

GAHC030005262019



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

Case No. : RSA/8/2019

Lalmuankimi
Ramthar Veng, Lunglei District
Mizoram

VERSUS

State of Mizoram r/b the Chief Secretary to the Govt. of Mizoram and 4 Others
New Capital Complex
Aizawl, Mizoram

2:The Secretary
Land Revenue and Settlement
Govt. of Mizoram

3:The Director
Land Revenue and Settlement
Govt. of Mizoram

4:The ASO-I
Land Revenue and Settlement

5:F. Lianbuang

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mr C Zoramchhana (Addl.AG/GA, Mizoram) for R1-R4

B E F O R E
THE HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing :18.05.2023 & 22.05.2023

Date of Judgment : 14.12.2023

J U D G M E N T & O R D E R (CAV)

Heard Mr. A R Malhotra, learned counsel for the appellant/plaintiff, Mrs. Linda L Fambawl, learned Government Advocate for the State respondent Nos. 1 to 4/defendant Nos.1 to 4 and Mr. L H Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli for the respondent No. 5/defendant No.5.

[2.] This is a second appeal filed by the appellant under Section 17(2)(b) of the Mizoram Civil Court's Act, 2005 (Civil Court's Act) r/w Section 100 of the Code of Civil Procedure, 1908 (CPC) against the Order dated 13.03.2019 passed by the Court of District Judge, Lunglei (First Appellate Court) whereby, the First Appellate Court set aside the Judgment & Order dated 12.08.2014 of the learned Trial Court and the decree drawn while declaring the present respondent No. 5 as the absolute and rightful owner of the suit land after coming to the conclusion that the Civil Suit was barred by limitation.

[3.] This Court vide Order dated 08.10.2020 while issuing notice to the respondents formulated the following substantial question of law:-

“Whether Title Suit No. 12/2010 was barred by limitation?”

[4.] Brief facts of the case essential for disposal of the instant appeal is that the father of the appellant Sh. Zahunga was allotted a plot of land at Ramthar near AOC, Lunglei by the District Council under the Periodic (Garden) Pass No.

718/1977 measuring about 8 (eight) bighas. In the said plot of land, both the family of Sh. Zahunga and his late brother Sh. Bahadur Chhetri jointly resided. Apart from the residential building of the appellant, the Automobile Workshop in the name and style of 'Lily Hyundai Workshop' owned by the son-in-law of the respondent No. 5 was operated from the land in question on payment of rental charge.

[5.] Sh. Zahunga expired on 22.02.1998 leaving behind the appellant as the only surviving member of the family since his wife Sangkungi expired before him on 17.01.1986 and their 3 (three) sons and one daughter had also expired a long time back. According to the appellant, she paid all the house taxes due from the said property which was in the name of her late father till the year, 2007. However, when she tried to pay the taxes in the year 2007, she was informed by the Office of the respondent No. 4 that in the official records, there was no land or building in the name of Sh. Zahunga and therefore, she was asked to discontinue paying the taxes. On making further enquiry, the appellant came to learn that the Periodic (Garden) Pass No. 718/1977 covering an area of 8 bighas was already transferred in the name of Sh. F Lalchhawna, h/o respondent No. 5 way back in the year 1990 without the knowledge and consent of Sh. Zahunga. According to the appellant, Sh. Lalchhawna illegally transferred the ownership of the land in his name and that her father Sh. Zahunga never sold his land nor did he receive Rs.3 lakhs from Sh. F Lalchhawna. Further, Sh. Zahunga being illiterate and uneducated, he neither could write his name nor gave his signature in the application form for transfer of ownership of land as was claimed by the respondents. It is therefore the contention of the appellant that without the knowledge and consent of her father, the land Pass was illegally converted into Garden LSC No. 4/G of 1990 by

Sh. F Lalchhawna, h/o the respondent No.5.

[6.] The appellant came to learn that the Garden LSC No. 4/G of 1990 was again divided and segregated into Garden LSC No. 209001/10/G/2 of 2003 covering an area of 2.90 bighas in the name of respondent No. 5. Being aggrieved with the action of the husband of the respondent No. 5, the appellant approached the respondent No. 5 on several occasions for settlement of their differences but instead, she was threatened to be evicted from her land. The son-in-law of the respondent No. 5 also stopped paying rent for running the Automobile Workshop from the suit land.

[7.] The appellant also came to learn that the land Pass which was in the name of her late father Sh. Zahunga was induced to be handed over to Sh. F. Lalchhawna by her relatives on the pretext of obtaining loan for her. However, without using the Pass for obtaining loan, Sh. F. Lalchhawna mutated the same to his own name without the knowledge and consent of the original owner. The appellant thus being aggrieved, served a legal notice under Section 80 of the CPC to the respondents on 05.04.2010 but as there was no response, he filed Title Suit No. 12/2010 on 20.07.2010.

[8.] In the Title Suit, the respondents as defendants filed their written statements denying the allegation and claim made by the appellant. The appellant, in order to substantiate her claim, examined 4 (four) plaintiff witnesses while the respondent Nos. 1 to 4 and the respondent No. 5 examined 1 (one) defence witness each. The Trial Court upon hearing the rival parties vide Judgment & Order dated 12.08.2014 decreed the suit in favour of the appellant by holding her to be the original owner of Periodic (Garden) Pass No. 718/1977. The respondent No. 5 was directed to surrender the original copy of both the

Garden LSC No. 4/G of 1990 and Garden LSC No. 209001/10/G/2 of 2003 within a time frame and the respondent No. 4 was directed to restore the Pass in the name of the appellant while cancelling the 2 (two) Garden LSC.

[9.] Aggrieved with the Judgment & Order of the Trial Court respondent No. 5 preferred RFA No. 5/2018 before the District Judge, Lunglei and the District Judge vide the Judgment & Order dated 13.03.2019, set aside the Judgment & Order of the Trial Court by holding that the suit was barred by limitation. At the same time, the Lower Appellate Court declared the respondent No. 5 to be the absolute and rightful owner of the suit land covered by the Garden LSCs. The Lower Appellate Court further by applying the principles of adverse possession in view of the occupation of the suit land by the appellant and the family of Sh. Krishna Bahadur Chhetri, directed the Settlement Officer, Revenue Department, Lunglei (respondent No. 4) to allocate suitable portion of land to them within the suit land. Aggrieved, the appellant is before this Court through the instant second appeal.

[10.] It is seen that the lower appellate Court in passing the impugned judgment and order was of the opinion that when the Title Suit was instituted before the Court of Senior Civil Judge, Lunglei on 22.07.2010, it was already barred by limitation. Therefore, the Trial Court ought to have dismissed the suit at the initial stage as Sh. F. Lalchhawna had purchased suit land from Sh. Zahunga in the year 1990 and the period of limitation started to run when the garden Pass No. 718/1977 was transferred in the name of Sh. F. Lalchhawna and converted into garden LSC No. 4/G of 1990. In coming to the said conclusion, the lower appellate Court relied upon Article 64 in the Schedule of the Indian Limitation Act, 1963 (Limitation Act). According to the lower

appellate Court, Smt. Lalmuankimi being the only surviving daughter of Sh. Zahunga, she should have instituted the suit within the stipulated period of 12 years. The claim of the respondent No. 1 that she came to know that she had been dispossessed of the suit land only in the year 2007 cannot be sustained in the eyes of law and the receipt submitted by her did not support her claim that taxes were paid in respect of the suit land. The lower appellate Court, therefore, set aside the judgment & order of the Trial Court dated 12.08.2014 and the decree drawn. The lower appellate Court further declared and confirmed that Smt. S. Lianbuangi, h/o Sh. F. Lalchhawna (L) was the absolute and rightful owner of the suit land covered by garden LSC No. 4/G of 1990 and garden LSC No. 20900/10/G/2 of 2003.

[11.] While concluding as above, the lower appellate Court upon considering the fact that Smt. Lalmuankimi and the relatives of Sh. Krishna Bahadur Chhetri had been occupying the suit land since the year 1957 when the garden Pass No. 122/1957 was allotted to Sh. Krishna Bahadur Chhetri with an area of 8 bighas at Lunglawn (now Ramthar Veng), Lunglei, by applying the principles of adverse possession, directed the appellant to allocate suitable portion of land within the suit land to Smt. Lalmuankimi D/o Zahunga & Smt. Maya Chhetri W/o Late Krishna Bahadur Chhetri. The Settlement Officer, Lunglei was also directed to ensure that the direction of the Court was complied with by issuance of separate LSCs to them.

[12.] The Trial Court on the other hand in passing the Judgment & Order dated 12.08.2014 in favour of the plaintiff/appellant on the question of limitation held that since the plaintiff only came to know about the transfer of ownership of the land from her father Sh. Zahunga to Sh. F Lalchhawna in the

year 2007 when the Revenue authorities declined to accept the payment of tax towards the suit land, there was no delay in filing the suit. The lower appellate Court took note of the fact that the right to sue for possession of the immovable property is circumscribed by Articles 64 & 65 of the Limitation Act. However, in applying the said provision, once title is proved by the plaintiff, the onus shifts to the defendant to disprove that the title is perfected by adverse possession. It is a settled law that the plea of adverse possession is both a question of fact and law. Before the Trial Court, it was the case of the plaintiff that her father Sh. Zahunga was an illiterate person and could not read or write or even give his signature which can be seen from the evidence led by the four plaintiff witnesses. The private defendant No. 5 who is the wife of Sh. F Lalchhawna was not examined and instead her daughter Smt. F Lalsangzuali was examined as the lone witness of the defendant No. 5. It can be seen that the fact of Sh. Zahunga being illiterate and unable to give a signature was neither shaken nor disproved by the defendants.

[13.] The claim of the defendants before the Trial Court was that Sh. Zahunga sold the suit land to Sh. F Lalchhawna for a sum of Rs. 3 lakhs by subscribing his signature in the application for transfer of ownership on 12.01.1990. However, the fact that it was Sh. Zahunga who had indeed subscribed his signature in the said application has not been proved. Be that as it may, the substantial question of law which has been formulated for consideration in the instant second appeal is to whether the Title Suit No. 12/2010 was barred by limitation. According to the plaintiff, knowledge about the transfer of land from the name of Sh. Zahunga to Sh. F Lalchhawna came to light and to their knowledge only in the year 2007 and the suit having been filed in the year 2010 cannot be barred by limitation. In her written statement,

defendant No. 5 raised preliminary objection that the suit was barred by principles of limitation, waiver, acquiescence and laches. She also maintained that the suit land was occupied by her family since 1982 when the motor workshop was established and that possession of the suit land became adverse to the plaintiff since that year. Therefore, the suit was really barred by time.

[14.] The official defendants in their written statement stated that as per the office record, Garden Pass No. 122/1957 was allotted in the name of Krishna Bahadur Chhetri with an area of 8 bighas at Lunglawn, Lunglei, which was later superseded by Garden Pass No. 718/1977 in the name of Zahunga. Against the averment of the plaintiff that after the demise of Sh. Zahunga, the plaintiff become the legal successor to all the properties of her father including the landed properties covered by the suit land, the official defendants in their written statements did not give any reply. They also acknowledged the fact that the plaintiff was asked not to continue payment of tax for the suit land since the same already stood transferred in the name of Sh. F. Lalchhawna in the year 1990. They also maintained that there was no proof to show that Sh. F. Lalchhawna practiced fraud in transferring the suit land in his name and that all the required formalities were followed for transferring the ownership of the suit land. The official defendants also maintained that the suit was barred by limitation since the possession of the suit land became adverse to the plaintiff since the year 1982.

[15.] In support of their respective claims that the suit was barred or not barred by limitation, the learned counsels for the rival parties have relied upon a number of authorities. We may first examine the authorities relied upon by the learned Senior Counsel for the respondent No. 5/defendant No. 5 which

are as follows:-

(i) *Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors. with State of H.P. Vs. Udham Singh Kamal & Ors.*, (1999) 8 SCC 304.

(ii) *Union of India & Anr. Vs. Punjab Singh & Anr.*, (2003) 10 SCC 36

(iii) *C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) by LRS. & Anr.*, (2012) 5 SCC 265.

(iv) *Basawaraj & Anr. Vs. Special Land Acquisition Officer*, (2013) 14 SCC 81.

(v) *Union of India & Ors. Vs. Vasavi Cooperative Housing Society Ltd. & Ors.*, (2014) 2 SCC 269.

(vi) *Foresshore Cooperative Housing Society Limited Vs. Praveen D. Desai (Dead) Through Legal Representatives & Ors.*, (2015) 6 SCC 412.

[16.] In the case of *Ramesh Chand Sharma* (supra), in the given facts of that case, the Apex Court was of the view that from the materials on record and after hearing the parties, the explanation sought to be given for the delay could not be entertained as there was no foundation thereof before the Tribunal. It was opened for the party concerned to make proper application for condonation of delay under Section 21(1) of the Administrative Tribunals Act, 1985, the same having not been done, the party could not be permitted to raise such contention at a later stage. This authority in the considered view of this Court cannot be applied to the instant case since there is no provision for filing an application for condonation of delay in a civil suit and therefore, the question of filing such an application by the plaintiff does not arise.

[17.] The case of *Union of India & Anr. Vs. Punjab Singh & Anr.* (supra) is also found to be not applicable to the instant case, inasmuch as, the said case

was regarding the filing of a suit challenging an Order dated 24.09.1980, claiming pension for a period anterior to 01.08.1980, after a lapse of 16 years. The suit was dismissed as time barred and the same was upheld by the Apex Court. The facts in the present case are not similar and the only manner in which delay in filing the civil suit can be considered will be with reference to Article 64 or 65 of the Limitation Act which will be dealt with in the later part of this order.

[18.] In the case of *C.N. Ramappa Gowda (supra)*, the Apex Court in the given facts of that case held that the burden lay on the plaintiff to prove her property had not been partitioned even if there was no written statement to the contrary or any evidence of rebuttal. Merely because there was no evidence of denial or of rebuttal, the plaintiffs' case cannot be held to have been proved. However, in the present case, pleadings have been exchanged by the rival parties and evidences were led. As already stated herein above, the question being considered in the present appeal is whether the suit was time barred. Therefore, the authority relied upon is found to be not applicable.

[19.] In the case of *Basawaraj & Anr. (supra)*, the Apex Court in the given facts of that case held that the expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned. This decision relied upon by the learned Senior counsel for the respondent No. 5 is also found to be not relevant to the present case, inasmuch as, the issue to be considered rather is as to whether there has been adverse possession of the suit land. As stated earlier, this aspect of the matter will be discussed at the latter part of this order.

[20.] In the case of *Foresshore Cooperative Housing Society Limited* (supra), the issue before the Apex Court was as to whether Section 9-A as amended by CPC (Maharashtra Amendment) Act, 1977 would include any objection with regard to the limitation and whether an issue relating to a bar of the suit created by the law of limitation can be tried as preliminary issue under the said Section. The question was answered by the Apex Court in the affirmative by holding that the provision of Section 9-A as introduced by the Maharashtra Amended Act was mandatory in nature. There is no argument with the proposition of law laid down by the Apex Court and fact, in the instant case as well, the learned Trial Court had framed an issue about the maintainability of the suit but only that, the issue was not raised and decided as a preliminary issue. Besides this, the issue involved in the present case as already stated herein above is as to whether possession of the suit land had become adverse to the plaintiff and therefore debarring him to claim re-possession of the suit land. Therefore, this authority on facts is also found to be not applicable to the present case.

[21.] Mrs. Linda L Fambawl, learned Government Advocate has relied upon the case of *Stat of Mizoram & Ors. Vs. Sh. Vanthangliana & Ors.*, reported in 2020 (4) GLT 797 wherein, this Court as held that the law of limitation is applicable in the State of Mizoram as held by Apex Court in the case of *J Thanslama vs. State of Mizoram & Ors.*, 2015 (5) GLT (SC) 7. There is no argument to the fact that the law of limitation applies in the State of Mizoram as held by the Apex Court. The issue to be considered in the present case otherwise is as to whether the possession of the suit land had become adverse and therefore, plaintiff could not have filed the Civil Suit on account of the same being time barred.

[22.] The learned counsel for the appellant in support of the case of the appellant has relied upon the following authorities:- learned Government Advocate

(i) R. Chandevaramappa & Ors., Vs. State of Karnataka, (1995) 6 SCC 309.

(ii) Karnataka Board of Wakf Vs. Government of India & Ors., (2004) 10 SCC 779.

(iii) Saroop Singh Vs. Banto & Ors., (2005) 8 SCC 330.

(iv) M Durai Vs. Muthu & Ors., (2007) 3 SCC 114.

[23.] In the case of *R. Chandevaramappa & Ors.* (supra), the Apex Court in the given facts of that case and on the issue of adverse possession at paragraph No. 11 and 12 held as follows:-

“11. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession

would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant.

12. This Court has held that any alienation made contrary to the Act and public policy is not valid. ...”

[24.] From the above abstract, it may be seen that according the Apex Court when one does not have the right to alienate the land and has come into possession of the land on the basis of adverse possession, the same has to be pleaded and likewise stand taken and that alienation of the property contrary to the relevant Act and public policy is not valid. In the present case as well, the plaintiff had taken the stand and also established the fact that her late father being uneducated could not give his signature and therefore, reliance cannot be placed upon the application for transfer of LSC containing the signature of Late Zahunga. The Late husband of the respondent No. 5 having come to acquire the suit land in such a manner, the principles of adverse possession cannot be said to be attracted.

[25.] In the case of *Karnataka Board of Wakf* the Apex Court in the given facts of that case held that plea of adverse possession is not a pure question of law but a blended one of fact and law and person claiming adverse possession has to discharge the burden that such possession was a continuous one, open and undisturbed apart from other factors. Relevant portion of the Judgment as contained in paragraph No. 11 is abstracted hereunder:-

“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use

of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : [S M Karim v. Bibi Sakinal](#) AIR 1964 SC 1254, [Parsinni v. Sukhi](#) (1993) 4 SCC 375 and [D N Venkatarayappa v. State of Karnataka](#) (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

[26.]

In the present case as well, it has not been substantiated as to

how the suit is not maintainable on account of delay and in what manner and when possession of the land had become adverse. In other words, there are no facts and figures given as to how possession of the suit land became adverse. Therefore, merely stating that the possession of the suit land has become adverse cannot be the reason for reversing the Judgment & Order of the learned Trial Court. It is a must to have a categorical stand and statements to the effect that the possession of a suit land has become adverse. The same was the decision of the Apex Court in the case of *Saroop Singh* (supra). Therefore, in the absence of any such foundation in the present case before the Trial Court, the conclusion reached by the lower appellate Court is found to be erroneous.

[27.] In the case of *M. Durai* (supra), the Apex Court in the given facts of that case held that in terms of Article 64 & 65 of the Limitation Act, the burden of proof to establish that one has perfected title over the land by remaining in possession of the same would be a burden cast upon the defendants. Once the plaintiff proves his title, the burden shifts to the defendants to establish that he has perfected his title by adverse possession. In the present case as well, although the plaintiff was able to show that the suit land was allotted to her father by the erstwhile District Council, the defendants have not managed to establish that the defendant No. 5 had perfected his title by way of adverse possession. Therefore, the findings arrived at by the learned lower appellate Court is found to be erroneous.

[28.] It is also seen that while setting aside the Judgment & Order of the learned Trial Court, the learned lower appellate Court vide the impugned Judgment & Order had declared and confirmed the respondent No. 5 to be the absolute and rightful owner of the suit land. However, fact remains that the

respondent No. 5 as defendant No. 5 apart from filing her written statement did not file any counter claim against the plaintiff and therefore, the conclusion and direction given by the learned lower appellate Court is also misconceived.

[29.] Under the facts and circumstances of the case, this Court finds merit in the instant appeal and accordingly, the impugned Judgment & Order dated 13.03.2019 is hereby set aside. Since the learned lower appellate Court had mainly decided the first appeal on the question of limitation, the matter is remanded back to the lower appellate Court for fresh consideration on merit.

[30.] The parties shall appear before the learned District Judge, Lunglei on 23rd January, 2024 along with a certified copy of this order whereafter, the learned lower appellate Court shall proceed in accordance with law and after giving the parties due opportunity of hearing, dispose the appeal expeditiously.

[31.] With the above observations and directions, the appeal stands disposed of.

JUDGE

Comparing Assistant