

GAHC030000662021



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

Case No. : RFA/3/2021

Lalthanpara and Anr.
Mel-8, Falkawn, Aizawl 2: P. Sangzual

VERSUS

Rochhingpuia
Mel-8, Aizawl, Mizoram

Advocate for the Petitioner : Mr. Johny L Tochwawng

Advocate for the Respondent : Ms. Rosalynn L Hmar

Linked Case : I.A.(Civil)/23/2021

Lalthanpara and Anr.
Mel-8
Falkawn
Aizawl

2: P. Sangzuala
Luangmual Vengchhak
Aizawl
VERSUS

Rochhingpuia
Luangmual Vengchhak
Aizawl

Advocate for the Petitioner : Mr. Johny L Tochwawng

Advocate for the Respondent : Ms. Rosalynn L Hmar

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT

Date : 15-03-2023

Heard Mr. Johny L. Tochhawng, learned counsel for the appellant along with Ms. Rosalynn L. Hmar, learned counsel for the opposite party.

2. A brief back ground of the appellants case is that the appellant No. 1 is the owner of the landed properties having a Plot No.5-6 (House Site) located at Falkawn village. Sometime in the year 2011 the appellant No.1 sold his landed properties to Mr. R. Sakhawliana and F. Lalromawia, wherein the Plot No.5-6 (House Site) was converted into LSC No.105205/01/633 of 2011 and LSC No.105204/01/634 of 2011 respectively. The 2 (two) LSCs were purchased by Appellant No.2 from Mr. R. Sakhawliana and Mr. F. Lalromawia without having any knowledge that the said lands were previously determined and adjudicated in the Court of learned Additional Sub-District Council Court.

3. The appellants came to know that there was a Title Suit No.50/2009 only when a copy of summons in respect of Execution Case No.34/2013 was served and received on 21.08.2019. The appellant No.1 is the initial owner of the land and the appellant No.2 is now represented by his wife both of them being un-aware of the Title Suit No.50/2009 which was adjudicated against them. being highly aggrieved and this satisfied with the said Judgment & Order which is dated 24.05.2021 passed by the

Addl. Subordinate District Council Court, Aizawl in Title Suit No.50/2009 and subsequently the Execution Case No.34/2013, the appellants have filed the instant appeal.

4. Mr. Johny L. Tochwawng, learned counsel for the appellant submits that the ex-parte Judgment & Order dated 24.05.2010 is liable to be set aside since the appellant No.1 did not received any summon which was said to have been issued by the learned Trial Court. As such, he had no knowledge about any dispute of this land. He submits that the appellant was not given any opportunity to contest the claim of the respondent in Title Suit No.50/2009 which is a clear violation of the principles of natural justice. That the appellant No.1 is the rightful owner of the land properties, having Plot No.5-6 (House Site) located at Falkawn Village which was legally issued to him by the Village Council, Falkawn on 16.10.1996. The appellant No.1 being the rightful owner of the said land had sold his plot of land No. 5 to R. Sakhawliana and the plot of land No.6 to F. Lalromawia. Subsequently, R. Sakhawliana and F. Lalromawia converted the plot of land to LSC No.105205/01/633 of 2011 and LSC No.105204/01/634 of 2011 respectively, which was then later purchased by appellant No.2 represented by his wife Smt. Lalthakimi.

5. The learned counsel for the appellants submits that the proceedings of the Execution Cases No.34/2013 is also liable to be set aside since the appellants were not given a chance to be heard in Title Suit No.50/2009. The learned counsel has thus prayed for setting and quashing the Order dated 24.05.2010 in Title Suit No.50/2009

and the Execution Case No.34/2013 and for remanding the case back to the Trial court by giving a chance to the appellants to file a Written Statement and contest the suit in Title Suit No.50/2009.

6. Ms. Rosalynn L. Hmar, learned counsel for the respondent on the other hand submits that since the appellant No.1 had sold the suit land to the appellant Nos.2 and 3 and that the suit land now belongs to a person name Lalthakimi, the appellant No.1 can no longer have the *locus standi* to file the instant appeal.

7. Having heard the submissions made by both the parties and on careful perusal of the LCR in Title Suit No.50/2009, it is seen that this Court is only to consider the point whether the learned lower court in Title Suit No.50/2009 had rightly passed the ex-parte decree against the appellants. It is seen on perusal of the LCR that the Trial court while issuing summons to the appellants/defendants had not taken steps to verify whether the summons were actually served and received by the present appellant. Order 5 Rule 16 of the Civil Procedure Code provides that :

“16. Person served to sign acknowledgment.—Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.”

8. In the instant case there was also no steps taken for substituted service under Order 5 Rule 20 nor was notice in the local newspaper published to ensure that notice

was served to the appellants. As such, this Court finds that the learned Lower Court had erred in passing in its Order dated 24.05.2010 in Title Suit No.50/2009 without giving an opportunity to the appellants/respondents of being heard and had passed its judgment declaring the respondents/plaintiffs as the absolute owner of the plot of land No.D-0-1" which is change to "F-6-7" and directed the appellant/defendant to hand over all documents in respect of the aforesaid plot of land.

9. In view of the above, the Judgment & Order dated 24.05.2010 is set aside along with the Order 24.05.2010 in Execution Case No.34/2013 and the matter is remanded back to the Senior Civil Judge for *denovo* trial by giving the appellants the opportunity to submit the written statement and adduce their evidence accordingly.

JUDGE

Comparing Assistant