

IN THE COURT OF ADDITIONAL DISTRICT JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

Regular First Appeal No. 37 of 2014
arising out of Declaratory Suit No. 6 of 2014

1. Shri Hmingthankima S/o Darsiana (L)
R/o Sairang Dinthar Veng.
2. Smt. Thanthuami D/o Suka (L)
R/o Sairang Dinthar Veng. Appellants

-Versus-

1. Shri Sapbela
S/o Zabanga (L),
Govt. Complex, Aizawl
2. The State of Mizoram (through the Chief Secretary to the
Government of Mizoram, Aizawl).
3. The Secretary to the Government of Mizoram,
Land Revenue & Settlement Department, Aizawl.
4. The Director,
Land Revenue & Settlement Department,
Government of Mizoram Aizawl. Respondent

APPEARANCE

For the appellant	:	Shri W. Sam Joseph, Advocate.
For the respondent 1	:	Shri C. Lalramzauva, Sr. Advocate. Shri K. Laldinliana, Advocate
For the respondent 2-4	:	None appears.

Hearing	:	13.3.2015 & 31.3.2015
Order delivered on	:	29.4.2015

ORDER

1. The appeal was transferred to my predecessor. Hence, the present appeal came for my disposal.
2. I heard the learned Counsel Shri W. Sam Joseph appearing for the defendant/appellants and the learned Senior Counsel Shri C. Lalramzauva assisted by Shri K. Laldinliana, Advocate for the plaintiff/respondent.
3. The defendant/appellants challenge the Judgment and Order dated 10.11.2014 passed by the learned Senior Civil Judge, Aizawl District issued vide dated 28.11.2014 in Declaratory Suit No.6 of 2004 filed under Section 17 of the Mizoram Civil Courts Act, 2005 read with Section 96 and Order 41 of Code of Civil Procedure, 1908. It is their prayer that the Judgment & Order dated 10.11.2014 passed by the learned Senior Civil Judge in Declaratory Suit No. 6 of 2004 be dismissed and quashed.
4. The Declaratory Suit No. 6 of 2004 was filed by the plaintiff/respondent in the Court of the Assistant to the Deputy Commission, Aizawl District for declaration of title and ownership in his favour over the land covered by LSC No. 201 of 1975 located at Tuikual South, Aizawl. However, since judiciary came to be separated from the executive, the learned Senior Civil Judge took the case.
5. The case of the plaintiff/respondent is that his father Zabanga (L) jointly purchased the suit land with Shri Denghuaia and Shri Hrangluaia in the year of 1959 from Shri Tebawnga. Thereafter, as the plaintiff/respondent's mother died, the plaintiff/respondent's late father occupied the suit land with his children. A copy of certificate to this effect is given at Annexure-I of the plaint in Declaratory Suit No. 6 of 2004. When the plaintiff/respondent's late father also died in the year of 1962, his grandfather Shri Suka (L) looked after them at Sairum village and thereafter at Sairang village. The plaintiff/respondent's grandfather mutated the suit land into his name under House Pass No. 91 of 1065 and thereafter converted the same to land settlement certificate under LSC No. 201 of 1975. The plaintiff/respondent's grandfather during his life time used to tell them that the suit land belonged to them

as it was purchased by his late father. When the defendant/appellant No. 2 who is also the daughter of the plaintiff/respondent's grandfather, returned with her two children around the year of 1970, they were also looked after by Shri Suka (L). During his life time, the plaintiff/respondent's grandfather Shri Suka used to enjoy the rent received from the suit land, but after his death on 6.1.85, the suit land was looked after by his son Thanghlianga and thereafter in 1997 the suit land was occupied by his grandson Shri Zothansanga S/o Lalengphunga (L) with the permission of the plaintiff/respondent and he was in occupation of the suit land till filing the suit. However, the defendant/appellants without the knowledge of the plaintiff/respondent and the other surviving children of Shri Suka (L) stole the LSC No. 201 of 1975 and mutated the same in the name of the defendant/appellant No. 1. Thereafter, the defendant/appellants sold the suit land to Shri Romuana who was the Defendant No. 3 in Declaratory Suit No. 3 after which the LSC No. 201 of 1975 was again transferred to the name of the Defendant No. 3 by defrauding the State defendant/respondents with false and fabricated documents. Copies of the "Hmun Inpekna Lehkha" and the application for transfer of ownership allegedly submitted by Shri Suka (L) and the LSC No. 201 of 1975 are Annexures-2, 3 & 4 of the Declaratory Suit No. 6 of 2004. The plaintiff/respondent submitted application before the Sub District Council Court, Aizawl in H.C. Case No. 388 of 2003 for declaring legal heir of his late father and grandfather in respect of LSC No. 201 of 1975 and the same was disposed off vide order dated 21.8.2003 wherein the appellant was directed to submit a plaint in a proper form by impleading the defendant/appellant No. 2. Hence, the Declaratory Suit No. 6 of 2004 was instituted for a decree declaring that the mutation of LSC No. 201/75 located at Tuikual 'S' by the State defendants No. 4-6 in favour of the defendant No. 1 and thereafter in the name of the defendant No. 3 is illegal and null and void and for a decree declaring that the suit land covered by LSC No. 201/75 was purchased by Shri Zabanga (L) and the plaintiff being the son of Shri Zabanga (L) is the rightful and legal owner of the suit land covered by LSC No. 201/75.

6. In the written statement jointly submitted by the defendants/appellants, apart from the preliminary objection made by them they stated that the suit land was never purchased by the plaintiff/respondent's father Zabanga (L) and the Annexure-I annexed with the plaint in Declaratory Suit No. 6 of

2004 is a manufactured document having no validity in the eye of law. The said property was purchased by late Suka from Mr. Tebawnga CID in House Pass No. 91 of 1965. According to them, since late Suka was looked after by the defendant/appellant No. 2, the suit land was given to the defendant/appellant No. 1. They further stated that late Suka during his life time sold a portion of the land to Shri Lalsawma of Tuikual South. The defendant/appellant No. 1 also stated that he had wanted to mutate the LSC in his name due to sentimental reasons but as he was to slice out the portion which late Suka had sold to Shri Lalsawma, he had to apply for mutation. Accordingly, the defendant/appellant No. 1 mutated the remaining portion of the land to his name on 23.3.2003 which he again sold to the Defendant No. 3 Shri Romuana on 14.7.2003 and the LSC was mutated in the name Shri Romuana on 17.7.2003. After the purchase of the suit land by Shri Romuana, he tried to demolish the Assam type building and tried to construct concrete building thereon; the plaintiff/ respondent started objecting to the construction and obstructed him from collecting rent from the tenants who were occupying the said building which was constructed by the defendant/appellant No. 2. The said sale of the land to the defendant No. 3 was cancelled by the ADM (J) vide order dated 28.4.2005 in F.A.O. No. 9 of 2004 and the said LSC was retransferred in the name of the defendant/appellant No.1 on 3.8.2005 by the Land Revenue Department. They further stated that as, the plaintiff/appellant's parents died early he was looked after by the defendant/appellant No.2 and late Suka. In the year of 1973 the plaintiff respondent joined Govt. service; he started living separately and never took any effort to look after the deceased Suka and his wife till their death. The In Hmun Pekna (Gift of land) was made by late Suka and it was witnessed by Shri Thangributa and Shri H.Thansanga. Hence, the suit is liable be dismissed with cost.

7. The State respondents/defendants submitted that apart from preliminary objections, the mutation of LSC No. 201 of 1975 was done by Land Revenue Department on receipt of required documents duly certified by the V.C.P. Tuikual South. They also submitted that the department had no knowledge either on the death of the plaintiff/respondent's grandfather or the fabricated form documents submitted to the department by the defendant/appellant No. 1.

8. The Defendant No. 3 in Declaratory Suit No. 6 of 2004 failed to file written statement in spite of sufficient chances given to him. It was decided the case be proceeded ex-parte against him vide Order dated 30.1.2009.

9. On the basis of the pleadings, the learned Lower Court framed 5 issues and Issues No. iii and iv being relevant for the present order, is extracted herein below:

"Issue No. iii :

Whether the suit is barred by limitation, doctrine of estoppels, acquiescence and waiver?

Issue No. iv :

Whether the land covered by LSC No. 201/75 was purchased by Zabanga (L), father of the Plaintiff?"

10. In the trial, the plaintiff/respondent produced and examined 5 witnesses including himself to prove his case. On the other hand, the defendants/appellants produced and examined themselves. The State defendants/respondents did not produce witness.

11. On the basis of the framing of issues decided in favour of the plaintiff/respondent, the learned Lower Court held that the suit land covered by LSC No. 201 of 1975 was initially purchased by Shri Zabanga (L) and the plaintiff/respondent being the son of Shri Zabanga (L) is the rightful and legal owner the said suit land covered by LSC No. 201 of 1975.

12. It was submitted by the learned Counsel Shri W.Sam Joseph that the learned Lower Court was biased in arriving at the decision against the appellant. The justification made by the learned Lower Court for deciding the issue such as "Whether the suit is barred by Limitation, Doctrine of Estoppel, Acquiescence and Waiver is completely perverse and biased. According to the learned counsel, the plaintiff/respondent had slept too long to make claim to the suit property. In the view of the learned counsel, the plaintiff/respondent should have his claim soon after

his father died, if the land was purchased by late father as alleged by him. The learned Counsel Shri W.Sam Joseph also placed reliance of the Judgment and Order of the Gauhati High Court (Principal Bench) in the case of **Saila v. Ngurtaiveli** reported in **1980 AIR(Gauhati) 70**, the relevant portion of which runs as **"In our view, on the basis of the fact found by the court below, which we accept, we have no hesitation in coming to the conclusion that the conduct of late Thangphunga was such that he acquiesced in the ownership of R.D.Leta in the suit premises. Though notaries act were done in the suit premises between the Plaintiff and the near relatives of late R.D.Leta, as discuss above, while Thangphunga was alive, Thangphunga remained stood by. In such a case, the doctrine of estoppels by acquiescence comes into play. The proper sense of the word 'acquiescence' is that if a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right and takes no objection while the act is in progress, he cannot afterwards complain."**

13. I have carefully perused the records available before me. As rightly pointed out by the learned Lower Court, under Section 65 of the Limitation Act the plaintiff has 12 years to sue against the defendant when the possession of the defendant becomes adverse to him and under Section 59 of the Limitation Act the plaintiff has 3 years to sue against the defendant when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded or set aside or the contract rescinded first become known to him. According to the learned Senior Counsel Shri C.Lalramzauva, the issuance of House Pass in favour of Shri Suka (L) in respect of the suit land was not inconsistent or detrimental to the interest of the plaintiff/respondent over the suit land on the strength that he was told by Shri Suka (L) that the suit land belonged to him. In such a situation, the possession of the land by Suka (L) must be held to be permissive possession. The learned Senior Counsel also submitted that the LSC in respect of the suit land was illegally transferred from the name of Suka (L) to the name of the defendant/appellant No. 1 which was beyond his knowledge. In the facts and circumstances, it can be concluded that the plaintiff/respondent had no knowledge regarding mutation of LSC from the name of Shri Suka to the name of the

defendant/appellant No. 1 on 23.3.2003. However, the Declaratory Suit No. 6 of 2004 was filed by the plaintiff/respondent within the period of limitation.

14. It was also submitted by the learned Counsel Shri W.Sam Joseph that the justification made by the learned Lower Court for deciding the issue such as, "Whether the land covered by LSC No. 201/75 was purchased by Zabanga (L), father of the Plaintiff?" is also completely perverse and biased. According to the learned Counsel, the suit land belonged to the deceased Suka since the House Pass No. 91 of 1965 was issued in the name of Suka and not in the name of Zabanga and the same was given to the defendant/appellant No. 2 on 9.11.1984 vide Ext. D-2. On the other hand, the learned Senior Counsel Shri C.Lalramzauva contended that the suit land was purchased by his late father Zabanga in the year of 1959 and occupied by his late father and himself with his siblings till the death of their father, and after the death of his father, he alongwith his siblings began to be looked after by their grandfather late Suka and as result a House Pass no. 91 of 1965 was issued in favour of his grandfather Suka (L) in respect of the suit land, he being the head of the family. The learned Senior Counsel Shri C.Lalramzauva submitted that the respondent used to be told by his grandfather Suka (L) that the suit land was belonging to them since his late father Zabanga had purchased the suit land. The learned Senior Counsel placed reliance on the Judgment and Order of the Apex Court in the case of **State of U.P. v. Amar Singh and others** reported in **(1997) 1 SCC 734** which held that **mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land.**

15. While perusing the record, I find that it was not denied by the defendants/appellants that the late Zabanga with his children had occupied the suit land. As the plaintiff's father Shri Zabanga died in 1962, they began to be looked after by their grandfather Shri Suka (L). It appears to me from the material evidence on record that the House Pass No. 91 of 1965 was issued to Shri Suka (L) after the death of Shri zabanga (L) while the plaintiff/respondent and his siblings were still young. The alleged gift of land at Ext. D-2 to the defendant/appellant No. 2 by Shri Suka (L) as on 9.11.1984 was not proved as required by law. The submission of '**Hmun Inpekna Lehkha**' allegedly made on 19.2.2013 by Shri Suka at Ext. P-2 and the '**APPLICATION FOR TRANSFER OF OWNERSHIP OF LSC**' allegedly made in

favour of the defendant/appellant No. 1 by Shri Suka were clear fabricated documents since Shri Suka had already died on 6.1.1985 at Sairang Dinthar which the defendant/appellant No. 1 had submitted to the Land Revenue & Settlement Department for mutation of LSC No. 201 of 1975 from the name of Shri Suka to his name. Admittedly, the defendant/appellant No. 2 took care of late Suka till his death. In the circumstances, I am of the considered view that the plaintiff/respondent's father Shri Zabanga jointly purchased the suit land covered by LSC No. 201/75 with Shri Denghuai and Shri Hrangluaia from Shri Tebawnga in the year of 1959. It is pertinent to mention here that in the plaintiff/respondent's evidence the document 'Hriatpuina' at Ext. P-1 was admitted as a manufactured document. But, the meaning of 'manufacture' is a human made thing. I therefore do not consider the document as illegal. It was also not disproved by the defendant/appellants in the learned Trial Court.

16. In view of the aforesaid discussion and finding, I am of the view that the learned Trial Court has rightly held the above facts established by the plaintiff by appreciation of the evidence from its proper perspective. I therefore do not find any merit in this appeal.

17. Agreeing with the views of the learned Trial Court, I hold that the suit land covered by LSC No. 201 of 1975 was initially purchased by Shri Zabanga and since Shri Zabanga had already died the plaintiff/respondent, being the son of Shri Zabanga (L), is the rightful and legal owner of the land covered by LSC No. 201 of 1975.

18. In the result, the appeal fails and is dismissed. However, the parties are left to bear their own costs.

19. Send back the Lower Court Record.

Sd/-VANLALENMAWIA

Addl. District Judge
Aizawl Judicial District
Aizawl, Mizoram

Memo No. _____/ADJ(A)/2015 : Dated Aizawl, the 29th April, 2015

Copy to: -

1. Shri Hmingthankima, through Counsel Shri. W Sam. Joseph, Advocate.
2. Smt. Thanthuami through Counsel Shri. W Sam. Joseph, Advocate.
3. Shri Sapbela, through Shri C. Lalramzauva, Sr. Advocate.
4. The State of Mizoram represented by Chief Secretary to the Govt. of Mizoram, through Addl. G.A. Shri Joseph Lalfakawma, Aizawl.
5. The Secretary to the Government of Mizoram, Land Revenue & Settlement Department, through Addl. G.A. Shri Joseph Lalfakawma, Aizawl.
6. The Director, Land Revenue & Settlement Department, Government, through Addl. G.A. Shri Joseph Lalfakawma, Aizawl.
7. District Judge, Aizawl Judicial District, Aizawl.
8. Ld. Senior Civil Judge, Aizawl.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R