

GAHC030005272023



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

Case No. : RFA/36/2023

Smt. Lalvuani
W/o Barna Sanga, R/o Bawngkawn, Aizawl, Mizoram

VERSUS

State of Mizoram represented by the Secretary to the Govt. of Mizoram and 5 Ors.
Land Revenue and Settlement Department 2:The District Magistrate

3:The Director

4:Sh. Laldinglana

5:Sh. R.C. Liandawla

6:Smt. Rualkhum

Advocate for the Petitioner : Mr Zoramchhana

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1-R3

Linked Case : I.A.(Civil)/51/2024

Smt. Lalvuani
W/o Barna Sanga
R/o Bawngkawn
Aizawl
Mizoram

VERSUS

The State of Mizoram and 5 Ors.
Represented by the Secretary to the Government of Mizoram
Revenue and Settlement Department

2:The District Magistrate Aizawl District Aizawl

3:The Director Land Revenue and Settlement Department Aizawl

4:Sh. Laldingliana S/o R. Lalbana R/o ITI Veng Aizawl Mizoram

5:Sh. R.C. Liandawla S/o R. Lalbana R/o Bawngkawn Aizawl Mizoram

6:Smt. Rualkhumi W/o Hrangbana (L) R/o Chanmari Aizawl

Advocate for the Petitioner : Mr Zoramchhana

Advocate for the Respondent : Addl. AG/GA Mizoram for R1

Linked Case : I.A.(Civil)/58/2024

Smt. Lalvuani W/o Barna Sanga R/o Bawngkawn Aizawl Mizoram

VERSUS

The State of Mizoram represented by the Secretary to the Government of Mizoram and
5 Ors. Land Revenue and Settlement Department

2:The District Magistrate Aizawl District Aizawl Mizoram

3:The Director Land Revenue and Settlement Department Aizawl

4:Sh. Laldingliana S/o Lalbana R/o ITI Veng Aizawl Mizoram

5:Sh. R.C. Liandawla So/ R. Lalbana R/o Bawngkawn Aizawl Mizoram

6:Smt. Rualkhumi W/o Hrangbana (L) R/o Chanmari

Aizawl proposed to be substituted by her legal representative

Advocate for the Petitioner : Mr Zoramchhana

Advocate for the Respondent : Addl. AG/GA Mizoram for R-1

Linked Case : I.A.(Civil)/121/2023

Smt. Lalvuani W/o Barna Sanga R/o Bawngkawn Aizawl Mizoram

VERSUS

State of Mizoram represented by the Secretary to the Govt. of Mizoram and 5 Ors.
Land Revenue and Settlement Department

2:The District Magistrate Aizawl District Aizawl Mizoram

3:The Director Land Revenue and Settlement Department Aizawl

4:Sh. Laldingliana S/o R. Lalbana R/o ITI Veng Aizawl Mizoram

5:Sh. R.C. Liandawla S/o R. Lalbana R/o Bawngkawn Aizawl Mizoram

6:Smt. Rualkhumi W/o Hrangbana (L) R/o Chanmari Aizawl
S/b her son Sh. Zohmingthanga

Advocate for the Petitioner : Mr Zoramchhana

Advocate for the Respondent : Addl. AG/GA Mizoram for R1-R3

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 27.08.2024

Date of Judgment: 27.08.2024

Judgment & order(ORAL)

Heard Mr. Zoramchhana, learned counsel for the appellant. Also heard Ms. Vanneihsiami, learned Government Advocate, appearing on behalf of respondents No. 1 to 3; and Mr. Anil Rinliana Malhotra, learned counsel, appearing on behalf of respondent No. 6.

2. The appellant, herein, by way of instituting the present appeal, has assailed the order, dated 27.03.2023, passed by the learned Senior Civil Judge-II, Aizawl District, Aizawl, in CMA 74/2022, along with the order, dated 27.03.2023, passed in Civil Suit No. 79/2021.

3. The appellant, herein, had instituted a Title Suit No. 07/1998, for a declaration that LSC No. AZL-1383/1994, issued in the name of respondent No. 6, herein, was *void ab initio* as it had the effect of encroaching upon the LSC No. AZL-555/1985 issued to the appellant, herein. The said Title Suit No. 07/1998, on contest, was decided by the learned trial Court, on 19.04.2007, dismissing the said suit as preferred by the appellant, herein. Thereafter, the

appellant had instituted Regular First Appeal being RFA No. 08/2007, presenting a challenge to the judgment & order, dated 19.04.2007, passed by the learned trial Court in Title Suit No. 07/1998, before the learned District & Addl. Sessions Judge, Aizawl District, Aizawl, Mizoram. The said appeal was disposed of by vide judgment, dated 24.09.2010, interfering with the judgment of the learned trial Court, impugned, therein.

4. Being aggrieved, the respondent No. 6 approached this Court by way of instituting a Regular Second Appeal being RSA No. 08/2010. This Court, vide order, dated 12.05.2011, proceeded to dispose of the said appeal, by interfering with the the order passed by the learned Addl. District & Sessions Judge, Aizawl District, Aizawl, Mizoram, in Regular First Appeal No. 08/2007, and remanded back the matter to the learned lower appellate Court for disposal in accordance with law. On the said Regular First Appeal No. 08/2007 being restored to the file of the learned Addl. District Judge-I, Aizawl Judicial District, Aizawl; the same was considered and disposed of vide order, dated 24.07.2014, by upholding the judgment & order of the learned trial Court.

5. The present appellant, thereafter, has instituted the Civil Suit No. 79/2021, before the Court of learned Senior Civil Judge-II, Aizawl District, Aizawl, seeking an enforcement of the order, dated 24.03.1992, passed by the respondent No. 3, herein, for location transfer of the LSC No. Azl-555/1985, issued to the appellant, herein, and also for a direction to the private respondents No. 4 & 5, herein, to submits the original LSC No. Azl-555/1985, to the State respondents for compliance of the said order, dated 24.03.1992.

6. The respondent No. 6, herein, instituted an application being CMA No. 74/2022, in Civil Suit No. 79/2021, invoking the provisions of Order VII Rule

11(d) of the Code of Civil Procedure, 1908, for rejection of the plaint in Civil Suit No. 79/2021. The learned Senior Civil Judge-II, Aizawl District, Aizawl, on consideration of the issue as arising in CMA No. 74/2022, proceeded vide order, dated 27.03.2023, to dispose of the said application by holding the Civil Suit No. 79/2021, to be barred by the law of *res judicata* and accordingly; liable, to be rejected. The plaint in Civil Suit No. 79/2021, thus, came to be rejected. Consequently, the learned trial Court proceeded to pass an order, dated 27.03.2023, in Civil Suit No. 79/2021, disposing of the same on account of rejection of the plaint on the ground that the said suit was barred by the principle of *res judicata*.

7. Being aggrieved, the appellant, herein, has instituted the present appeal.

8. The learned counsels appearing for the parties have reiterated the facts as noticed hereinabove and have made their respective submissions in the matter.

9. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

10. At the outset, it is to be noted that as far as the scope of Rule 11 of Order VII of the Code of Civil Procedure, 1908, is concerned; the law is well settled. The Court can look into only the averments made in the plaint and at best, the documents produced along with the plaint. The defence of a defendant and documents relied upon by such defendant/defendants, cannot be looked into while examining an application so preferred under the provisions of Rule 11 of Order VII of the Code of Civil Procedure, 1908.

11. The provisions of Rule 11 of Order VII of the Code of Civil Procedure, 1908, being relevant, is extracted hereinbelow:

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- d) where the suit appears from the statement in the plaint to be barred (by any law;*
- [(e) where it is not filed in duplicate;]*
- [(f) where the plaintiff fails to comply with the provisions of rule 9:]*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

12. The Hon’ble Supreme Court in the case of **Keshav Sood v. Kirti Pradeep Sood & ors.**, reported in **2023 0 Supreme(SC) 1288**, on consideration of issues similar to the one arising in the present proceeding, had drawn the following conclusions:

“4. After having heard the learned counsel appearing for the parties, we find that the plea of res-judicata could not have been gone into on an application made by the appellant under Rule 11 of Order VII of CPC. Apart from pleadings in the earlier suit, several other documents which were relied upon by the appellant in his application under Rule 11 of Order VII of CPC were required to be gone into for deciding the issue of res-judicata.

5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res-judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res-judicata raised by the appellant on merits.”

13. Applying the said decision of the Hon’ble Supreme Court in the case of **Keshav Sood**(supra) to the facts of the present case; it is seen that the learned trial Court had proceeded to reject the plaint in the suit so preferred by the appellant, herein, only on the ground that the same was barred by the law of *res judicata* which, admittedly, was not permissible.

14. In view of the above conclusions and following the decision of the Hon’ble Supreme Court in the case of **Keshav Sood** (supra); the order, dated 27.03.2023, passed by the learned Senior Civil Judge-II, Aizawl District, Aizawl, in CMA No. 74/2022, arising out of Civil Suit No. 79/2021; along with the order, dated 27.03.2023, passed by the learned Senior Civil Judge-II, Aizawl District, Aizawl, in Civil Suit No. 79/2021; stands set aside.

15. The Civil Suit No. 79/2021, is, accordingly, restored to the files of the learned Senior Civil Judge-II, Aizawl District, Aizawl.

16. The learned trial Court is now required to proceed with the consideration as mandated in Civil Suit No. 79/2021 and for the purpose, would frame an issue on *res judicata*, along with other issues so required to be framed in the matter and thereafter, proceed to decide the Civil Suit No. 79/2021, strictly, in accordance with law.

17. With the above directions and observations, the instant Regular First Appeal, accordingly, stands disposed of.

JUDGE

Comparing Assistant