Revenue Department. Despite repeated request, the Plaintiff refused to hand over it. Hence, the Defendant had to inform the Police to collect the same. Now the said LSC is in the custody of the Court and the said LSC is to be returned to the Defendant No 1.
16. The Defendant No 1 exhibited one document (Exhibit D – 1) which says, "Pu Lalrintluanga hnen atangin Rs 80,000/- (Sing riat) waviin 8/1/1996 hian lawm takin ka dawng e/I thankfully received a sum of rupees Rs 80,000/- (Eighty thousand) from Shri Lalrintluanga" (signed by KM Zakhuma). *However, this money receipt (Exhibit D - 1) itself does not make it clear that the sum of Rs 80,000/-*

received by Shri KM Zakhuma was solely the money of the Defendant No 1 or the Plaintiff as well. It was uncertain that the money that was given to the land owner for purchase of the land was the Plaintiff's money or the Defendant No 1's money. In fact, this document (sale receipt) supported the Plaintiff's statement and the Defendant No 1's statement as well. The Plaintiff deposed that she sent the Defendant No 1 to Shri KM Zakhuma with a sum of Rs 80,000/- for paying the cost of the suit land on her behalf. There was no contradiction between the Plaintiff's evidence and the Exhibit D – 1. At the sametime, the Defendant No 1 also deposed that he handed over his own money to the land owner for the cost of the suit land. Hence, solely based on this Sale letter (Exhibit D - I), preference or greater weight could be given neither to the Plaintiff nor the Defendant No 1.

17. Among others, the Defendant No 1 deposed that he purchased the suit land from Shri KM Zakhuma on 08.01.1996 for Rs 80,000/- on full payment from his own money. On requested by the Plaintiff, he sold half portion of the land to the Plaintiff for Rs 45,000/-. He received the price in full from the Plaintiff. Thereafter, they made a clear boundary. As the Plaintiff hailed from Burma, she entrusted the job of converting the Village Council Pass into LSC to him. The Plaintiff promised to pay expenditure spent for conversion. Accordingly, he took steps and divided the plot of land into four LSCs, i.e (1) in his name (2) in his wife's name (3) in the name of Darzami – I (4) in the name of Darzami II. Before the LSCs were ready, they shifted their abode to Champhai from Dawrpui, Aizawl. When the Defendants were away from Aizawl, the Plaintiff took out the two LSCs registered in the name of the Plaintiff as well as the LSC registered in the name of Defendant No 1. In corroboration, DW-5 Shri T Vanlalhruaia deposed in his examination-in-chief that he clearly witnessed the sale transaction of the suit land since it happened during his stay in the house of Defendant No 1 and the Plaintiff had no knowledge about the deal. DW-3 Shri RL Thangluia deposed in his examination-in-chief that he was a frequent guest in the house of the Defendant No 1 at Dawrpui, Aizawl when he was working under Champhai Forest Division. He knew that the suit land was purchased by the Defendant No 1 from Shri KM Zakhuma for Rs 80,000/-. Even on the day of purchase, he stayed at the residence of the Defendant No 1 and the Defendant No 1 invited him to accompany him when he was going to meet Shri KM Zakhuma to purchase the suit land on 08.01.1996. But he did not accompany him. After two days on 10.01.1996, the Plaintiff came to the house of the Defendant No 1 and purchased half portion of the land for Rs 45,000/- by paying the said amount. He was present at the time of handing over the money. During his re-examination he stated that though he did not know the exact

agreement and transaction between the Plaintiff and the Defendant No 1, he did know that the Plaintiff purchased the plot of land from the Defendant No 1 by handing over Rs 45,000/- to the Defendant No 1 on 10.01.1996. The Defendant No 2 Smt RTC Laltanpuui (wife of Defendant No 1) also deposed on her cross-examination at Para 9 that she was present when the Plaintiff and the Defendant No 1 made a deal to sell half portion of the land to the Plaintiff for a sum of Rs 45,000/- and at Para 11 she saw the Plaintiff handing over Rs 45,000/- to the Defendant No 1 in their house and DW 3 Shri RL Thangluia was also present. Shri RL Thangluia (DW 3) also deposed that he was present when on 10.01.1996 the Plaintiff came to the house of the Defendant No 1 and handed over Rs 45,000/- to the Defendant No 1 for the price of half portion of the suit land belonged to the Defendant No 1. *From the above, it appeared that the Defendant No 1 had three eye-witnesses to consolidate his stand. However, this Court is in doubt that how the Defendant No 1 could forget to mention his three eye-witnesses in his Written statement and even during trial of the case whilst giving his evidence when the eye witnesses are the best witnesses.* In fact, the Defendant No 1 had submitted his examination-in-chief before the Court on 07.09.2011 and DW 3 and DW 5 submitted their examination-in-chief on 29.11.2011 and 25.10.2011 respectively and the Defendant No 2 on 24.07.2015. When the Defendant No 1 did not mention about his three eye-witnesses in his written statement and whilst giving his evidence, DW 3 and DW 5 after more than two months from the Defendant No 1's evidence in the Court and the Defendant No 2 also after three years from the Defendant No 1's evidence deposed before the Court that they were the eye-witnesses in the present case. The same makes the Defendants' case doubtful and it also appeared that the said three eye witnesses are the wife, brother-in-law, guest of the Defendant No 1.

18. Again, the followings invited attention of this Court. The Defendant No 2 was a holder of one LSC out of four. She was also wife of the Defendant No 1 and played an important role (as an eye witness as deposed by her in her evidence). However, before she was impleaded as a party in the present case, the Defendant No 1 did not make her a witness. Further, on her cross-examination, she deposed that she did not know the reasons for not making a Defendant witness at that time. Also, Shri T Vanlalhruaia (DW 5) during cross-examination admitted that despite eye-witness, he did not know about the exact agreement made by the Defendant No 1 and the Plaintiff on that day. He also deposed that he did not personally see the Defendant No 1 purchasing a plot of land from the land owner. He knew the same as told by the Defendant No 1 and it was hearsay.

19. Again, the Defendant No 2 (wife of the Defendant No 1) to put this Court in doubt during her cross-examination deposed that she went to the Land Revenue & Settlement Office when the process of mutation was going on to put the signature *on behalf of the Plaintiff*. There was neither legal authorization nor the Plaintiff's consent was obtained in order to give signature on behalf of the Plaintiff.
20. DW 4 Shri Lalnunsanga deposed that the Defendant No 1 was well known to him and he used to serve as his driver. He further deposed that after the Plaintiff purchased half portion of the suit land from the Defendant No 1 and demarcation was complete, the Plaintiff, the Plaintiff's son, the Defendant No 1, Shri Sangvunga and he himself went to the site to verify the boundary. However, this Court considered that the Plaintiff was alleged to have purchased some portion of the suit land on *10.01.1996* from the Defendant No 1 and the Plaintiff had filed the present case on *01.03.2006*. DW 4 submitted his examination in chief on *19.04.2012* and when he was cross-examined on *13.06.2012*, he admitted that he verified the said site *only recently*. Hence, his evidence would have no much effect.
21. Further, from the evidence it appeared that the relatives of the Parties intervened to amicably settle the dispute. The relatives namely Smt Lyni Lalthanzuali, Shri Lalzidinga, Smt Hmangaihi and Shri Lalluaia including the Plaintiff and the Defendant No 1 gathered at the spot and proposed that the agreed price Rs 40,000/- be accepted in lieu of the LSC No. AZL - 47 of 1997 issued to the Defendant No 1 without interest by the Plaintiff and the Defendant No 1 should also return LSC No. AZL - 677 of 1996 to the Plaintiff. The same was accepted by the Defendant No 1 but the Plaintiff could not accept it.
22. Furthermore, despite encroachment the said LSC No. AZL - 677 of 1996 issued in the name of the Defendant No 2 by the Plaintiff, the Defendant No 1 and 2 had not made any obstruction or protest till date. The Defendant No 2 during her cross-examination at Para 29 deposed that it was a fact that although the Plaintiff had been developing the suit land including the land covered under LSC No. AZL - 677 of 1996, she had not protested against the same. In the meanwhile, the Plaintiff in her re-examination deposed that she had developed the LSC No. AZL - 677 of 1996 (registered in the name of Defendant No 1's wife) and constructed road as the land belonged to her but the Defendants had not made any protest.

23. Apart from the above, the Defendant No 2 (wife of the Defendant No 1) submitted in her written statement that when the Defendant No 1 had approached his previous Advocate, he had clearly mentioned that the said entire plot of land was purchased by him from Shri. KM Zakhuma for Rs 80,000/- and he divided the said land and sold half portion to the Plaintiff for a sum of Rs 45,000/- but the said Counsel while preparing the Plaint in English language made a mistake and told that he received Rs 40,000/- from the Plaintiff for payment made to Shri KM Zakhuma on 8.1.1996. In reality, the Defendant No 1 paid the entire cost of the land amounting to Rs 80,000/- to the said Shri KM Zakhuma and thereafter half of the portion of the land which he had purchased from Shri KM Zakhuma was sold to the Plaintiff for a sum of Rs 45,000/-. She did not go through the written statement submitted by the Defendant No 1 before it was submitted by the Counsel to the Court. If she would have gone through it, the discrepancy would not have occurred. Her husband was not conversant with English Language.
24. With regard to this averment by the Defendant No 2 in her written statement at Para 16, after much thought and consideration, this Court opined that the Defendant No 1 had already submitted his written statement on 27.03.2006 and gave his evidence on 11.09.2007. However, he did not make any comment/clarification/justification on his written statement relating to the above averment when as per the leading Hon'ble Supreme Court decisions, amendment of written statement is allowed liberally. The Defendant No 1 in the present case had not applied for amendment of his written statement.

In Nagappa vs. Gurudayal Singh & ors., AIR 2003 SC 674, The Hon'ble Supreme Court held that amendment can be allowed even at an appellate stage in a case where the law of limitation is not involved and the facts and circumstances of the particular case so demand, in order to do justice to the parties.

In North Eastern Railway Administration, Gorakhpur vs Bhagwan Das (D) 2008 AIR SCW 3159, The Supreme Court held that amendment of pleadings at an appellate stage is permissible if it does not cause injustice to the other party and is necessary to determine the question in contravention.

25. In fact, the Defendant No 2 after she was impleaded as a party as per Order passed by the Hon'ble Addl. District Judge, Aizawl submitted her written statement and her examination-in-chief after eight (8) years from the date of receipt of the Defendant No 1's

written statement. Therefore, *making a comment/clarification/justification on the Written statement submitted by her husband (Defendant No 1) after eight years by the Defendant No 2 (Wife of the Defendant No 1) in her written statement was too late, improper and unjust. In fact, the Defendant had not sought for amendment of Pleadings within eight years.*

26. The Defendant No 2 repeated the averment made at Para 8 in her written statement in her examination in chief about the alleged mistake made by the Defendant No 1's previous Counsel. She submitted that when the Defendant No 1 paid in full the entire cost of the suit land i.e Rs 80,000/- to the land owner, the Defendant No 1's previous Advocate mistakenly wrote that the Defendant No 1 received Rs 40,000/- from the Plaintiff for purchasing the suit land. However, on her cross-examination, to put this Court in doubt she deposed that she had not met the said previous Advocate and the statement made by her in this regard was only hearsay. *As a matter of fact, there was variance between the Defendant No 1's written statement and the Defendant No 2's evidence. No doubt, about the variance between pleading and proof is not to be expressly found in any provision of the Code of Civil Procedure. However, in various decisions made by the higher Courts it was held that there could not be any variance between pleading and proof. It is the duty of the Court to decide the rights of the Parties not to punish them for their little mistake in the pleadings. Courts do not exist for the sake of discipline but deciding the matters in controversy. However, in the present case, this Court considers that the variance between pleadings and proof is serious and caused prejudice to the Plaintiff and makes the Defendants' case doubtful.*

In M/s. Modi Spinning and Weaving Mills Co. Ltd. Vs M/s Ladha Ram and Co..on 23 September, 1976, the Hon'ble Supreme Court observed, "The Defendants cannot be allowed to change completely the case made in paras 25 and 26 of the written statement and substitute an entirely different and new case. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the Plaintiff completely from the admissions made by the defendants in the written statement". (Equivalent citation 1977 AIR 680, 1977 SCR (1) 728).

27. The averment made at Para 15 by the Defendant No 1 in his Written statement is extracted as under:

"He made payment of Rs 80,000/- (including he received Rs 40,000/- from the Plaintiff to KM Zakhuma) for the whole land.

28. It would not be so wrong to add that as it is clear enough as seen in above, it hard to believe that the alleged mistake made by the said previous Defendant No 1's Advocate was a real mistake.
29. Apart from the above, the Defendant No 1 in his examination in chief submitted that he purchased the suit land from Shri KM Zakhuma on 08.01.1996 for Rs 80,000/- on full payment from his own money. In his written statement, he stated that he received Rs 40,000/- from the Plaintiff. In his cross-examination also, he stated that he received Rs 5,000/- from the Plaintiff with regard to the purchase of the landed property. There was a lot of contradictions.
30. Further, the Defendant No 2 Smt RTC Laltanpuui (wife of Defendant No 1) deposed on her cross-examination at *Para 9* that she was present when the Plaintiff and the Defendant No 1 made a deal to sell half portion of the land to the Plaintiff for a sum of Rs 45,000/-. However, on her cross-examination at *Para 10* she deposed, "The aforesaid deal between the Plaintiff and the Defendant No 1 was taken place in our house but no one else present except *us*". At *Para 11*, she deposed that she saw the Plaintiff handing over Rs 45,000/- to the Defendant No 1 in their house and DW 3 Shri RL Thangluia was also present. Shri RL Thangluia (DW 3) also deposed that he was present when on 10.01.1996 the Plaintiff came to the house of the Defendant No 1 and handed over Rs 45,000/- to the Defendant No 1 for the price of half portion of the suit land belonged to the Defendant No 1. Here, when the word "*us*" was used by the Defendant No 2, it was uncertain as to whether the PW 3 was included or not or there was a contradiction in the depositions made by the Defendant No 2 in her cross-examination at *Para 10* and *Para 11*.
31. In the meanwhile, the Plaintiff despite claiming true purchaser of the suit land from the land owner by sending the Defendant No 1 to make delivery of the price to the land owner and submitted that she agreed to slice out a small portion of the land adjacent to the drain for the purpose of availing loan in the name of Defendant No 1's wife to the Defendant No 1, no written agreement made by the Parties was available to be seen. *However, only written agreement is not a valid agreement.*

In ***Alka Bose vs Parmatma Devi & ors dated 17th December, 2008***, the Hon'ble Supreme Court has held that an agreement can be oral. It can be by exchange of communications which may or may not be signed.

32. Apart from the above, nowhere in the evidence to satisfy this Court about contribution of Rs 40,000/- by the Defendant No 1 for purchase of the suit land was found. The Plaintiff and PW 2 deposed that the Defendant contributed nothing for the purchase of the suit land.
33. It is well known that in criminal case, the case is to be proved beyond the shadow of all reasonable doubts but in civil case, the preponderance of possibilities of evidence might be taken into consideration. The burden of proof lies on the Plaintiff and the Plaintiff has to convince the Court. *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, this Court finds a variance between written statement and proof and a lot of contradiction in the Defendants' evidences to make the Defendants' version doubtful. Therefore, this Court holds the view that the Defendants' evidences are doubtful and the Plaintiff's evidences are more convincing, probable truth, accuracy and in greater weight of evidence. Accordingly, these three issues are decided in favour of the Plaintiff as follows.*
34. Therefore, this Court considered that the Plaintiff purchased the suit land from the Land owner Shri KM Zakhuma for a consideration of Rs 80,000/- by sending the Defendant No 1 to hand over the purchased money on her behalf on 08.01.1996. It is also considered that the Defendant No 1 violated his agreement with the Plaintiff by getting two portions of the land settled in the name of his wife i.e LSC No. AZL - 677 of 1996 dated 27.5.1996 and in the name of the Defendant No 1 i.e LSC No. AZL - 47 of 1997 dated 21.2.1997 and the Plaintiff is liable to be declared as the owner of the said land covered by LSC No. AZL - 677 of 1996 being registered in the name of Smt RTC Laltanpuui (Defendant No 2). It is further considered that the Plaintiff and the Defendant No 1 agreed that a portion of the purchased land adjoining the drain shall be sliced out in favour of the Defendant No 1 for a consideration of Rs 40,000/- with an interest @ Rs 400/- per Rs 10,000/- per month. However, with regard to the interest, this Court considers an interest Rs 400/- per Rs 10,000/- per month is improper and unjust and be calculated @ 6% per annum. Further,

the period would not be computed from 08.01.1996 till date as the present suit had been filed on 01.03.2006. Accordingly, interest shall be computed by way of Simple Interest from January 1996 to February 2006 i.e 11 years and 2 months i.e Rs 40,000 x 11.2 x 6 divided by 100 + Principal = Rs 66,800/-. The Defendant No 1 therefore shall pay Rs 66,800/- to the Plaintiff within a period of six months from the date of this Order for the cost of the LSC No. AZL – 47 of 1997 which had already been registered in the name of the Defendant No 1. In case of failure, the Defendant No 1 shall return the said LSC to the Plaintiff and the Plaintiff shall be declared as the rightful owner.

35. ISSUE No 9: Whether the Plaintiff is liable to pay Rs 40,000/- to the Defendant No 1. The Ld. Counsel for the Defendants argued that the suit filed by the Plaintiff had no merit and was liable to be dismissed and the Defendant was entitled to get a sum of Rs 40,000/- from the Plaintiff towards the cost of the firewood that he had supplied to the School run by the Plaintiff and her daughter Smt Sawmpuii. It had come in evidence that the School run by Smt Sawmpuii belonged to the Plaintiff and the Defendant No 1 had supplied firewood to the said School. The Ld. Counsel added that the Plaintiff's witness Smt Lalhmangaihi deposed during cross examination that she came to know that the land was purchased by the Plaintiff for the purpose of establishment of Children Training School. The School belonged to her as her un-married daughter ran it. The Plaintiff and her daughter Smt Sawmpuii helped each other financially. But, she did not know to what extent they helped each other financially. It is proved that the Defendant had supplied firewood to the School run by the Plaintiff and so the Plaintiff owed a sum of Rs 40,000/- towards the cost of the firewood. The Ld. Counsel for the Plaintiff on the other hand argued that the Defendants filed no counter claim to pray a relief. Further, with regard to the price of firewood alleged to have been supplied to the Plaintiff, the Plaintiff had no knowledge about the same. The Plaintiff during her cross-examination admitted that Smt Sawmpuii was her daughter running a School in the name and style of "Children's Training School". The Plaintiff and PW 2 deposed that they did not know as to whether the Defendant No 1 supplied the said firewood (6 trips of TMB) to Smt Sawmpuii or not. However, PW 2, PW 4 and PW 5 admitted that Smt Sawmpuii was running the said institution.

36. It is considered that apart from the issue of non-filing of counter claim by the Defendant No 1, Smt Sawmpuii to whom the said six TMB trips of firewood was delivered was not a party in the present case. Further, document (Defendant No 1's annexure) showing

firewood 6 TMB Trips was delivered by Shri LHL Lalrinawma to the Plaintiff/Smt Sawmpuii was not exhibited and the said Shri LHL Lalrinawma was not made a witness by the Defendants. Furthermore, the Defendant No 1 clearly submitted in his written statement at Para 17 that the Defendant in the month of March, 1996, on demand made by the Plaintiff gave firewood (6 trip of TMB) at the cost of Rs 48,000/- to Children's Training School, Chhangurkawn, Aizawl by hiring the motor vehicle bearing Registration No. MZ - 01 - 8770 owned by Shri. LHL. Lalrinawma S/o Laihuliana, Champhai Vengthlang. However, he received Rs 8,000/- only from the Plaintiff and Rs 40,000/- was still due to the Defendant No 1. The Defendant No 1 and 2 and other three witnesses adduced evidence in favour of the Defendants, however, none of them deposed about this alleged supply of firewood to Smt Sawmpuii whilst giving their evidence in the Court. No doubt, unless admission of plea or facts by the Opposite party, travelling beyond evidence by the Court would be improper and unjust.

37. ISSUE No 10: Whether the Plaintiff is entitled to the reliefs claimed. If so to what extent? In the light of the above observations and findings, the Plaintiff is entitled to the relief claimed i.e three LSCs namely i) LSC No. AZL - 30 of 1997 registered in the name of Plaintiff ii) LSC No. AZL - 31 of 1997 registered in the name of Plaintiff iii) LSC No. AZL - 677 of 1996 registered in the name of Defendant No. 2 (Wife of Def No 1).

ORDER

38. In the light of the above observation, the Plaintiff is entitled to get LSC No. AZL - 30 of 1997, LSC No. AZL - 31 of 1997 and LSC No. AZL - 677 of 1996.
39. The Defendant No 1 shall pay Rs 66,800/- to the Plaintiff within a period of six months from the date of this Order for the cost of the LSC No. AZL - 47 of 1997 which had already been registered in his name. In case of failure, the Defendant No 1 shall return the said LSC to the Plaintiff and the Plaintiff shall be the rightful owner.
40. The parties shall bear their own costs.
41. With the above Order, the present case stands disposed of.

**Given under my hand and Seal of this Court on this day of the
21st September, 2018 Anno Domini.**

(H. LALDUHSANGA)

Civil Judge - II

Aizawl

Memo No.....:

Dated Aizawl, the 21st September , 2018.

Copy to:-

1. Smt. Darzami W/o Ngura (L) R/o Chanmari, Aizawl through Counsel Shri Victor L Ralte, Advocate.
2. Shri. R. Lalrintluanga S/o Rualkhuma (L) R/o Champhai Vengthlang, Champhai through Counsel Shri W Sam Joseph, Advocate.
3. Smt. RTC Laltanpuui W/o R. Lalrintluanga R/o Champhai Vengthlang, Champhai through Counsel Shri W Sam Joseph, Advocate.
4. State of Mizoram represented by the Chief Secretary to the Govt. of Mizoram through Counsel Smt Lalrinpuui, Addl. Government Advocate.
5. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department, Aizawl, Mizoram through Counsel Smt Lalrinpuui, Addl. Government Advocate.
6. The Director, Land Revenue & Settlement Department, Aizawl, Mizoram through Counsel Smt Lalrinpuui, Addl. Government Advocate.
7. i/c Judicial Section.
8. Case record.
9. Guard File.

PESHKAR