

GAHC030000072015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/7/2015

Hmingthankima and Anr
Sairang Dinthar Veng 2: Thanthuam

VERSUS

Sapbela and 3 Ors.
Govt. Complex, Aizawl 2:State of Mizoram r/b Chief Secretary

3:Secretary to Govt of Mizoram
Land Revenue and Settlement Dept

4:Director Land Revenue and Settlement Dep

Advocate for the Petitioner : Mr F Lalenglina

Advocate for the Respondent : Mr C Lalramzauva Sr. Adv. for R1

BEFORE

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date of hearing : **30.11.2023**

Date of judgment : **14.12.2023**

JUDGMENT & ORDER (CAV)

Heard Mr. F. Lalengliana, learned counsel for the appellants. Also heard Mr. C. Lalramzauva, learned senior counsel assisted by Ms. Lalrochami, learned counsel for the respondent No. 1/plaintiff and Mrs. Mary L. Khiangte, learned Government Advocate for the respondent Nos. 2 to 4.

2. This RSA No. 7/2015 is filed under Section 17(2) of the Mizoram Civil Courts Act, 2005 read with Section 100 of CPC against the Judgment and Order dated 29.04.2015 in RFA No. 37/2014 arising out of Declaratory Suit No. 6/2004 passed by the Hon'ble Court of Addl. District Judge, Aizawl Judicial District.

3. The case of the plaintiff/respondent No. 1 is that his late father i.e., Sh. Zabanga had purchased the suit land covered by LSC No. 201/1975 in the year 1959 jointly with his friends, i.e., Sh. Denghuaia and Sh. Hrangluaia (L) from Sh. Tebawnga. Since, the plaintiff/respondent No.1's mother had already died, the plaintiff/respondent No.1's late father alongwith the plaintiff/respondent No. 1 and his other siblings occupied the suit land. In the year 1962, the plaintiff/respondent No. 1's father passed away and since the plaintiff/respondent No. 1 and his other siblings were very young, their grandfather Sh. Suka looked after them. Later on, Sh. Suka mutated the suit land to his name under House Pass No. 91/1965 and thereafter, converted the same to Land Settlement Certificate under LSC No. 201/1975. Sh. Suka died on 06.01.1985. The defendant No. 1, who is the son of defendant No. 2, i.e., daughter of Sh. Suka, without the knowledge of the plaintiff/respondent No. 1 and the other surviving children of Sh. Suka had stolen the LSC No. 201/1975 and mutated the same to the name of the defendant No. 1. Thereafter, the

defendant Nos. 1 and 2 had sold the suit land to the defendant No. 3. It appears from the plaint that though the plaintiff/respondent No. 1 had earlier submitted the heirship application before the Sub-District Council Court, Aizawl, in H.C. Case No. 388 of 2003 praying for declaring himself as the legal heir of his late father and grandfather in respect of LSC No. 201/1975, the said heirship application was disposed of vide Order dated 21.08.2003 for submitting the plaint in a proper form. Though the plaintiff/respondent No. 1 had filed a fresh suit, the same was withdrawn with liberty to file a fresh vide the Order dated 22.09.2004. Admittedly, no further fresh suit has been filed till date. It is the case of the plaintiff/respondent No. 1 that since the suit land was purchased by his late father Sh. Zabanga and he being the youngest son of Sh. Zabanga, has every right to inherit the suit land and the defendant Nos. 1 and 2 have cheated him and converted the suit land to their own names.

4. Accordingly, the plaintiff/respondent No. 1 filed the declaratory suit claiming inter-alia, for a decree declaring that the mutation of LSC No. 201/1975 located at Tuikual 'S' by the defendants Nos. 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. 201/1975 was purchased by Sh. Zabanga (L) and the plaintiff/respondent No. 1 being the son of Sh. Zabanga (L) is the rightful and legal owner of the suit land covered by LSC No. 201/1975.

5. On the other hand, the case of the defendants/appellants is that the suit land was never purchased by the plaintiff/respondent No. 1's father Sh. Zabanga and it was purchased by defendant No. 2's father Sh. Suka, which is evident from the House Pass No. 91/1965. In the said House Pass, it was clearly

mentioned that the suit land was purchased by Sh. Suka from Sh. Tebawnga, C.I.D. The pass issued by the Revenue Officer, Mizoram District Council dated 28.10.1965 clearly stated that the land was purchased by Sh. Suka from Sh. Tebawnga and that the House Pass No. 91/1965 was later on converted to Land Settlement Certificate No. 201/1975. However, in the meantime, Sh. Suka died on 06.01.1985 and since the defendant No. 2 was looking after Sh. Suka till his dead, Sh. Suka gifted the suit land to the defendant No. 1, who is the son of defendant No. 2. On the basis of the aforesaid gift deed, the defendants claim that the suit land was gifted to defendant No. 1 by the original settlement holder Sh. Suka and hence, they are the rightful owner of the said suit land.

6. The Trial Court framed the following issues:-

- “(i). Whether the suit is maintainable in its present form and style or not?
- (ii). Whether the suit is bad for non-observance of Section 80 CPC?
- (iii). Whether the suit is barred by Limitation, Doctrine of Estoppels, Acquiescence and Waiver?
- (iv). Whether the land covered by LSC No. 201/1975 was purchased by Sh. Zabanga (L), father of the plaintiff?
- (v). Whether the plaintiff is entitled to the relief claimed. If so, to what extent?”

7. The plaintiff/respondent No. 1 adduced 5 witnesses including himself whereas the defendant Nos. 1 and 2 adduced two witnesses before the Trial Court whereas the State defendant denied production of witness to support

their evidence. Both the contesting parties also exhibited documents in support of their respective claims. The Trial Court while adjudicating the Issue No. 4, i.e., whether the land covered by LSC No. 201/1975 was purchased by Sh. Zabanga (L) father of the plaintiff/respondent No. 1, relied on the evidences of the PW Nos. 1, 2 and 5, who are the sons and daughter of Sh. Zabanga, who has stated in their depositions that the suit land was jointly purchased by their late father alongwith his two friends in the year 1959 from Sh. Tebawnga. The said statement was supported by other witnesses namely, Smt. Thangzuali (cousin brother of the plaintiff) and Smt. Lalremsiami, wife of Sh. Suka's grandson namely Sh. Zothansanga.

8. The plaintiff/respondent No. 1 also annexed a witness statement, which was exhibited as Exhibit P-1 to show that the suit land was purchased by Sh. Zabanga and after the death of Sh. Zabanga, the same continued to be looked after by his grandfather i.e., Sh. Suka, who in turn had caused issuance of the Pass in his name.

9. The Trial Court on the basis of the said Exhibit P-1 came to the conclusion that the suit land was purchased by Sh. Zabanga (father of the plaintiff). The Trial Court accordingly decreed the suit by declaring that the suit land covered by LSC No. 201/1975 was initially purchased by Sh. Zabanga (L) and since the said Sh. Zabanga had already died, the plaintiff/respondent No. 1 being the son of Sh. Zabanga is the rightful and legal owner of the land covered by LSC No. 201/1975.

10. Accordingly, aggrieved by the said Judgment and Order dated 10.11.2014 passed by the Trial Court, the defendants/appellants have filed an appeal being

RFA No. 37/2014. The Appellate Court vide its Judgment and Order dated 29.04.2015 agreed with the views of the Trial Court and held that the suit land was initially purchased by Sh. Zabanga and since Sh. Zabanga had already died, the plaintiff/respondent No. 1 being the son of Sh. Zabanga is the rightful and legal owner of the land covered by LSC No. 201/1975. Being aggrieved by the aforesaid Judgment and Order, the defendants/appellants preferred the present second appeal.

11. This Court on 10.09.2015 formulated the following substantial questions of law:

“i) whether the finding of the Court below was perverse in declaring that the father of the respondent No. 1 had bought the suit land while the findings of the First Appellate Court is that the document HRIATPUINA (Exhibit P-1) was a manufactured document.

ii) Whether the suit was barred by law of limitation as the title to the land was never in the name of the father of the respondent No. 1 at any time.

iii) whether the title and ownership of land could be conveyed/declared by the Court below in favour of respondent No. 1 in view of the fact that the father of the respondent No. 1 had expired in the year 1962, and the suit land was never mutated in the name of the father of the respondent No. 1 before the land was recorded in the name of the appellant’s grand-father Suka (L) in 1965 vide House Pass No. 91 of 1965.”

12. Mr. F. Lalengliana, learned counsel appearing for the appellants/defendants, as regard, the first substantial question of law as whether the finding of the Appellate Court was perverse in declaring that the

plaintiff/respondent No. 1's father had purchased the suit land while the plaintiff/respondent No. 1 in his cross examination admitted Exhibit P-1 was manufactured at the time of filing of the suit, argued that the said Exhibit P-1, which the plaintiff/respondent No. 1 admits to be a manufactured document at the time of filing of the suit cannot override title and ownership of the suit in favour of Sh. Suka granted under the House Pass No. 91/1965, which was later converted to LSC No. 201/1975 as per law.

13. Mr. F. Lalengliana, learned counsel, as regard, the substantial question of law of limitation, argued that the plaintiff/respondent No. 1 was fully aware of the fact that his grandfather Sh. Suka was holding the Land Settlement Certificate in his name as regards the subject suit land. The plaintiff/respondent No. 1 also was solely aware of the fact that there was no certificate in the name of his father and as evident from the evidence-in-chief of the plaintiff, the plaintiff/ respondent No. 1 did not do anything in order to obtain pass in respect of the suit land since 1962 to 2003.

14. Mr. F. Lalengliana, learned counsel further argued that the plaintiff/respondent No. 1 remained silent since the year 1962 till the year 2003 for about 40 long years, which is also accepted by him in his cross examination and as such, the suit is hopelessly barred by the law of limitation. By referring to Section 65 of the Limitation Act, Mr. F. Lalengliana, learned counsel further argued that the plaintiff/respondent No. 1 has 12 years to sue when the possession of the plaintiff/respondent No. 1 become adverse to the plaintiff/respondent No. 1 and under Section 59 of the said Act, the plaintiff/respondent No. 1 has 3 years to sue the case and fact and title of the plaintiff/respondent No. 1 to have the instrument or decree cancelled or set

aside or the contract resented first become known to him. The plaintiff/respondent No. 1 keeping silent even after the death of his grandfather Sh. Suka on 06.01.1985, who is the title holder of the suit land, is estoppel by the doctrine of acquiescence and hence, the suit is barred by limitation. In support of the aforesaid, Mr. F. Lalengliana, learned counsel relied upon the following decisions:-

(i) B.L. Sreedhar & Ors. Vs. K.M. Munireddy (Dead) & Ors passed by the Supreme Court in *Civil Appeal No. 2971/1995 and 1972/1995*.

(ii) Sailala vs. Ngurtaiveli, reported in *1980 AIR (Gauhati) 70*.

15. Mr. F. Lalengliana, learned counsel, as regard, the third substantial question of law relating to the title and ownership of the land in question, argued that it was admitted by the plaintiff/respondent No. 1 that land pass was never issued in the name of his father and the concerned authority issued House Pass No. 91/1965 in the name of his grandfather Sh. Suka in the year 1965, which was later on converted into LSC No. 201/1975 in terms of the Mizo District (Land and Revenue) Act, 1956. By referring to Section 7 of the said Act, he further argued that the settlement holder has heritable and transferable right over the suit land and since the appellants/defendants were taking care of title holder Sh. Suka till his dead, he is entitled to inherit the said suit land.

16. In support of the aforesaid submission, he relies upon the decision of the Hon'ble Supreme Court in the case of *Smt. Kaithuami (L) through LRS Vs. Smt. Ralliani & Ors* decided on 26.04.2022 in *Civil Appeal No. 7159-7160/2008*.

17. As such, Mr. F. Lalengliana, learned counsel submits that the findings of both the Trial Court and the First Appellate Court to the effect that the plaintiff/respondent No. 1's father is the purchaser of the suit land, is without any evidence whatsoever and hence, the said findings are totally perverse and therefore, this Court while exercising its power under Section 100 CPC is entitled to reverse the concurrent findings of the First Appellate Court and the Trial Court.

18. In support of the aforesaid submission, he relies upon the following decisions of the Hon'ble Supreme Court:-

(i) Keshav & Others Vs. Gian Chand & Others, 28.08.2017 in Civil Appeal No. (S) 11059/2017.

(ii) Kashmir Singh Vs. Harnam Singh & Another decided on 03.03.2008 in Appeal (C) No. 1036/2002.

19. On the other hand, Mr. C. Lalramzauva, learned senior counsel assisted by Ms. Lalrochami, learned counsel appearing on behalf of the respondent No. 1/plaintiff submits that there being concurrent findings of fact by the Trial Court and the First Appellate Court to the effect that the suit land was purchased by the plaintiff/respondent No. 1's father in the year 1959 and that the suit land continued to be under the occupation of Sh. Suka, grandfather of the plaintiff/respondent No. 1 as Sh. Zabanga had prematurely died in the year 1962 and though Sh. Suka had obtained House Pass No. 91/1965 in his name which was subsequently converted to LSC No. 201/1975 in respect of the suit land, the plaintiff/respondent No. 1 being the son of Sh. Zabanga had been considered and held to be a rightful/inheritor of the suit property, the Second

Appellate Court is bound by such concurrent findings of fact by the Trial Court and the First Appellate Court and as such, cannot be re-opened in second appeal. In support of the aforesaid submission, he relied upon the following Apex Court decisions in the case of:-

(i) Deity Pattabhiramaswamy Vs. S. Hanymayya and Others, reported in AIR 1959 SC 57 (para 13)

(ii) Mst. Kharbuja Kuer Vs. Jangbahadur Rai and Others, reported in AIR 1963 SC 1203 (para 10)

(iii) Maniar Ismail Sab and Others Vs. Maniar Fakruddin and Others, reported in AIR 1989 SC 1509/1989 (2) SCC 685

(iv) Laxmidevamma and Others Vs. Ranganath and Others, reported in 2015 4 SCC 264 (para 11 and 17)

(v) Syeda Rahimunnisa Vs. Malan Bi (Dead) by Legal Representatives and Another, reported in 2016 10 SCC 315 (para 26, 30, 31, 32).

20. Mr. C. Lalramzauva, learned senior counsel also argued that the High Court in second appeal can only interfere when there is substantial questions of law involved and in support of the said contention, he relies upon the Apex Court decision in the case of *Lisamma Antony and Another Vs. Karthiyayani and Another*, reported in (2015) 11 SCC 782 para 11 and 12 and also *Syeda Rahimunnisa Vs. Malan Bi (Dead) by Legal Representatives and Another*, reported in (2016) 10 SCC 315 para 25.

21. Mrs. Mary L. Khiangte, learned Government Advocate for the State respondents submits that she has not received any instructions in the matter.

22. I have duly considered the submissions made by the learned counsels for the appellants and respondents and also perused the record of the case.

23. At the outset, let me first examine whether the questions framed by this Court as stated above involves a substantial question of law or not. The Apex Court in the case of *Hero Vinoth (Minor) Vs. Seshammal*, reported in (2006) 5 SCC 545 (paragraph 21 to 24) held as follows:-

“21. The phrase "substantial question of law", as occurring in the amended Section 100 of the CPC is not defined in the Code. The word substantial, as qualifying "question of law", means-of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with - technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta⁹ the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case⁶ the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju¹⁰. Sir Chunilal case⁶, SCR p. 557).

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views,

then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law." This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (Sir Chunilal case⁶, SCR p. 557 -58).

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

22. *In Dy. Commr. v. Rama Krishna Narain¹¹ also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 100 CPC.*

23. *To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of*

the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See: Santosh Hazari v. Purushottam Tiwari¹² (deceased) by Lrs.[(2001) 3 SCC 179].

24. *The principles relating to Section 100 CPC relevant for this case may be summarised thus:*

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law, having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question,

violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

24. In the present case, the questions framed has a bearing on the decision of the case, answers to the questions, affects the substantial rights of the parties to the suit and such questions are not settled by any binding precedents, and involves a debatable legal issue. Therefore, the three questions framed are substantial questions of law. I shall now, decide the substantial question of law No. 1 as whether the finding of the Court below was perverse in declaring that the father of the plaintiff/respondent No. 1 had bought the suit land while the findings of the First Appellate Court is that the document Hriatpuina (Exhibit P-1) was a manufactured document.

25. The said Exhibit P-1 is reproduced hereunder for ready reference:-

“WITNESSES

In the year 1959, Tebawnga's Land/House Site located at Tuikual 'S' at Sairang Main Road level was jointly purchased by Zabanga, Denghuaia and Hrangliana. I am a witness to the fact that this land was purchased

and Zabanga S/o Suka along with his children actually occupied the existing house located in that area in the year 1959.

*Sd/-
1. (DENGHUAIA)
Tuikual 'S', Aizawl*

*Sd/-
4. (THANGZUALI)
W/o Biakthanga*

*Ext.P-1(B)
Sd/- 7/6/12
Sr. C.J*

*Sd/-
2. (LALRUAI)
Tuikual 'S', Aizawl
Sairang*

*Sd/-
5. (ROTHANGPUII)
D/o Zabanga (L)*

*Ext.P-1(A)
Sd/-
Sr. C.J*

*Sd/-
3. (KHAWVELTHANGI)
W/o Hrangliana
Tuikual 'S', Aizawl"*

26. A perusal of the said witnesses certificate shows that the said exhibit has been signed by:- (1) Sh. Denghuaia, (2) Smt. Lalruai, (3) Smt. Khawvelthangi, (4) Smt. Thangzuali, (5) Smt. Rothangpuui to the effect that they are witnesses to the fact that the suit land was purchased by the plaintiff/respondent No. 1's father Sh. Zabanga alongwith his two friends in the year 1959 and thereafter, Sh. Zabanga along with his children occupied the existing house located in that suit land. Sh. Denghuaia at Sl. No. 1 was one of the joint purchasers. However, he has not deposed before the Trial Court. Smt. Lalruai at Sl. No. 2 has neither signed nor deposed. Smt. Khawvelthangi at Sl. No. 3 is the wife of the other purchaser who has also not deposed before the Trial Court. Smt. Thangzuali (PW No. 4) at Sl. No. 4 is the aunt of the plaintiff/respondent No. 1 and who has a tea stall at Zarkawt area. Smt. Rothangpuui (PW No. 2) at Sl. No. 5 is the sister of the plaintiff/respondent No. 1, who at the time of the purchase was about 11 years. None of the said witnesses have said that they have seen the plaintiff/respondent No. 1's father purchasing the land alongwith his friends

from the purchaser and/or are witnesses to the signing of the deed of purchase. Be that as it may, the question that arises is whether the factum of such purchase can be proved on the basis of the said 'Witnesses Certificate'.

27. In terms of paragraph 11 of the Sixth Schedule to the Constitution of India, the Mizo District Council, has enacted the Mizo District (Land and Revenue) Act, 1956 to provide for the recognition of rights on land and assessment of revenue on such land by the District Council. Though during the pendency of the suit, the said 1956 Act, stood repealed, by the enactment of the Mizoram (Land and Revenue) Act, 2013, by Section 131, of the said Act 2013, provisions of the 1956 Act, were saved in the cases when any right, privilege, obligation or liability acquired, accrued or incurred under the 1956 Act. In the present case, the alleged right of the plaintiff/respondent No. 1 to inherit the suit land having accrued prior to the new enactment, the 1956 Act shall be applicable. Relevant provisions of the said 1956 Act are reproduced hereunder for ready reference:-

“Chapter-1

2. Definition- In this Act unless there is anything repugnant or the context otherwise requires:-

8). *'Settlement holder' means any person other than a pass holder, who has entered into an agreement with the Administrator to pay land revenue and is deemed to have acquired status of settlement-holder under section 7.*

11). *'Pass-holder' means a person who has the temporary right of use and occupancy over a specified plot of land for a specified*

period under such terms as the Administrator .. may prescribe in the pass he holds.

Chapter II

5. Rights of Pass-holder- *A pass holder shall have no right in the soil beyond a right of user for the period for which it is given and shall have no right of transfer, or of inheritance beyond the period of the pass or of subletting.*

7. Settlement-holder's right over land:

"The settlement-holder shall have heritable and transferable right of use on or of subletting in his land subject to:-

- a) the payment of all revenue and taxes from time to time legally assessed or imposed in respect of the land:-*
- b) such terms and conditions as are expressed in his settlement lease, and the rules made thereunder."*

8. Power of the Administrator over vacant land: *In the case of any land over which no person has right of use or occupancy under this Act or which is not under use or occupancy of the Government, the Administrator may direct that:-*

- a) such land may be disposed of by way of grant, lease or other wise in the manner prescribed;*
- b) the person who has entered into unauthorised occupation of such land may be rejected in the manner prescribed.*
- c) any crop, building or other constructions erected without authority may be disposed of in a manner it deems fit.*

Chapter III

10. Recording and Demarcation of land - The Administrator or any officers appointed in its behalf shall survey all lands to be recorded. The demarcation boundary and the assessed revenue to be paid annually shall be recorded in the General Register vide Appendix "A". The Administrator may prescribe subject to a paragraph 8 (1) of the Sixth Schedule to the Constitution of India and to this Regulation principles on which the land revenue is to be assessed, the terms for which and the conditions on which settlement may be made. The settlement-holder shall make proper boundary marks as may be directed by such officer or the Administrator.

Recording shall be made in such manner and after such inquiry as may be prescribed.

11. Certificate of possession and assessment - A settlement-holder shall on the completion of survey and demarcation of boundary, obtain a certificate of recording for the details of that land on payment of such amount of recording fee as may be prescribed. Different rates of fees may be prescribed for any local area of class of land.

12. Local ownership over land - Possession of such certificates showing details of boundary area and assessed revenue to be paid annually shall be deemed to be the conclusive proof that the land has been settled with the holder of the certificate and that all rights and interests arising out of such settlement have vested in such holder of the certificate.

13. *If a settlement-holder violates any term of the lease, the lease shall be liable to be cancelled.*

14. Transfer of ownership of Land: No transfer of any right, title or interest in any land shall be recognized by the Administrator or the Village Council and no person shall be deemed to be ex-operated from any liability due to the

Administrator or the Village Council by virtue of such transfer, unless such transfer is registered in the office of the Administrator in the manner prescribed.

Relevant provisions of The Mizo District (Land and Revenue) Rules, 1967 is reproduced hereunder for ready reference:-

“THE MIZO DISTRICT (LAND AND REVENUE) RULES, 1967

Chapter I

2. Definition:

3). "Vacant Land" means any land which has not been allotted to any one, whether occupied or unoccupied and over which nobody has acquired any right under the Act, and shall not include any land within the State Reserved Forests, if any, and all lands actually covered by Government and public roads.

4). "Land Settlement" means the settling of land under the Act and under these Rules, either permanently or periodically with individual persons or society who have entered into an agreement with the District Council to pay land revenue, and includes survey, demarcation of boundary and classification preliminary to such settlement.

5). "Permanent Settlement" means the settling of land under the Act and under these Rules permanently with an individual person or society who have entered into an agreement with the District Council to pay land revenue and to whom a Certificate of land Settlement as prescribed in Appendix 'A' of these Rules is issued.

Chapter II

5. Application for Land-Settlement:

Application for Land-Settlement shall be in writing and presented to the Executive Member-in-charge, Land-Settlement or to the Officer appointed in this behalf. If the Executive Committee orders under Rule 3, and land-pass or permit to be settled, no such written application will be necessary.

7. Disposal of Application:

After receiving the survey report and making such further investigation as may be necessary and settling any dispute that may have arisen, the Executive Member or the Officer shall either grant settlement or reject the application or allow it in part as he deems fit. When land-settlement granted registration and issuing of Certificate of land shall be done under Rule 21 and 22.

21. Registration:

When any settlement is granted under Rule 7, 14 and 15 of these Rules, the same shall be entered in the General Register on payment of Rs. 10/- as registration fee and such payment as redemption and any other necessary payments, if any."

28. As such, under the provisions of the said Act, land is settled with person by issuing Land Settlement Certificate which is required to be recorded as per Chapter-III of the said Act. The procedure of registration of such settlement is provided under Rule 21 of the Mizo District (Land and Revenue) Rules, 1965. A reading of the aforesaid provisions abundantly clarifies that ownership, right, title or interest over any land, can be recognized only after such transfer is

registered in the office of the Administrator in manner prescribed under the provisions of the said Act and Rules as quoted herein above. Section 12 mandates that possession of such certificates and annual payment of the assessed revenue shall be deemed to be conclusive proof that the land is settled with the holder of the certificate. Section 14 further mandates that no transfer of any right, title, or interest in any land shall be recognized by the Administrator or the village council unless such transfer is registered in the office of the Administrator. In fact, before issuance of such certificate under the said Act, a detailed survey and investigation is required to be done by the authorities concerned under Chapter-II of the Settlement Rules.

29. In view of the aforesaid provision of law, it is absolutely clear that in order to establish title/ownership over the suit land, the certificate, pass or permit, by which such title/ownership has been recorded has to be adduced in evidence and such document has to be proved in law.

30. In the case in hand, no evidence whatsoever in relation as regards the title/ownership has been adduced as evidence before the Trial Court. In fact, the plaintiff/respondent No. 1's witnesses have admitted that Sh. Zabanga never had any Pass/Patta/Land Settlement Certificate in respect of the suit land at any point of time and further, admitted to the fact that the pass was in the name of Sh. Suka, who has been paying the assessed revenue annually till his death. The plaintiff/respondent No. 1, during his cross-examination admitted that the said Exhibit P-1 was manufactured at the time of filing the suit and does not bear any date. He further stated during his cross examination that he knows that Sh. Denghuala and Smt. Khawvelthangi at Sl. Nos. 1 & 3 of Exhibit P-1

have already died. He further admits that except Exhibit P-1, he does not have any other document in support of the purchase of the suit land by his father. PW-2 (sister of the plaintiff/respondent No. 1), who is also one of the signatory witness to the said Exhibit P-1, in her cross-examination stated that she has not seen Sh. Denghuaia, Smt. Thangzuli (PW-4) and Smt. Khawvelthangi putting their signatures in the said Exhibit P-1 and further admitted that her father never had any Pass/Patta/Land Settlement Certificate in respect of the suit land at any point of time and that the pass was in the name of Sh. Suka. Further, the plaintiff/respondent No. 1 during his depositions, deposed that after the death of his father in the year 1962, the plaintiff/respondent No. 1 and his siblings lived with Sh. Suka in his village and thereafter, he left Sh. Suka's house on 14th April, 1974 due to his employment in the Government of Mizoram under the Transport Department. PW-2 during her cross examination further stated that neither the plaintiff/respondent No. 1 nor the other siblings did anything to obtain pass certificate in respect of the suit land since 1962 till 2004. The plaintiff/respondent No. 1 as per his own deposition is not in possession of the said suit land since 1962. That being so, I am of the view that no reasonable person on the basis of Exhibit P-1 can come to the conclusion that the suit land has been purchased by the plaintiff/respondent No. 1's father. As noted above, under the provisions of the Mizo District (Land and Revenue) Act, 1956 and the Rules made thereunder, unless the settlement certificate is possessed and registered thereunder, no right/title/ownership could be recognized over the land. The burden, therefore, was on the plaintiff/respondent No. 1 to prove his case by producing either the copy of the Pass/Patta/Land Settlement Certificate issued in favour of the plaintiff/respondent No. 1's father by which he could have proved that the subject suit land was purchased by his father. In absence

of such documentary evidence, it cannot be established in law that the subject suit land was purchased by the plaintiff/respondent No. 1's father. On the contrary, there exists a valid settlement certificate in relation to the suit land in favour of Sh. Suka recognizing him in law the rightful owner over the suit land. The plaintiff/respondent No. 1, though was well aware of the said settlement certificate has not challenged the same. As such, Sh. Suka as per record is the rightful owner over the suit land.

31. There is no doubt that under Section 100 of the CPC, the jurisdiction of this Court is very limited and are bound by the concurrent finding of facts recorded by the Trial Court and the Appellate Court.

32. In this connection, let me first deal with the decisions relied by Mr. C. Lalramzauva, learned senior counsel for the plaintiff/respondent No. 1 to the fact that concurrence finding of the Trial Court and the Appellate Court cannot be reopened in second appeal, which is as follows:-

(i) Deity Pattabhiramaswamy Vs. S. Hanymayya and Others, reported in AIR 1959 SC 57 (para 13).

(ii) Mst. Kharbuja Kuer Vs. Jangbahadur Rai and Others, reported in AIR 1963 SC 1203 (para 10).

(iii) Maniar Ismail Sab and Others Vs. Maniar Fakruddin and Others, reported in AIR 1989 SC 1509/(1989) 2 SCC 685.

(iv) Laxmidevamma and Others Vs. Ranganath and Others, reported in (2015) 4 SCC 264 (para 11 and 17).

(v) *Syeda Rahimunnisa Vs. Malan Bi (Dead) by Legal Representatives and Another*, reported in (2016) 10 SCC 315 (para 26, 30, 31, 32).

33. A careful consideration of the aforesaid decisions clearly indicates that in case of perversity, the Second Appellate Court is entitled to reverse the concurrent findings of fact by Trial Court and Appellate Court.

34. This principle has been well settled which can be seen from the decisions of the Supreme Court rendered in the cases of *Keshav & Others Vs. Gian Chand & Others (supra)* and *Kashmir Singh Vs. Harnam Singh & Another (supra)*. What transpires from the said decisions is that though the general rule is that High Court will not interfere with the concurrent findings of the Court below, the same is not an absolute rule. Some of the well recognized exceptions are:-

- (i) the Court's below have ignored material evidence or acted on no evidence;
- (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- (iii) the Courts have wrongly cast the burden of proof.

35. In the case of *Kashmir Singh Vs. Harnam Singh & Another (supra)*, the Apex Court has further clarified that "decision based on no evidence" not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole is not reasonably capable of supporting the finding.

36. In the case of *Keshav & Others Vs. Gian Chand & Others (supra)*, the

Apex Court emphasized that the Second Appellate Court can reverse the findings of the Trial Court and Appellate Court only if the findings of such Courts are perverse or some gross illegality has been committed in arriving at the findings. The Apex Court further held that the reversal can only be done by assessing the evidence and dealing with reasons employed by the two Courts below and recording specific reason for dissent and only in cases where the findings were found to be perverse, only then reversal of findings could have been made.

37. In view of the decisions rendered by both the parties, it is absolutely clear that the Second Appellate Court in a given case, if the concurrent findings of the Trial Court and the First Appellate Court are perverse, may reverse the findings.

38. The Apex Court in the case of *Damodar Lal Vs. Sohan Devi and Others*, reported in (2016) 3 SCC 78 held as under:-

“8. "Perversity" has been the subject-matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

9. In Krishnan v. Backiam², it has been held at para 11 that: (SCC pp. 192-93)

“11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in second appeal on the ground that the said findings are based on no evidence or are

perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect."

10. *In Gurvachan Kaur v. Salikram³, at para 10, this principle has been reiterated: (SCC pp. 532)*

"10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court⁴ was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent."

39. The Apex Court in the aforesaid case further held that the wrong finding should stem out of a complete misreading of evidence or it should be based only on conjectures and surmises. The Apex Court further laid down the test on perversity as to be that of the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the Court below is possible, there is no perversity. If not, the finding is perverse. Therefore, the question that arises for consideration is whether on the basis of the evidence, a reasonable man could have said that it is possible to hold that the plaintiff's father has purchased the suit land. The finding of both the Trial Court and the First Appellate Court as regards the purchase of the suit land by the plaintiff's father being based on the document Hriatpuina (Exhibit P-1), which cannot by any stress of imagination be said to be a document conveying title/ownership upon the plaintiff/respondent No. 1's father, the said findings of both the Courts below accordingly is absolutely erroneous, perverse and contrary to law. The plaintiff/respondent No. 1, having admitted in his evidence-in-chief that the said

document is a manufactured document and the First Appellate Court, having accepted the same has totally erred in law by taking the said document as proof of the purchase of the subject land. The Trial Court as well as the First Appellate Court erred in law in ignoring the settlement certificate issued under the law in favour of Sh. Suka, recognizing him to be the owner over the suit land and thereby accepting the said Exhibit P-1 which admittedly was a manufactured document at the time of filing the suit. PW-2 admits that she has not seen the other three witnesses signing the document. Infact, the said Exhibit P-1 did not have any date, and it appears from the evidences on record, that one of the signatories is dead, however there is no evidence as when he died. The fact that PW-2 has said that she has not seen him signing, the said Exhibit P-1, in the opinion of this Court, appears to be a doubtful document. Therefore, the finding of the First Appellate Court to the effect that Exhibit P-1 is not an illegal document, is wholly erroneous and unsustainable in law. As such, both the Courts below failed to consider the provisions of the 1956 Act and Rules applicable to the facts of the instant case. Hence, the conclusions drawn by the two Courts below were totally erroneous being contrary to the mandatory provisions of law and also being arrived at without evidence.

40. I have also accessed the evidences of the plaintiff/respondent No. 1's witnesses and as stated above, they have admitted that there is no document/pass in favour of the plaintiff/respondent No. 1's father in relation to the suit land. On the contrary, the settlement certificate available on record and admitted by the witnesses of both parties amply proves that Sh. Suka is the settlement holder of the suit land. The said settlement is not challenged by the plaintiff/respondent No. 1. There is no dispute that the Second Appellate Court generally does not reverse the concurrent findings of facts arrived by the two

Courts below, however, the said Rule is not absolute. In a given case where the concurrent findings of the two Courts below are based on no evidence, the Second Appellate Court, in my opinion, can reverse the findings of the Court below.

41. Admittedly, there is no evidence in law as regards the purchase of the suit land by the plaintiff/respondent No. 1's father and in absence of any admissible evidence whatsoever, the findings of the Trial Court and the First Appellate Court to the effect that the plaintiff/respondent No. 1's father had bought the suit land is totally perverse and erroneous in law and as such, the first substantial question of law is answered in favour of the appellant/defendant No. 1.

42. I shall now decide the substantial question of law No. 2 as regards limitation. The bar of suit by limitation being raised by the defendants and being adjudicated by the Trial Court and the First Appellate Court having held that the plaintiff/respondent No. 1 has no knowledge regarding mutation of LSC from the name of Sh. Suka to the name of the defendant/appellant No. 1 and only when the defendant No. 3 demolished the Assam Type House standing on the suit land, the plaintiff/respondent No. 1 came to know about the illegal sale of his land by the defendant Nos. 1 & 2 and accordingly filed the suit and in that view, the declaratory suit was within the period of limitation, that being the finding of facts of both Courts below, I am not inclined to interfere with the same and accordingly, the substantial question of law No. 2 is answered in favour of respondent No.1/plaintiff.

43. I shall now decide the substantial question of law No. 3 as whether title

and ownership of land could conveyed/declared by the Court below in favour of the plaintiff/respondent No. 1, in view of the fact that the father of the plaintiff/respondent No. 1 had expired in the year 1962 and the suit land was never mutated in the name of the plaintiff/respondent No. 1 before the land was recorded in the name of the appellant's grandfather Sh. Suka in 1965 with a House Pass No. 91/1965.

44. I have already held that there is no evidence of the fact that the father of the plaintiff/respondent No. 1 had purchased the suit land and to that extent the finding of the Trial Court and First Appellate Court is totally erroneous in law and perverse.

45. It is an admitted fact that Sh. Suka had obtained the House Pass No. 91/1965 in relation to the suit land. A perusal of the said House Pass No. 91/1965 indicates that Sh. Suka has purchased the suit land from Sh. Tebawnga, C.I.D and in the year 1975, the said House Pass No. 91/1965 was converted to LSC No. 201/1975. The said settlement has not been challenged by the plaintiff/respondent No. 1. That being the position, the decision of both the Courts below in declaring title and ownership of the suit land in favour of the plaintiff/respondent No. 1 is totally contrary to the provisions of the Mizo District (Land and Revenue) Act, 1956, which provides that the settlement holder shall have heritable and transferable right over the settled land. Admittedly, Sh. Suka, is the settlement holder of the suit land. Therefore, both the Courts below totally erred in law in declaring title/ownership in favour of the plaintiff/respondent No. 1 over the suit land, which as per law was settled with Sh. Suka. The courts below have committed grave miscarriage of justice and erred in law by acting on no evidence and by ignoring the mandatory provisions

of the 1956, Act & Rules made thereof, as applicable in the facts of the instant case. Accordingly, the substantial question no. 3 is answered in favour of the Appellant/Defendant No.1.

46. In the result, for the reasons stated above, this second appeal succeeds and as such, the Judgment and Order dated 29.04.2015 in RFA No. 37 of 2014 is set aside and quashed. Consequently, the Judgment and Decree dated 10.11.2014 in the Declaratory Suit No. 6 of 2004 stands reversed and the Declaratory Suit No. 6 of 2004 stands dismissed.

47. Accordingly, the appeal stands allowed.

48. Send back the LCR.

No costs.

JUDGE

Comparing Assistant