

GAHC030000112017



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

Case No. : RFA/23/2017

Sangzuali
South Hlimen, High School Veng, Aizawl

VERSUS

State of Mizoram and 25 Ors.
Aizawl

Advocate for the Petitioner : Ms Dinary T Azyu

Advocate for the Respondent : Mrs. Linda L Fambawl (GA, Mizoram) for R1-R4

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 11-10-2023

Heard Mrs. Dinari T. Azyu, learned counsel for the appellant along with Ms. Lalawmpuii Fanai, learned counsel for the private respondent Nos. 5 to 26.

[2.] Mrs. Dinari T. Azyu, learned counsel for the appellant submits that the RFA was filed against the judgment and order of the learned Senior Civil Judge-III, Aizawl District, Aizawl in Civil Suit No. 15/2012, wherein the learned Lower Court had declared that the appellant cannot occupy the land which is beyond the land pass and

the land pass only described an area of 2 bighas. As such, the plaintiff is not entitled to his relief claim.

[3.] The brief facts of the case is that the appellant was the owner of Huan Pass No. 216 of 1957, wherein though his Huan Pass did not mention the area or the boundary, the area and boundary was verified by an Order dated 02.03.1977, issued by the Director, Land Revenue & Settlement Department, wherein the boundary of the appellant was described as follows:-

“Mr. Zaluta’s land is bordered on all sides by private land. On the west, it is bordered by Mrs. Kaichhingi’s garden. On the east, it is bordered by Mr. Lala’s garden. On the south and north, it is bordered by the land of Mrs. Darlalpuui and Mr. J. Lalrinliana.”

[4.] However, in a subsequent order passed by the Director, Land, Revenue & Settlement, Mizoram dated 4th October, 1996, it was decided that the Garden Pass No. 216 of 1957 belonging to the petitioner/plaintiff will be reduced to 2 bighas, while the area reserved would be utilized for public as well as individuals who do not own any pass. Thereafter, House Site Plan was made by the technical session as per the decision of the then Director, Land, Revenue & Settlement. The appellant/plaintiff aggrieved by this Order dated 4th October, 1996 had approached the learned Senior Civil Judge-III, claiming the full 12.43 bighas which was as per the boundary description of his Garden Pass No. 216 of 1957. The appellant/plaintiff had also prayed that the respondents should not encroach upon the 2 bighas of landed area within his

Garden Pass No. 216 of 1957. The learned Lower Court then passed the impugned Judgment & Order dated 10.11.2017, wherein the appellant/plaintiff was declared the owner of only an area of 2 bighas as per the Garden Pass No. 216 of 1957. Aggrieved by this, the appellant/plaintiff has approach this Court by way of Regular First Appeal.

[5.] Mrs. Dinari T. Azyu, learned counsel for the appellant/plaintiff submits that they no-longer want to press for ownership of the 12.43 bighas, in accordance with the boundary description of the Garden Pass No. 216 of 1957, since this matter has been kept pending for a long time and the area is now occupied by private individuals, who are his neighbours, therefore, he is no longer interested in continuing the claim of the area of his Garden Pass No. 216 of 1957 in accordance with the boundary description.

[6.] The learned counsel for the appellant/plaintiff however submits that there is encroachment within the 2 bighas of his Garden Pass NO. 216 of 1957. Though the learned Senior Civil Judge-III in Civil Suit No. 15/2012 had declared that the area of his Garden Pass is 2 bighas, the State respondents have also issued passes within the area of the 2 bighas. The learned counsel for the appellant submits that the learned Trial Court had erred in not framing the following issues (i) *Whether the Melthum House Site Plan so far as the House Sites approved over the suit land is concerned vide Letter under Memo No.K.19011/1/97-REV dated 06.06.07 (Annexure – XXI) encroached upon the 2 bighas of the Huan Pass No. 216 of 1957 belonging to the*

plaintiff (ii) Whether the approval of House Site (Plot No. 2) allotted to the defendant No. 26 vide letter under Memo No.K.19011/1/97-REV dated 16.03.05 (Annexure – XVII) encroached upon the 2 bighas of the Huan Pass No. 216 of 1957 belonging to the plaintiff. The learned counsel for the appellant submits that the appellant/plaintiff had prayed for the above reliefs before the Trial Court, however, the learned Lower Court had not touched these points and no issues were framed with regard to the above points.

[7.] Ms. Lalawmpuii Fanai, learned counsel for the private respondent Nos. 5 to 26, in all fairness submits that they do not dispute upon the fact that the appellant/plaintiff is the rightful owner of an area of 2 bighas within his Garden Pass No. 216 of 1957. She also submits that the learned Lower Court had not framed the issues whether there was encroachment within the landed area of the appellant/plaintiff within the 2 bighas and admits that it is not clear whether there is actually any encroachment within the landed properties of the appellant/plaintiff.

[8.] In view of the submissions made by the learned counsels for both the parties, this Court finds it fit to remand this matter back to the learned Court of Senior Civil Judge-III, Aizawl, for framing the following issues (i) *Whether the Melthum House Site Plan so far as the House Sites approved over the suit land is concerned vide Letter under Memo No.K.19011/1/97-REV dated 06.06.07 (Annexure – XXI) encroached upon the 2 bighas of the Huan Pass No. 216 of 1957 belonging to the*

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[9.] Accordingly, with the above direction, RFA No. 23/2017 stands disposed. The learned Senior Civil Judge shall take necessary steps by issuing notice to both the parties.

JUDGE

Comparing Assistant