

GAHC030000252018



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

Case No. : RFA/19/2018

Zaithanmawii
Republic Hmar Veng, Aizawl

VERSUS

C Zakima and Zaithanmawia (Minor) r/b C Zatluangi and 6 Ors
Republic Hmar Veng, Aizawl
2: The State of Mizoram through the Chief Secretary to
the Govt. of Mizoram
Aizawl

3: The Secretary to the Govt. of Mizoram
Revenue Department
Aizawl
Mizoram
Aizawl
Mizoram

4: The Director
Land Revenue and Settlement
Mizoram
Aizawl
Aizawl
Mizoram

5: The Deputy Director
Land Revenue and Settlement Department
Aizawl Mizoram
Aizawl
Mizora

Advocate for the Petitioner : Mr L H Lianhrima, Sr. Adv.

Advocate for the Respondent : Mr F Lalenglina for R1

::: B E F O R E:::

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 21.11.2023 & 29.11.2023

Date of Judgment : 05.12.2023

JUDGMENT & ORDER (CAV)

Heard Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the appellant. Also heard Mr. F. Lalenglina, learned counsel for the respondent No. 1 and Mr. P.C. Lalthangmawia, learned Govt. Advocate appearing for the official respondents.

[2.] This is a Regular First Appeal filed by the appellant directed against the Judgment & Order dated 20.08.2018 passed by the learned Senior Civil Judge, Aizawl in Title Suit No. 28/2003. Be it stated herein that the appellant had earlier approached this Court through RFA No. 18/2012 against the Judgment & Order dated 28.10.2010 passed by the same Court. This Court upon hearing the parties vide Judgment & Order dated 03.10.2013 after setting aside the impugned Judgment & Order, remanded the matter back to the learned Trial Court to enable the appellant, arrayed as Defendant No. 8 in the Title Suit to adduce evidence. On remand, the learned Trial Court vide the impugned Judgment & Order dated 20.08.2018 reiterated its earlier decision. Aggrieved, the Defendant No. 8 as appellant is again before this Court.

[3.] Brief facts of the case as projected by the plaintiff/respondent No. 1 (herein

after referred to as the plaintiff) is that his father Suaka had a plot of land covered by LSC No. 379 of 1975 situated at Republic Veng, Aizawl. During his lifetime, he allowed the plaintiff to construct a building within the said plot and the plaintiff accordingly constructed a building. Since the plaintiff was permanently staying at Samtlang, he allowed his son C. Zathanga (husband of the present appellant) to stay in a portion of the building that he constructed. As for the other portion, the same was rented out and the plaintiff was collecting house rent.

[4.] The plaintiff's father Suaka expired on 24.10.1991 and during his lifetime, the original LSC was kept in the safe custody of the daughter of the plaintiff C. Zatluangi for the purpose of payment of tax etc. According to the plaintiff, his son C. Zathanga in the year 1995 requested him to handover the original LSC to him so as to enable him to pay taxes and the plaintiff in good faith asked his daughter C. Zatluangi to hand over the same to C. Zathanga. C. Zathanga married the instant appellant on 14.09.1995 as per Mizo custom and the bride's price was paid by the plaintiff on the same day.

[5.] After the death of the plaintiff's father Suaka, the plaintiff due to sentimental reason did not want to transfer the LSC in his name but eventually, he applied for Heirship Certificate for the said land in the year 1996. The Subordinate District Council Court, Aizawl accordingly issued the Heirship Certificate as applied by him vide Memo No. SDCC/HC-2/96/13/3891-3 dated 31.07.1996. Thereafter, the plaintiff asked C. Zathanga to hand over the original LSC for transferring the same to his name.

However, to his surprise, he came to learn that the LSC was already transferred in the name of C. Zathanga soon after he married the instant appellant. The plaintiff then filed a complaint before the Revenue authorities and requested the transfer of the LSC to his name by virtue of the Heirship Certificate obtained by him. Although the complaint was lodged in the year 1996 but the same was not disposed for a long time and in the meantime, C. Zathanga expired on 18.01.2003. After his death, the Director, Land Revenue & Settlement finalized the complaint by passing an order dated 22.05.2003 which was to the effect that since the plaintiff on 24.09.1993 had not objected to the transfer of the LSC from Suaka to C. Zathanga, the transfer of the LSC in the name of C. Zathanga as per Office letter dated 19.10.1995 will stand confirmed.

[6.] The plaintiff therefore filed the Title Suit with the following prayers:-

*“a) Let a decree be passed declaring that the orders issued by the defendants vide **Office letter No.S.11016/4/95-DTE(REV) dated 19.10.95 and Memo No. C.13016/E-20/02-DISP(REV): Dt, Aizawl, the 22nd May /03 are illegal and null and void.***

b) Let a decree be passed declaring that the plaintiff derived his right over the land covered under LSC No. 379 of 1975 by virtue of the Heirship Certificate issued vide Memo No. SDCC/HC- 2/96/13/3891-3 Dated Aizawl, the 31st July '96. Let a decree be passed that the plaintiff has right, title, interest over the land covered under LSC no. 379 of 1975.

c) Let a decree be passed declaring that the transfer of the LSC No.379 of 1975 from the name of the plaintiff's father Late Suaka to the name of the plaintiff's son C.Zathanga (L) without heirship certificate or any authority is illegal and void. Let a direction be issued to the defendants nos. 1 to 7 to put the said land and building

covered under LSC No. 379 of 1975 in the plaintiff's name.

d) Let a decree be passed declaring that the transfer of the said LSC No.379 of 1975 from the name of the deceased Suaka to the name of the deceased C.Zathanga was done by the defendants 1 to 7 without following the provisions of Revenue Acts, rules and procedures in force for transfer of the land from one person to another.

e) Let a decree be passed declaring that the plaintiff is entitled to get the rent and other profits arising out of the said building located within the land covered under LSC No.379 of 1975 from the defendant no.8 as well as other tenants.

f) By way of mandatory/permanent injunction the defendant no.8 be restrained from collecting any rent from the portion of the building situated within the said LSC No.379 of 1975 which is occupied by the tenants.

g) By way of mandatory and permanent injunction, the defendant no.8 be restrained from doing any act detrimental to the interest of the plaintiff within the land and building covered under LSC No.379 of 1975.

h) Let a decree be passed directing the defendant no. 8 to hand over possession of the land and building covered under LSC No. 379 of 1975.

i) Let any other relief to which the plaintiffs are entitled according to Law, Justice, Equity and Good Conscience be decreed in favour of the plaintiff."

[7.] Against the plaint, both the official defendants and also the instant appellant filed their written statement denying the claim made by the plaintiff. The learned Trial Court framed the following issues:-

- (i) Whether the Suit is maintainable or not?
- (ii) Whether the plaintiff has locus standi to file the Suit or not?
- (iii) Whether LSC No. 379 of 1975 was legally transferred to C. Zathanga h/o of Defendant No. 8 or not?
- (iv) Whether the plaintiff is entitled to the relief claimed? If so, to what extent?

[8.] In order to establish their case, the plaintiff examined three (3) witnesses including himself. However, before he was cross-examined, he expired on 11.09.2005. The instant appellant as Defendant No. 8 examined two (2) defense witnesses i.e., Zaithanmawii and H. Lalsangliana. As for the official defendants, their lone witness i.e., Martini Lalhlupuii was neither examined nor cross-examined but she exhibited seven (7) documents relied upon by them as was mentioned in their written statements filed on 08.06.2004. The learned Trial Court after hearing the parties decided the Title Suit in favor of the plaintiff vide its Judgment & Order dated 28.10.2010. However, as already stated, the appellant being aggrieved filed RFA No. 18/2012 before this Court and vide Judgment & Order dated 03.10.2013, the matter was remanded back to the learned Trial Court for reconsideration by allowing the instant appellant to adduce her evidence. Consequently, on remand, the learned Trial Court vide Judgment & Order dated 20.08.2018 once again decided the Suit in favor of the plaintiff. Aggrieved, the appellant who was the Defendant No. 8 in the Title Suit is before this Court.

[9.] Mr. L.H. Lianhrima, learned Senior Counsel submits that amongst the four (4)

issues framed by the learned Trial Court, issue No. 3 is the main issue i.e., whether the LSC was legally transferred to the husband of the present appellant C. Zathanga. The learned Senior Counsel submits that it is evident from the Certificate given by C. Ralkapchhunga on 24.09.1995 (Exhibit G-2) that he had no objection in the transfer of LSC No. 379 of 1975 in the name of C. Zathanga. He submits that C. Zathanga along with Lalsangliana (DW-2) had gone to Samtlang to meet C. Ralkapchhunga on the latter's motorcycle and C. Ralkapchhunga gave no objection for changing the LSC in the name of C. Zathanga in writing. The next day, C. Ralkapchhunga also came down to Aizawl and the no objection given by him was counter signed by R. Challiana, the then Village Council President of Republic Veng. Therefore, it was on the strength of such documents and the statements of the said VCP and Ralkapchhunga that the impugned order dated 22.05.2003 was passed. Therefore, the Heirship Certificate belatedly acquired by Ralkapchhunga in the year 1996 after the LSC was mutated in the name of C. Zathanga has no bearing to the case and C. Ralkapchhunga cannot claim transfer of LSC to his name by virtue of the said Heirship Certificate. Therefore, the impugned Judgment & Order of the learned Trial Court and the Decree drawn should be set aside and quashed. In support of his submission, the learned Senior Counsel relies upon the case of *Rathnavathi & Anr. -Vs- Kavita Ganashamdas (2015) 5 SCC 223* , *Dayamthi Bai (Smt) -Vs- K.M. Shaffi (2004) 7 SCC 107* and *Bharat Petroleum Corpn. Ltd & Anr -Vs- N.R. Vairamani & Anr. (2004) 8 SCC 579*.

[10.] Mr. F. Lalenglina, learned counsel for the respondent No. 1 on the other

hand submits that no Will or Gift Deed was made by Suaka in favor of C. Ralkapchhunga and therefore, in the absence of the same, no claim for the property in question can be made by C. Zathanga as long as C. Ralkapchhunga s/o Suaka was alive. He submits that the alleged consent taken from C. Ralkapchhunga for conversion of the LSC from the name of Suaka to the name of C. Zathanga is irrelevant in view of the fact that C. Ralkapchhunga is not the title holder of the land in question. The registered owner of the land was Suaka and therefore, C. Ralkapchhunga did not have any right to give away the land or issue a no objection certificate for transfer of the land into the name of C. Zathanga. On the other hand, C. Ralkapchhunga obtained Heirship Certificate for the said property in the year 1996 after the death of his father Suaka on 24.10.1991 and before he could transfer the land in his name, C. Zathanga was found to have already transferred the land in his name in the year 1995 purportedly on the strength of the no objection given by C. Ralkapchhunga. The learned counsel submits that the original LSC was kept by C. Zatluangi d/o C. Ralkapchhunga for the purpose of paying taxes. In the year 1995, C. Zathanga requested the plaintiff to hand over the original LSC to him so as to pay Revenue Tax and in good faith, the same was handed over to him. However, C. Zathanga instead got the LSC mutated in his name. He therefore submits that the learned Trial Court upon considering the manner in which the LSC was transferred in the name of C. Zathanga rightly decreed the Suit in favor of the plaintiff. He submits that unless there is an instrument recognized by law for changing the ownership of

the LSC, the LSC cannot be transferred in the manner it was done and therefore, the learned Trial Court was right in relying upon the case of *Suraj Bhan & Ors. -Vs- Financial Commissioner & Ors. (2007) 6 SCC 186* to contend that entries made in the Revenue records or jamabandi is only for fiscal purpose i.e., payment of land revenue and no ownership is conferred on the basis of such entries. That title to the property concerned can only be decided by a competent Civil Court. The learned counsel also submits that the well settled principle of law is that if a thing is to be done in a particular manner, it must be done in that manner or not at all. In this connection, he relies upon the case of *Parmar Himatsing Jugatsing -Vs- Patel Harmanbhai Narsibhai* reported in AIR 1974 SC 951. He thus submits that the impugned Judgment & Order passed by the learned Trial Court should not be disturbed and instead upheld.

[11.] Mr. P.C. Lalthangmawia, learned Govt. Advocate appearing for the official respondents adopts the arguments made by Mr. F. Lalengliana and submits that the complaint submitted by C. Ralkapchhunga before the Revenue Department was examined by summoning the complainant and the opposite parties. However, the complainant himself expired before he could be examined and his statement recorded. The complainant C. Ralkapchhunga otherwise appeared before the Revenue authorities and he acknowledged the fact of signing the Certificate dated 24.09.1995 wherein, he stated that he had no objection if the LSC in question was transferred in the name of his son C. Zathanga. Acting upon the consent given by C. Ralkapchhunga at the relevant time, the Revenue authorities found it just and expedient to uphold the

transfer made in favor of C. Zathanga in respect of the land in question. He therefore submits that the Judgment & Order impugned by the appellant may not be interfered with by this Court and instead upheld.

[12.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As submitted by the learned Senior Counsel for the appellant, the issue which has a decisive bearing upon the claim of the rival parties is Issue No. 3 formulated by the learned Trial Court. According to the plaintiff and the official defendants/respondents, C. Ralkapchhunga had signed a no objection certificate on 24.09.1995 on being approached in his place of stay at Samtlang by C. Zathanga and Lalsangliana. The Certificate said to have been signed by him is dated 24.09.1995 and the same is exhibited as Exhibit G-2 before the Trial Court. The same is also counter signed by R. Challiana, VCP of Republic Veng on 25.09.1995. However, Lalsangliana who was examined as DW-2 during the trial in his examination-in-chief by way of an affidavit dated 18.11.2013 stated that it was in the month of April, 1995 that he and his friend C. Zathanga had gone to Samtlang in his motorcycle. In his cross-examination, he stated that C. Zathanga never told him that Suaka had left the land and building covered by the LSC in his favor. He also stated that in the year 1995, they did not take any transfer application form prescribed by the Revenue Department to Suaka for transfer of the LSC and all he remember was that C. Zathanga had taken a small chit. He further submits that he does not know as to who put the signature of Suaka in the transfer

application form after the death of Suaka and that as far as he knew, Zathanga did not have any Heirship Certificate in respect of the LSC in question. He also stated that before obtaining Heirship Certificate, C. Ralkapchhunga did not have any authority over the land covered by the LSC in question.

[13.] Zaithanmawii w/o C. Zathanga was examined as DW-1. In her examination-in-chief, she stated that being the only grandson of Suaka, her husband C. Zathanga was pampered by his grandfather to a great extent and he also gifted the LSC in question to her husband while he was alive. Her husband did not mutated the LSC in his name as he did not find the need to do so. She further stated that Suaka also gifted a land located in the same area to the sister of her husband and that she continues to occupy the land without any problem. After Suaka died, her husband mutated the LSC in his name after obtaining permission from C. Ralkapchhunga, his father. In her cross-examination, she stated that it was a fact that Suaka did not execute any Will in respect of the LSC in question in favor of her late husband C. Zathanga. That it was also a fact that C. Zathanga did not obtain any Heirship Certificate in respect of the said LSC. Also, Suaka did not execute any Gift Deed in respect of the property in question during his lifetime.

[14.] The official defendants/respondents besides filing their written statements did not examine any witness of their own except that one Smt. Martini Lalhlupuii, Under Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department on 14.08.2014 exhibited seven (7) documents as G-1 to G-7.

[15.] From the above, what can be seen is that the LSC in question was transferred from the name of Suaka to C. Zathanga on the strength of the no objection given by C. Ralkapchhunga. According to H. Lalsangliana (DW-2), he and C. Zathanga had gone to Samtlang in the month of April, 1995 in his bike and they obtained no objection for change of LSC from the name of Suaka to C. Zathanga duly signed by C. Ralkapchhunga. However, the documents said to have been signed by C. Ralkapchhunga, which is exhibited as Exhibit G-2 is dated 24.09.1995 i.e., the date given by the signatory C. Ralkapchhunga. Further, the said Certificate appears to have been counter signed by the VCP of Republic Veng, Sh. Challiana on 25.09.1995. Therefore, there is some discrepancy on the date on which it was signed. Both C. Ralkapchhunga and R. Challiana expired before they could be summoned and examined/cross-examined as witnesses before the learned Trial Court. The plaintiff and the official defendants have heavily relied upon the documents exhibited by the Under Secretary of Revenue Department. It is a settled law that documents are to be proved in the manner prescribed by law. Mere production of documents and marking them as exhibits before the Trial Court is not sufficient. The authority before whom such documents have been written have also not been examined as witness before the Trial Court. Moreover, DW-2 Lalsangliana in his cross-examination admitted the fact that C. Ralkapchhunga before obtaining Heirship Certificate did not have any authority over the land covered by the LSC in question. Such being the case, there appears to be force in the contention of the plaintiff that issuance of no objection

certificate by C. Ralkapchhunga without having a Heirship Certificate in his favor for the property in question is irrelevant. Furthermore, in absence of the examination of the departmental witness, the exhibits by itself cannot be the basis for upholding the action taken by the Department. As such, the findings arrived at by the learned Trial Court is found to be erroneous.

[16.] As for the authorities relied upon, there can be no arguments about the law laid down by the Apex Court in *Rathnavathi & Anr.* (supra) that the High Court being the last Court of appeal on facts /law while hearing first appeal under Section 96, it is well within its powers to appreciate the evidence and came to its own conclusion independent to that of the trial court's decision. However, in the present case, under the given facts and circumstances, this Court finds it a fit case for remand. In the case of *Dayamthi Bai (Smt)* (supra), the Apex Court in the given facts of that case did not find merit in the Civil Appeal in view of the fact that the mode of proof was found to be irregular and insufficient. According to the Apex Court, objections regarding marking of documents as exhibit is to be taken before they are marked as such. In the present case, it is seen that the department witness had neither deposed before the Trial Court nor was she cross-examined. Therefore, the question of acceptance or non-acceptance of the exhibited documents does not arise and will have to be left open. In view of the above conclusion reached, reference to the other authorities relied upon is found to be unnecessary.

[17.] In the result, the impugned Judgment & Order is hereby set aside and the

matter is remanded back for reconsideration from the stage of examination of witness by the official defendants. The same shall be done as expeditiously as possible and independent of any observation that may have been made on merit by this Court.

[18.] With the above observations and directions, the appeal stands disposed of. Office to send back the original LCR immediately.

JUDGE

Comparing Assistant