

GAHC030001072023



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

Case No. : RFA/5/2023

Sh. Zothanseia
R/o Bilkhawthlir, Mizoram

VERSUS

Sh. Chawngkhuma (L) through his legal heir Chawngthantluanga and 5 Ors.
S/o Darngkhaka
R/o Dawrpui, Aizawl

3: The Chief Secretary to the Govt. Of Mizoram

4: The Director, Land Revenue & Settlement Department, Govt. Of Mizoram

5: The Settlement Officer, Land Revenue & Settlement Department, Govt. Of Mizoram, Aizawl

6: Settlement Officer, Land Revenue & Settlement Department, Govt. Of Mizoram, Kolasib.

Advocate for the Petitioner : Mr. Johny L Tochwawng

Advocate for the Respondent : Mrs. H Lalmalsawmi, GA Mizoram for R2-R6

Linked Case : I.A.(Civil)/26/2023

Sh. Zothanseia
R/o Bilkhawthlir
Kolasib District

VERSUS

Sh. Chawngkhuma (L) Through his Legal Heir Chawngthantluanga and 5 Ors.
S/o Darnghaka
R/o Dawrpui
Aizawl
Mizoram

2:The State of Mizoram
R/b the Chief Secretary
Govt. of Mizoram
Aizawl

3:The Secretary
Land
Revenue and Settlement Department
Govt. of Mizoram
Aizawl

4:The Director
Land
Revenue and Settlement Department
Govt. of Mizoram
Aizawl

5:The Asst. Settlement Officer
Land Revenue and Settlement Department
Govt. of Mizoram
Aizawl

6:The Asst. Settlement Officer
Land Revenue and Settlement Department
Govt. of Mizoram
Kolasib

Advocate for the Petitioner : Mr. Johny L Tochwawng
Advocate for the Respondent : Mrs. H Lalmalsawmi
GA Mizoram for R2-R6

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
JUDGMENT & ORDER (CAV)

Date of Judgment : 21.02.2024

Heard Mr. Johnny L. Tochhawng, learned counsel for the appellant along with Mr. Lalremtluanga, learned counsel for respondent No.1 and Mrs. H. Lalmalsawmi, learned Govt. Advocate for respondent Nos. 2-6.

2. This is an appeal under Section 96 of CPC read with Section 17 of the Mizoram Civil Courts (Amendment) Act, 2021 for setting aside the Order dated 20.04.2021 passed by the Senior Civil Judge, Kolasib in Civil Suit No. 3/2018.

3. The case of the appellant in brief is that the appellant land covered by his Periodic Patta 1903 of 1976 (bifurcated into two PPs in 2006) is overlapped by the Land Settlement Certificate W-42 of 1987 belonging to the respondent No.1. The appellant/plaintiff came to know of such encroachment of his land, in the year 2004 and the appellant/plaintiff being aggrieved by such encroachment filed the Civil Suit No. 3/2018 before the Senior Civil Judge, Kolasib for an order of cancellation of the Land Settlement Certificate No. W-42 of 1987. While the Civil Suit was pending at the pre hearing stage, the appellant found his lost diary and from the contents of his diary, he discovered some mistake in the dates mentioned in his plaint. He then had filed an application in CMA No. 18/2020, for amendment of para 5 of the plaint in which the date of knowledge of the encroachment, cause of action, was to be changed from the year 2004 to 2008. The CMA No.18/2020 was however dismissed on

15.12.2020. The learned trial court opined that the copy of papers of the diary merely indicate that the plaintiff went to Phapheng with regard to taking measurement on respect of land that may be destroyed in the widening of the road, which did not throw light of which date the plaintiff came to know about the alleged encroachment of his land. The learned trial court found the submission made by the plaintiff unsubstantiated and that it would be unjust especially when issues were already framed and the hearing was currently being heard on the question of limitation period of filing the suit. Subsequently, the Civil Suit No.3/2018 was also dismissed on 20.04.2021 on the grounds that the suit was barred by limitation.

4. Aggrieved by the dismissal of the Civil Suit No.3/2018, the appellant is now before this court.

5. Mr. Johny L. Tochhawng, learned counsel for the appellant submits that the learned trial court had erred in dismissing the CMA No.18/2020 on 15.12.2020 and had erred in passing the impugned Order dated 20.04.2021 in the connected Civil Suit No.3/2018, which was due to the rejection of the application for the amendment of the plaint in CMA No.18/2020 on 15.12.2020.

6. The learned counsel also submits that he had filed a Regular First Appeal on 8.10.2021, against the dismissal of CMA No.18/2020 order dated 15.12.2020, along with a prayer for condonation of delay in I.A. (C) No.88/2021. This court allowed the condonation of delay application on 12.12.2021, however, since the Civil Suit No. 3/2018 was already dismissed on 20.04.2021, the RFA No.31/2021 was withdrawn

with the permission to file afresh.

7. The learned counsel submits that if the impugned order dated 20.04.2021 in Civil Suit No.3/2018 is not set aside the appellant will not be given the opportunity to adduce evidence before the trial court to prove that the respondent has encroached upon his landed property on the issuance of the Land Settlement Certificate No.W-42 of 1987 to the respondent No.1 by the State respondent Nos. 2-6.

8. The learned counsel for the appellant further submits that the learned trial court had erred in not allowing the appellant to amend his plaint and had wrongfully dismissed the CMA No.18/2020 on 15.12.2020. That an application for amendment of the plaint can be filed at any time and thus he has prayed that this court may allow the amendment of the plaint by setting aside the dismissal order dated 15.12.2020 in CMA No.18/2020 and consequently set aside the impugned Order dated 20.04.2021 in the connected Civil Suit No.3/2018.

9. In support of his submission, the learned counsel for the appellant Mr. Johyny L. Tochhawng has cited the following authorities; **Gayathri Women's Welfare Association Vs. Gowramma & Anr.**, reported in **(2011) 2 SCC 330 paras 33, 34 & 36, Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.**, reported in **(2007) 5 SCC 602 paras 16, 17 & 18, State of Madhya Pradesh Vs. Union of India & Anr.**, reported in **(2011) 12 SCC 268, State of Madhya Pradesh Vs. Union of India & Anr.**, reported in **(2011) 12 SCC**

268, Mount Mary Enterprises Vs. Jivratna Medi Treat Private Limited, reported in **(2015) 4 SCC 182 paras 6-10, Varun Pahwa Vs. Renu Chaudhary,** reported in **(2019) 15 SCC 628 paras 8 & 9..**

10. Mr. Lalremtluanga, learned counsel for the respondent No.1 on the other hand submits that the instant Regular First Appeal is liable to be dismissed since the appellant has not raised any substantial grounds for setting aside the impugned order of the Senior Civil Judge in Civil Suit No.3/2018 dated 20.04.2021.

11. The learned counsel submits that the Civil Suit No.3/2018 was filed on 1.05.2018. Thereafter, the CMA No.18/2020 was filed in 2020 for amendment of the pleadings under Order 6 Rule 17 CPC. The CMA No.18/2020 was dismissed on 15.12.2020 and the Civil Suit No.3/2018 was then dismissed on 20.04.2021. Thereafter, the appellant filed the RFA No.31/2021 against the dismissal of CMA No.18/2020 on 8.10.2021 with an application for condonation of delay which was allowed on 02.12.2021. On 15.12.2022 the RFA No.31/2021 was dismissed on withdrawal, with a liberty to file afresh.

12. The learned counsel for the respondent submits that from the above dates, it can be clearly made out that the instant appellant has not made out any case for the setting aside of the impugned order dated 20.04.2021. The learned counsel submits that the appellant was not vigilant enough and had taken steps to appeal against the dismissal of CMA No.18/2020 on 15.12.2020 at a very belated stage.

13. The learned counsel further submits the RFA No.31/2021 was filed by the appellant against the order of dismissal of CMA No.18/2020, however, it should have been filed as FAO and not RFA. The RFA No.31/2021 was later withdrawn, and appellant has now filed the RFA against the dismissal of Civil Suit No.3/2018 dated 20.04.2021 at a belated stage as an afterthought therefore the dismissal of CMA No.18/2020 arising out of the Civil Suit No.3/2018 cannot be looked into again at this stage.

14. He submits that when the Civil Suit No.3/2018 was dismissed on 20.04.2021, the RFA No.5/2023 was filed only on 10.03.2023, which shows that the appellant does not have any reason to file the instant appeal and is liable to be dismissed outright.

15. I have heard the submissions made by the learned counsels for both the parties. On perusal of the reasons given by the learned trial court, for the dismissal of the impugned order dated in 20.04.2021 in Civil Suit No.3/2018, it is seen that the learned trial court had reasoned that *the year for reckoning the period of limitation for the plaintiff's suit hereof is accepted to be the year 2004 and date of filing this suit is 1.5.2018, it can be seen that the instant suit is filed by the plaintiff after a lapse of 13 years which is well beyond the period of limitation stipulated under Articles-56,58,59 or 65 of the Limitation Act, 1963. And as the plaintiff did not file any application under section-5 of the said Act for condoning the delay of over 1 year hereof, and the case of the plaintiff does not seem to be nor even claimed to be saved by the provision of sections-14 or 17 of said Act, it thereby cannot but be held that*

the instant suit of the plaintiff is hopelessly barred by the law of limitation even when considered from the longest period of limitation of 12 year stipulated under Art-65 of the said Act. Thus the trial court held that in view of the above findings and by virtue of section-3 of the Limitation Act, 1963, the trial court had no choice but to hold the instant suit liable to be dismissed.

20. This court finds that there are no grounds to interfere with the reasoning of the learned trial court, who on the dismissal of CMA No.18/2020, had accepted the year 2004 as the date for reckoning the period of limitation and found the date of filing the Civil Suit is on 1.05.2018, and finding that the plaintiff/appellant had filed the suit after lapsed of 13 years which is beyond the period of limitation had also dismissed the Civil Suit is on 1.05.2018.

16. This court finds that the appellant has also prayed for the setting aside of the dismissal order dated 15.12.2020 in CMA No.18/2020, in the instant RFA wherein the learned trial court had not allowed the appellant/plaintiff to amend his plaint by changing the date of cause of action from 2004 to 2008. The learned counsel relied on different authorities submitting that the amendment of the plaint can be filed at any times and that the plaintiff/appellant should be given the opportunity to be heard and the matter be decided on the merits of the case.

However, on perusal of the authorities relied upon, it is seen that the facts and circumstances of the cases relied upon by the learned appellant are different from the instant case. In **Gayathri Women's Welfare Assn. v. Gowramma, (supra),**

during the pendency of the appeal before the High Court, the respondents filed an application seeking amendment of the written statement to include the additional prayer in the counterclaim for recovery of possession of the suit. The High Court noticed that in the normal course an application for amendment of the written statement at the stage of appeal from the original decree was not entertainable. However, since the dispute was pending between the parties from the year 1981 and the suit was pending since 1999, no injustice would be caused to the appellant if the prayer for possession was also permitted to be incorporated in the counterclaim. Likewise in the other authorities relied upon by the learned counsel for the appellant, it is seen that the appellant had approached the appellate court for the amendment of the plaint or the written statements, during the pendency of the main case.

17. However in the instant case, it is seen that the Civil Suit no 3/2018 was dismissed on 20.04.2021 and the appellant had filed an appeal against the dismissal order dated 15.12.2020 in CMA No.18/2020, on 8.10.2021 by filling the RFA No.31/2021 instead of filling an FAO, which was also withdrawn by the appellant. The delay in filling the RFA No. 31/2021 was condoned mainly on the grounds that the Apex court due to the COVID 19 Pandemic, had allowed the exclusion of the period from 15.03.2020 till 02.10.2021 in computing the period of limitation, but thereafter the matter was not pressed by the appellant and instead the RFA 31/2021 was withdrawn by the appellant with a permission to file afresh. It is noted that the unusual circumstances in the instant case is that the Civil Suit No.3/2018 was already

dismissed on 20.04.2021.

18. Considering the unusual circumstances of the case, this court find it fit to peruse the dismissal order dated 15.12.2020 in CMA No.18/2020. It is seen that the learned trial court had not allowed the amendment of the plaint by changing the date from 2004 to 2008 based on the diary of the plaintiff/appellant found later and reasoned that *the copy of papers of the diary merely indicate that the plaintiff went to Phapheng with regard to taking measurement on respect of land that may be destroyed in the widening of the road, which did not throw light of which date the plaintiff came to know about the alleged encroachment of his land. The learned trial court found the submission made by the plaintiff unsubstantiated and that it would be unjust especially when issues were already framed and the hearing was currently being heard on the question of limitation period of filing the suit was.*

19. This court finds that there appear to be no reason to interfere with the reasoning made by the learned trial court especially at this stage, when the Civil Suit No.3/2018 was already dismissed on 20.04.2021.

21. Thus, considering the facts and circumstances of the case as discussed above, this court does not find any grounds to interfere with the reasoning of the learned trial court for dismissal of the Civil Suit No.3/2018 and accordingly the RFA No.5/2023 stands dismissed and disposed.

JUDGE

Comparing Assistant