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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(C.R.P. Art. 227) No.17 of 2023
With
MC(CRP(ART.227)/24 of 2023

Mongjam Tombi Singh, aged about 65 years, S/o (Late) M. Thambou
Singh of Thangmeiband Hijam Dewan Leikai, P.O. Imphal, P.S.
Lamphel, Imphal West District, Manipur.

..... *Petitioner/s*

– Versus –

1. Md. Najakat Ali, aged about 45 years, S/o (Late) Md. Ali Kashim Ali,
resident of Yairipok Changamdabi Makha Leikai, P.O. & P.S.
Yairipok, Imphal East District, Manipur.
2. Surya Bahadur Chhetri, aged about 80 years, S/o (L) Pahal Singh,
resident of Mantripukhri Bazar, P.O. Mantripukhri, P.S. Heingang,
Imphal East District, Manipur (now deceased) represented by his
legal heirs namely:-
 - i) Smt. Laxmi Devi Chhetry, aged about 79 years, W/o (Late)
Surya Bahadur Chhetry, a resident of Mantripukhri Devi
Land, P.O. Mantripukhri and P.S. Heingang, Imphal East
District, Manipur.
 - ii) Anand Prakash Chhetry, aged about 59 years, S/o (Late)
Surya Bahadur Chhetry, a resident of Mantripukhri Devi

Land, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur.

- iii) Bijoy Kumar Chhetry, aged about 58 years, S/o (Late) Surya Bahadur Chhetry, a resident of Mantripukhri Devi Land, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur
- iv) Basant Kumar Chhetry, aged about 51 years, S/o (Late) Surya Bahadur Chhetry, a resident of Mantripukhri Devi Land, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur.
- v) Nirmala Chhetry, aged about 55 years, D/o (Late) Surya Bahadur Chhetry, a resident of Mantripukhri Devi Land, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur.
- vi) Bimola Sharma, aged about 53 years, D/o (Late) Surya Bahadur Chhetry, a resident of Mantripukhri Devi Land, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur.

- 3. H.R. Hringpham, aged about 47 years, W/o KL Kapoor of Sanjenthong Mission Lane, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur.

.... ***Respondent/s***

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. N. Ibotombi, Sr. Advocate
Mr. A. Rommel, Advocate

For Respondent No.3 : Ms. L. Brizet Devi, Advocate, R-3

For Respondent Nos.1 & 2 : Nemo

Date of Hearing : 25.04.2023

Date of Judgment & Order : **04.05.2023**

JUDGMENT & ORDER
(CAV)

[1] By the present petition under Article 227 of the Constitution, the petitioner herein challenges the impugned order dated 27.02.2023 passed by the Ld. Civil Judge (Senior Division), Imphal East in Judicial Misc.Case No.483 of 2022 (Ref. :- Original Suit No.8 of 2014/55 of 2014). By way of Judl. Misc. Case No.483 of 2022, the petitioner who is defendant in the suit pending before the Trial Court seeks leave of the Court for calling the case records of Mut. Case No.314/SDC/HNG/2013 from the Court of Ld. Sub-Deputy Collector, Heingang to enable him to prove that order dated 06.04.2013 was passed by the Ld. Sub-Deputy Collector, Heingang with full knowledge and consent of defendant No.3 at the time of leading evidence of defendant No.1. Vide impugned order dated 27.02.2023, the application was rejected.

[2] The brief fact of the case in nutshell is that the respondent No.2/defendant No.3, Surya Bahadur Chhetri (now deceased and represented by LR's) was the owner and the recorded pattadar of the Agricultural land under patta No.91/101(Old), 16(New) covered by C.S. Dag No.98 measuring an area of .66 acre situated at Village No.9 – Chingmeirong East and he transferred the said land to the petitioner herein/defendant No.1 under a kutchra sale deed dated 12.02.2013. Thereafter, name of the petitioner/defendant No.1 was entered into the land records of right by cancelling the name of respondent No.2/defendant No.3 vide mutation order dated 06.04.2013 passed by the Ld. SDC, Heingang in Mutation Case No.314 of 2013. It is stated that the mutation proceeding was done with the knowledge and consent and in presence of respondent No.2/defendant No.3 who also took part in the mutation proceeding. Thereafter, the petitioner/defendant No.1 transferred the said land to proforma respondent No.3/defendant No.2, H.R. Hringpham by executing a Regd. Sale Deed bearing No.396 (v) dated 12.04.2013 of the Sub-Registrar, Sawombung, Imphal East, Manipur. Subsequently the name of proforma respondent No.3/defendant No.2 was entered in the records of right of the said land vide mutation order dated 18.04.2013 passed by the Ld. SDC, Heingang in Mutation Case No.351/SDC/IE/2013. Thereafter, respondent No.1/plaintiff filed Original Suit No.8 of 2014/55 of 2014 before the Court of Ld. Civil Judge (Senior Division), Imphal East against the petitioner as defendant No.1, proforma respondent No.3 as defendant No.2 and respondent No.2 as defendant No.3 alleging that respondent No.1/plaintiff purchased the land from

respondent No.3/defendant No.2 under a Regd. Sale Deed. The petitioner/defendant No.1 entered his appearance in the above suit and filed his written statement. The respondent No.3/defendant No.2 also entered her appearance and filed written statement-cum-counter claim in connection with the suit. The respondent No.2/defendant No.3 also filed his written statement alleging that the entry of the name of the petitioner/defendant No.1 in the record of right of the aforesaid land was made behind his back and without his knowledge and such subsequent transferred made by the petitioner/defendant No.1 to respondent No.3/defendant No.2 cannot be acted upon the eye of law. The suit filed by respondent No.1/plaintiff was dismissed for non-prosecution and the counter claim made by the proforma respondent No.3/defendant No.2 is pending for disposal. During pendency of the suit, the petitioner/defendant No.1 filed Judl. Misc. Case No.483 of 2022 before the Ld. Civil Judge (Senior Division), Imphal East under Order VIII Rule – 1A(3) of the Code of Civil Procedure, 1908 read with Section 151 of the same Code praying for calling the case records of Mutation Case No.314/SDC/HNG/2013 from the Ld. SDC, Heingang in connection with the said suit so as to enable the petitioner/defendant No.1 to prove that the order for recording the name of the petitioner/defendant No.1 by cancelling the name of respondent No.2/defendant No.3 was passed by the Ld. SDC, Heingang with the full knowledge and consent of the respondent No.2/defendant No.3 and he was present in the said proceeding. The respondent No.2/defendant No.3 filed his written objection to the Judl. Misc. Case No.483 of 2022.

[2.1] On that day, the petitioner/defendant No.1 also filed a Misc.Case being Judl. Misc. Case No.484 of 2022 before the Ld. Civil Judge (Senior Division), Imphal East under Order XVI Rule 6 of the Code of Civil Procedure read with Section 151 of the same Code for allowing him to file certified copy of the order dated 06.04.2013 passed by the Ld. SDC, Heingang in Mutation Case No.314 of 2013 for recording his name in the records of right of the suit land by cancelling the name of respondent No.2/defendant No.3 from the land records. The Ld. Civil Judge (Senior Division), Imphal East has taken up the said application first and allowed the prayer.

[2.2] Vide impugned order dated 27.02.2023, the Ld. Civil Judge (Senior Division), Imphal East rejected the prayer sought by the petitioner/defendant No.1 on the ground that it is not for the petitioner/defendant No.1 to prove that the order dated 06.04.2013 in Mutation Case No.314/SDC/HNG/2013 was passed with the consent of the present respondent No.2/defendant No.3, rather the burden of proof lies on the party who denies it and as such there is no necessity for calling the case record of Mutation Case No.314/SDC/HNG/2013 from the Court of the Ld. SDC, Heingang.

[2.3] Being aggrieved by the same, the petitioner/defendant No.1 challenges the impugned order mainly on the ground that the case record of Mutation Case No.314 of 2013 in the Court of Ld. SDC, Heingang is very much required to decide the real dispute, as respondent No.2/defendant No.3 alleged that the mutation order was done without his knowledge while it is the

specific case of the petitioner/defendant No.1 that respondent No.2/defendant No.3 was very much present during the proceedings of the Mutation Case and the mutation order was passed in his presence.

[3] This Court issued notice on 29.03.2023 to the respondents and directed the petitioner/defendant No.1 to take steps by speed post upon respondent No.1 and respondent No.2 and dasti on respondent No.3.

[3.1] The respondent No.3 entered appearance through her counsel, but none appeared on behalf of respondent No.1 and LR's of respondent No.2 in spite of service of notice by speed post.

[4] Heard Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel for the petitioner/defendant No.1 and Ms. L. Brizet Devi, learned counsel for respondent No.3/defendant No.2.

[5] Mr. N. Ibotombi, learned senior counsel for the petitioner/defendant No.1 submits that it is the specific case of the petitioner/defendant No.1 that respondent No.2/defendant No.3 transferred the said land in his favour and respondent No.2/defendant No.3 was present during the proceeding of Mutation Case No.314 of 2013 in the Court of Ld. SDC, Heingang. On the other hand, the respondent No.2/defendant No.3 denies that the mutation proceeding of Mutation Case No.314 of 2013 and mutation order dated 06.04.2013 were passed by the Ld. SDC, Heingang without his knowledge and in his absence.

[6] Mr. N. Ibotombi, learned senior counsel also states that by allowing the Misc.Case being Judl. Misc. Case No.484 of 2022 filed before the Ld. Civil Judge (Senior Division), Imphal East, the plaintiff/respondent No.1 filed on record a certified copy of the mutation order dated 06.04.2013 passed by the Ld. SDC, Heingang in Mutation Case No.314 of 2013. However, he clarifies that in the certified copy, original signature of the respondent No.2/defendant No.3 is not present. Hence, calling for record of the mutation proceeding from the Court of Ld. SDC, Heingang with respect to Mutation Case No.314 of 2013 is very much required for proving the case of the petitioner/defendant No.1. Mr. N. Ibotombi, learned senior counsel for the petitioner prays that the impugned order be set aside and the prayer for calling of the records of Mutation Case No.314/SDC/HNG/2013 from the Court of Ld. SDC, Heingang be allowed.

[7] Ms. L. Brizet, learned counsel for respondent No.3/defendant No.2 supports the submission of Mr. N. Ibotombi, learned senior counsel for the petitioner.

[8] From the pleadings of the parties, it is seen that the case of the petitioner/defendant No.1 is that the suit land was transferred by respondent No.2/defendant No.3 in his favour and the suit land was recorded in his name in presence of respondent No.2/defendant No.3 who also signed in the case record of the said proceedings. On the other hand, respondent No.2/defendant No.3 denies that the entry of the petitioner/defendant No.1 was done without his knowledge and behind his back.

[9] A plain reading of Section 101 of the Indian Evidence Act reveals that the burden of proof is on the person who asserts existence of certain fact and desires the Court to pass an order in his favour then, Illustration (b): A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true. A must prove the existence of those facts.

[10] In the recent case of **Smriti Debbarma (Dead) through Legal Representative vs. Prabha Ranjan Debbarma and Ors. (04.01.2023 - SC): MANU/SC/0010/2023: AIR 2023 SC 379**, Hon'ble Supreme Court held that the burden of proof lies on the person who asserts existence of a fact in affirmative and not on the party who denies it. Relevant para is reproduced as:

*“31. The burden of proof to establish a title in the present case lies upon the Plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief. This is mandated in terms of Section 101 of the Evidence Act, which states that **burden on proving the fact rests with party who substantially asserts in the affirmative and not on the party which is denying it.** This Rule may not be universal and has exceptions, but in the factual background of the present case, the general principle is applicable. In terms of Section 102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail. Onus of proof, no doubt shifts and the shifting is a continuous process*

in the evaluation of evidence, but this happens when in a suit for title and possession, the Plaintiff has been able to create a high degree of probability to shift the onus on the Defendant. In the absence of such evidence, the burden of proof lies on the Plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit. The Plaintiff could have succeeded in respect of the Schedule 'A' property if she had discharged the burden to prove the title to the Schedule 'A' property which squarely falls on her. This would be the true effect of Sections 101 and 102 of the Evidence Act. Therefore, it follows that the Plaintiff should have satisfied and discharged the burden under the provisions of the Evidence Act, failing which the suit would be liable to be dismissed. Thus, the impugned judgment by the High Court had rightly allowed the appeal and set aside the judgment and decree of the trial court. We, therefore, uphold the findings of the High Court that the suit should be dismissed. We clarify that we have not interfered or set aside any observations of the High Court in re the Tripura Land Revenue and Land Reforms Act, or Defendants' claim etc. Notably, M/s. Hotel Khosh Mahal Limited is not a party to the present proceedings.”

[11] In the present case, the petitioner/defendant No.1 asserts that the mutation order dated 06.04.2013 in Mutation Case No.314/SDC/HNG/2013 was passed by the Ld. SDC, Heingang in presence of respondent No.2/defendant No.3 and with his knowledge and consent. On the other hand, respondent No.2/defendant No.3 denies such an assertion.

[12] Therefore, as per the illustration (b) appended to Section 101 of Indian Evidence Act, the burden is primarily on the petitioner/defendant No.1 to prove that the mutation order was passed with knowledge and consent and in presence of respondent No.2/defendant No.3. This fact can be proved by calling for the record of the Mutation Case No.314/SDC/HNG/2013 from the Court of Ld. SDC, Heingang. Inability of respondent No.2/defendant No.3 to prove his absence will not ipso facto confirm his presence. Petitioner/defendant No.1 has an obligation to prove his positive assertion as per the recent case of **Smriti Debbarma (supra)**.

[12.1] Therefore, the Ld. Civil Judge (Senior Division), Imphal East was wrong in presuming that the burden of proof lies only on respondent No.2/defendant No.3 to deny this fact. This Court is of the opinion that the burden of proof primarily lies on the petitioner/defendant No.1 who alleged the existence of the fact, i.e., presence of respondent No.2/defendant No.3 during

the mutation proceeding which was conducted with his knowledge and consent.

[12.2] This Court is of the opinion that mere filing of certified copy of the order dated 06.04.2013 in Mutation Case No.314 of 2013 does not discharge the burden to prove the existence by the petitioner/defendant No.1 to the effect that respondent No.2/defendant No.3 was present during the mutation proceeding. This rival fact of presence or absence of respondent No.2/defendant No.3 can be established only from the proceeding of the Mutation Case No.314 of 2013.

[12.3] Accordingly, the impugned order dated 27.02.2023 is set aside and the present petition is allowed.

[12.4] The Ld. SDC, Heingang is directed to send records of the mutation proceedings in Mutation Case No.314/SDC/HNG/2013 along with the order dated 06.04.2013 to the Court of Ld. Civil Judge (Senior Division), Imphal East in connection with OS No.8 of 2014/55 of 2014 within 2(two) weeks from the date of receipt of copy of this order.

[12.5] The Revision Petition and pending application being MC(CRP Art.227) No. 24 of 2023 are disposed of in terms of the above observation and directions. No costs. It is clarified that this Court does not express any opinion on the merit of the case and nothing said herein shall prejudice the case of the parties during the trial.

[12.6] Send copy of this order to the Ld. Civil Judge (Senior Division), Imphal East and to the Ld. SDC, Heingang for information and necessary action.

JUDGE

-Larson

FR/NFR