

GAHC030002922022



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

Case No. : RFA/24/2022

Smt. Chalmawii
Aizawl

VERSUS

Sh F. Laldinsanga and 4 Ors.
Aizawl
2:The Chief Secretary to the Govt. of Mizoram

3:The Secretary
Land Revenue and Settlement Deptt.

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

5:The Settlement Officer
Land Revenue and Settlement Deptt

Advocate for the Petitioner : Mr. Johny L Tochwawng

Advocate for the Respondent : Ms. Lalawmpuii Fanai for R1

Linked Case : I.A.(Civil)/110/2022

Smt. Chalmawii
Dawrpui Veng
Aizawl

VERSUS

Sh. F. Laldinsanga and 4 Ors
Ramhlun North
Aizawl

2:Chief Secretary
Govt. of Mizoram
Aizawl

3:The Secretary
Land Revenue and Settlement Deptt.
Aizawl

4:The Director
Land Revenue and Settlement Department
Aizawl

5:The Settlement Officer
Land Revenue and Settlement Deptt.
Aizawl

Advocate for the Petitioner : Mr. Johny L Tochhawng
Advocate for the Respondent : Ms. Lalawmpuii Fanai for R1

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (Oral)

Heard Mr. Johny L. Tochhawng, learned counsel for the appellant along with Ms. Lalawmpuii Fanai, learned counsel for respondent No.1.

2. Mrs. Mary L. Khiangte, learned Govt. Advocate for the State respondent Nos. 2 to 5 submits that they have nothing to submit in this matter since the dispute is mainly between the appellant and the respondent No.1.

- 3.** This is an appeal filed under against the Order dated 07.12.2021 passed by the Senior Civil Judge-I, Aizawl District in Civil Suit No.56 of 2020.
- 4.** The learned Trial Court had passed the impugned order directing the defendant No.1/appellant not to encroach the landed property belonging to the Plaintiff/respondent No.1 covered by LSC No.AZL-54 of 1981 located at Ramhlun Veng, Aizawl, Mizoram.
- 5.** Mr. Johnny L. Tochwawng, the learned counsel for the appellant submits that the trial court had passed the impugned order without giving the opportunity to neither of the parties to adduce the evidence in the court, but had passed its order based on the plaint and the written statement submitted and at the stage of hearing of the maintainability of the Civil Suit. The learned trial court had wrongly observed that the plaintiff submitted that the cause of action first arose, when the LSC No.AZL-54 of 1981 was issued in favour of the Plaintiff/appellant on 16.02.1981 by slicing out the land from the Defendant No.1's/respondent No.1 LSC No.704 of 1980.
- 6.** The learned counsel for the appellant submits that the learned trial court had then observed that the counsel for the Defendant No.1/respondent had submitted that the suit was barred by limitation since the LSC was slice out in the year 1981 and therefore the suit was filed after 39 years. The learned trial court also held that the Defendant No.1/respondent did not encroach the plaintiffs/appellant land as per the spot verification reports conducted by the Surveyor, Land Revenue & Settlement Department. The learned trial court observed that the report was not challenged by

the appellant and that the challenging the demarcation of boundary of the plaintiffs LSC now is barred by limitation.

7. Mr. Johny L. Tochhawng, learned counsel for the appellant submits that the learned trial court had erred in making the above observation since the appellant in the plaint filed before the learned trial court had clearly mentioned at para 6 that:

“On April 2019, the plaintiff had decided to sell her landed property thereby visiting the spot with the prospective buyer for verification of its genuineness. However, to the uttermost surprise, the plaintiff came to learn that the defendant No. 1 shifted a boundary pillars inside her landed property by encroaching about 15 feet of her land. Upon the actions of the defendant No. 1, the plaintiff served a notice under Section 80 of Code of Civil Procedure to the defendant Nos. 1 to 5 to solve the matter and re-issued LSC No. AZL-54/1981 (Vide No. 1783 dt. 01-05-2019).”

The learned counsel therefore, he submits that the cause of action arose not in 1981 but in the year 2019. He further submits that the appellant was not aware of the verification report submitted by the Surveyor which was attached to written statement filed by the Defendant/respondent and therefore he could not have challenged the said verification report. He further submits that on perusal of the verification report shows that it is not clear whether or not the respondent had encroached upon the land owner.

8. The learned counsel thus submits that the impugned order dated 07.12.2021 may be set aside and the matter may be referred back to the learned trial court by giving the parties the opportunity to adduce evidence.

9. Ms. Lalawmpuii Fanai, learned counsel for the respondent No.1 on the other hand submits that there were no grounds to interfere or remand the matter back to the learned trial court. She submits that the cause of action arose way back in 1981 when the LSC No. 704 was slice out in 2 LSCs *i.e.* 704/1980 and 54/1981. She submits that the boundaries sliced out in 1981 has remain to the same and that since the cause of action arose as way back as 1981 the matter is barred by limitation since the instant appellant had approached this court after the lapse of 39 years.

10. She further submits that from the verification report submitted by Surveyor, Land Revenue & Settlement Department, it is clear that the respondent had not encroached upon the land of the appellant and even if this matter was sent back to the learned trial court, the out-come would be the same. She submits that sending back the matter for evidence would simply be wasting the precious time of the court.

11. Having heard the submissions made by both the parties, this court finds that the instant dispute is with regards to the Appellant who filed the Civil Suit No. 56/2020 before the Senior Civil Judge-I, Aizawl for an order for the respondent No.1/defendant not to encroach her landed property covered by LSC No. AZL- 54 of 1981 located at Ramhlun Veng, Aizawl, Mizoram. The said LSC No. AZL-54 of 1981 was demarcated from the original LSC No. 704/1980 which was allotted in the name of Sh. Chhawnthanga, S/o Khuanga (L) Ramhlun, Aizawl and the said original LSC No. 704/1980 had been sold to Sh. Chawimawia.

12. Thereafter Sh. Chawimawia equally divided the said LSC No. 704/1980 into two plots. Subsequently, the Appellant being the biological sister of Sh. Chawimawia, he had given half of the demarcated land to her without any cost. The Appellant then approached the Proforma Respondents and was issued the newly partitioned LSC No. AZL-54 of 1981 dt.14.02.1981 with an area of 272 Sq.m in her name.

13. The remaining portion i.e. the other half of the landed property under the said LSC No. 704/1980 was then sold and transferred to Sh. H. Laihnuna and later the same was transferred to F. Laldinsanga, Respondent No.1.

14. That, sometime in the year 2019, the Appellant decided to sell her landed property thereby visiting the spot with the prospective buyer for verification. However, it is stated that the Appellant came to learn that the Respondent No. 1 had shifted a boundary pillar inside her landed property, encroaching it by about 15 feet. As a result, the Appellant filed a civil suit in the court of Senior Civil Judge-I at Aizawl on 06.08.2020.

15. From the above narrated facts, this court finds that prima facie, it appears that the cause of action arose sometime in the year 2019 and it is also seen that the plaintiff/appellant had mentioned in its plaint that the cause of action arose in 2019, therefore, this court is of the considered view that the learned trial court had erred in

mentioning that the plaintiff submitted that the cause of action arose in the year 1981.

16. This court also finds that since the verification report of the Surveyor was filed by the respondent/defendant in the written statement, it is plausible that the appellant/plaintiff was not aware of such a report and therefore had not challenged the Surveyor report before the Trial Court.

17. In view of the above observations/findings this court finds that the ends of justice would be served if the parties are given the opportunity to adduce their evidence before the learned trial court.

18. Accordingly, RFA No.24 of 2022 stands allowed, the order dated 07.12.2021 passed by the Senior Civil Judge-I, Aizawl District is set aside and the matter is remanded back to the learned Trial Court for *denovo* trial were giving the opportunity to both the parties to adduce their evidence. Both the parties to appear before the learned Trial Court on **09.02.2024** for further necessary steps.

19. RFA No. 24 of 2022 stands disposed of as above.

JUDGE

Comparing Assistant