

GAHC030000082012



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

Case No. : RFA/39/2012

The Chairman, Presbyterian Church, Vaivakawn Pastor Bial, Phunchawng Veng
Phunchawng, Aizawl

VERSUS

Lianchungnunga and 7 Ors
Chaltlang, Dawrkawn, Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Ms Dinari T Azyu for R1-R5

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

JUDGEMENT

Date : 22-02-2023

Heard Mr. C. Lalramzauva, learned senior counsel for the appellant and Mrs. Dinari T. Azyu, learned counsel for the respondent Nos. 1 to 5.

2. This appeal under Section 17 (2)(b) of the Mizoram Civil Courts Act, 2005 is preferred against the Judgment & Order and Decree, dated 29.06.2012 passed by the learned Senior Civil Judge-I, Aizawl District at Aizawl in Civil Suit No. 66/2010.

3. The plaintiffs/respondents No. 1 to 5 herein instituted the aforesaid Civil Suit No. 66/2010 for declaring them as owners of the lands bearing LSCs No. AZL. 2523 of 1987 to AZL. 2527 of 1987, LSCs No. AZL. 2534 of 1987 to AZL. 2536 of 1987, LSCs No. AZL. 2530 of 1987 to AZL. 2537 of 1987, LSC No. AZL. 2531 of 1987, LSCs No. AZL. 2532 of 1987, AZL. 2539 of 1987, LSCs No. AZL. 2533 of 1987 and LSC No. AZL. 2538 of 1987 and for declaring that the plaintiffs/respondents No. 1 to 5 are entitled to the rent at the rate to be assessed by the collector for occupation of their lands by the defendant No. 4/appellant herein from July 2000 till vacant possession of the land is given back to the plaintiffs/respondents No. 1 to 5 and to declare the land lease bearing number NISC 72/1995 issued to the defendant No. 4/appellant as null and void. Therefore, it has been prayed for directing the defendants to give vacant possession of the suit lands covered by the said LSCs to them.

4. The defendants (appellant and respondent Nos. 6, 7 and 8 herein) contested the suit by filing their written statement denying the case of the plaintiffs/respondents.

5. Upon hearing the parties and appreciation of the evidence, oral and documentary on record, the learned Trial Court delivered the impugned Judgment & Order and Decree, as prayed, in favour of the plaintiffs/respondents No. 1 to 5 herein.

6. The learned senior counsel appearing for the defendant No. 4/appellant, submits that while appreciating the evidence, it has come to light that a Survey Commission was issued for local investigation and after such investigation, a report was submitted to the learned Trial Court, but despite no copy thereof was

furnished to the defendant/appellant herein, the report has been taken note of while deciding the crucial Issue No. 4 on whether the landed property covered by Land Lease No. MISC No. 72/1995 overlapped the landed properties of the plaintiffs and if so, which landed document should be prevailed/precedent. In issue No. 4 of the impugned Judgment & Order, it is noted that as revealed from the report of Survey Commission submitted on 07.06.2012, the landed property covered by Land Lease No. MISC No. 72/1995 has overlapped the land of the plaintiffs.

7. At this stage, Mr. C. Lalramzauva, learned senior counsel appearing for the defendant No. 4/appellant submits that the defendant No. 4/appellant was not served with any copy of the report and as such, he has no knowledge about it. *Per contra*, Mrs. Dinari T. Azyu, learned counsel appearing for the respondents, submits that the records show that the survey was conducted in presence of both the parties and on the other hand, this plea was neither raised in their written statement nor in the grounds of appeal and as such, no question of lack of knowledge about the Survey Commission Report can arise.

8. Upon hearing the learned counsel of both sides and perusal of the records, this Court finds substance in the submission that no opportunity was granted to the defendant No. 4/appellant herein to file any objection against the aforesaid Survey Commission report and no hearing on the report had ever taken place. The backdrop of the facts and circumstances of the instant suit shows that the Survey Commission report might have a significant bearing on the merit of the suit.

9. In view of the above, this Court finds it expedient to set aside the

impugned Judgment & Order and Decree, dated 29.06.2012 and it is accordingly ordered to remand back the matter to the learned Trial Court with direction to give an opportunity for filing objection against the aforesaid Survey Commission report, if any and then to give opportunity of hearing to both sides on it. Thereafter, the learned Trial Court shall deliver a fresh Judgment & Order.

10. It is further provided that the learned Trial Court shall make an endeavor to complete the entire exercise as directed above within a period of 3 (three) months. Both parties shall appear before the learned Trial Court on 13.03.2023 to receive further instructions.

With the above direction, the appeal stands disposed of.

Send back the LCR.

JUDGE

Comparing Assistant