

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(CRP.Art.227) No. 7 of 2025

Nongmaithem Tolhal Singh, aged about 75 years, son of late N. Cheiteino Singh of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur, died on 28.06.2018 by his LRs:-

1. Nongmaithem Maipak Devi, aged about 70 years, wife of late N. Tolhan Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
2. Sairem Ongbi Nongmaithem Romita Devi, aged about 39 years, wife of S. Anand Kumar and daughter of N. Tolhal Singh, resident of Chingmeirong Maning Leikai, P.O. Lamlong & P.S. Lamphel, Imphal West District, Manipur.
3. Nongmaithem Rakesh Singh, aged about 37 years, son of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
4. Nongmaithem Ritu Devi, aged about 32 years, daughter of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
5. Nongmaithem Ratan Singh, aged about 28 years, son of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

Petitioner/s

Vrs.

Nongmaithem Manitomba Singh, aged about 75 years, son of late N. Cheiteino Singh of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

Respondent/s

With

CRP(CRP.Art.227) No. 8 of 2025

1. Nongmaithem Maipak Devi, aged about 70 years, wife of late N. Tolhan Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
2. Sairem Ongbi Nongmaithem Romita Devi, aged about 39 years, wife of S. Anand Kumar and daughter of N. Tolhal Singh, resident of Chingmeirong Maning Leikai, P.O. Lamlong & P.S. Lamphel, Imphal West District, Manipur.
3. Nongmaithem Rakesh Singh, aged about 37 years, son of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
4. Nongmaithem Ritu Devi, aged about 32 years, daughter of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

5. Nongmaithem Ratan Singh, aged about 28 years, son of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

Petitioner/s

Vrs.

Nongmaithem Manitomba Singh, aged about 75 years, son of late N. Cheiteino Singh of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

Respondent/s

With

MC(CRP(CRP.Art.227)) No. 10 of 2025

Ref: CRP(CRP.Art.227) No. 7 of 2025

Nongmaithem Tolhal Singh, aged about 75 years, son of late N. Cheiteino Singh of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur, died on 28.06.2018 by his LRs:-

1. Nongmaithem Maipak Devi, aged about 70 years, wife of late N. Tolhan Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
2. Sairem Ongbi Nongmaithem Romita Devi, aged about 39 years, wife of S. Anand Kumar and daughter of N. Tolhal Singh, resident of Chingmeirong Maning Leikai, P.O. Lamlong & P.S. Lamphel, Imphal West District, Manipur.
3. Nongmaithem Rakesh Singh, aged about 37 years, son of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
4. Nongmaithem Ritu Devi, aged about 32 years, daughter of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.
5. Nongmaithem Ratan Singh, aged about 28 years, son of late N. Tolhal Singh, resident of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

Petitioner/s

Vrs.

Nongmaithem Manitomba Singh, aged about 75 years, son of late N. Cheiteino Singh of Singjamei Mathak Chongtham Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

Respondent/s

BEFORE

HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR

For the petitioners/Applicants : Mr. Henba Thokchom, Advocate
For the respondent : Mr. T. Rajendra, Sr. Advocate,
instructed by Mr. Md. Shakir Khan,
Advocate

Date of Judgment & Order : 10.02.2026

JUDGMENT & ORDER (ORAL)

[1] This common order will now dispose of the captioned 2(two) main 'Civil Revision Petitions' ('CRPs' in plural and 'CRP' in singular for the sake of brevity and convenience) and the captioned Miscellaneous Case (MC) in one of the CRPs viz., CRP (CRP.Art.227) No. 7 of 2025.

[2] Age old adage '*blood is thicker*' is not without exception and the case at hand comes across as one such exception. The reason is, litigation between two blood brothers namely Nongmaithem Manitomba Singh and his elder brother Nongmaithem Tolhal Singh which commenced more than one decade and two years ago in 2014 (22.10.2014 to be precise) is now being continued by legal heirs of Tolhal Singh owing to his demise on 28.06.2018.

[3] Factual matrix in a nutshell is that land admeasuring 0.0946 hectares or thereabouts comprised in Dag No. 1182 in Village No. 48 Singjamei, Imphal West, Manipur is the nucleus of the matter and this land shall be referred to as 'entire suit land' for convenience; that there is sub division of entire suit land, Dag No. 1182/1278 is a Ingkhol ('suit Ingkhol' for the sake of convenience) and Dag No. 1182/1285 is a shop plot ('suit shop plot' for the sake of convenience); that on 22.10.2014, the lone respondent in the captioned 2(two) CRPs (Manitomba Singh) filed a suit in O.S. No. 32 of 2014 on the file of Civil Judge, Junior Division Imphal West-I, Lamphelpat qua entire suit land, suit ingkhol and suit shop plot with prayers for eviction, injunction, demolition and other ancillary prayers against his elder brother Tolhal Singh; that the suit summon in this suit was served on Tolhal Singh on 04.11.2014 and citing this as cause of action, Tolhal Singh filed a

suit being O.S. No. 73 of 2017 on the file of Civil Judge Senior Division Imphal West with a specific performance prayer qua suit Ingkhol and suit shop plot; that 'Manitomba Singh' will also be referred to as 'CRP respondent' and 'heirs of Tolhal Singh (Wife, 2 sons and 2 daughters)' shall also be referred to as 'revision petitioners' both for the sake of convenience and clarity; that 'O.S. No. 32 of 2014' shall be referred to as 'I suit-eviction suit' and 'O.S. No. 73 of 2017' shall be referred to 'II suit-specific Performance suit'; that 'Civil Judge Junior Division Imphal West-I' shall be referred to as 'said Junior Division Trial Court' and 'Civil Judge Senior Division Imphal West' shall be referred to as 'said Senior Division Trial Court' both for the sake of convenience and clarity; that the II suit-specific performance suit was filed by revision petitioners' predecessor in title vide a plaint dated 09.10.2017; that in the I suit-eviction suit, pleadings were completed, issues were framed, recording of evidence commenced, plaintiff side evidence concluded on 29.05.2017 with plaintiff (CRP respondent) examining 3(three) witnesses and defendant side witnesses (defendants are revision petitioners) having examined 5 witnesses so far i.e. DW1 to DW5 and the scribe of a Kutcha Sale Deed on which the specific performance suit is predicated is to be examined as DW6 and last witness on defendants' side; that the I suit in the said Junior Division Trial Court is now next listed on 12.02.2026; that as regards the II suit-specific performance suit, the plaintiffs (revision petitioners) did not let in evidence and plaintiffs' side evidence was closed on 30.04.2024; that revision petitioners filed a misc. case in Judl. Misc. Case No. 416 of 2024 with a prayer to recall the 30.04.2024 order for reopening the plaintiff side evidence; that this Judl. Misc. No. 416 of 2024 was dismissed by the said Senior Division Trial Court in and vide a order dated 09.10.2024 which is sought to be revised vide captioned CRP No. 7 of 2025 ('1st impugned order' for the sake of convenience); that thereafter on 06.01.2024

revision petitioners filed a transfer petition by way of Judl. Misc. Case No. 02 of 2024 on the file of Court of 'District Judge, Imphal West' ('said District Court' for the sake of convenience) and this transfer petition was filed under Section 24 of 'the Code of Civil Procedure, 1908'('CPC' for the sake of brevity); that this transfer petition was dismissed by said District Court on 19.10.2024; that assailing the dismissal of the transfer petition vide 'order dated 19.10.2024'('2nd impugned order' for the sake of convenience) captioned CRP No. 8 of 2025 has been filed; that the 2 CRPs have been tagged and listed together along with the captioned MC in CRP No. 7 of 2025; that both captioned CRPs along with captioned MC were heard out in full today.

[4] Mr. Henba Thokchom, learned counsel for revision petitioners and Mr. T. Rajendra, learned senior advocate appearing on behalf of Md. Shakir Khan, counsel on record for the respondent are before this Court.

[5] There is no dispute that suit land, suit Ingkhol and suit shop plot are the same with regard to I suit-eviction suit and II suit-specific performance suit.

[6] As regards the 1st impugned order, said Senior Division Trial Court dismissed the recall petition primarily on the ground that it does not fall within the parameters for recall namely an order being obtained by fraud, misled by a party or if the Court itself commits a mistake which prejudices the party. To be noted, on 30.04.2024, the said Senior Division Trial Court held that issues were framed on 06.12.2019 but for more than 4 years no witness has been produced by the plaintiffs and therefore the plaintiffs' side is closed.

[7] As regards the 2nd impugned order, said District Court dismissed the transfer petition on the ground that Section 10 of CPC can be resorted to and

Section 11 will contain the situation as decision in the I suit-eviction suit will in any way have a direct impact on the II suit-specific performance suit in terms of the principles of res judicata.

[8] In the hearing today, Mr. Henba Thokchom, learned counsel for revision petitioners submitted that the suit land, suit Ingkhol and suit shop plot are same in both suits and the two suits proceedings in two different Courts can lead to possible conflicting verdicts and can cause complications and anomalies. Therefore it is imperative that the two suits are tried together in one Court either by way of joint trial or by way of simultaneous trial is learned counsel's say. As regards the 1st impugned order, post 06.12.2019, COVID-19 pandemic, which none could portend or presage, spread and this has been overlooked by said Senior Division Trial Court is learned counsel further say. Learned counsel also pointed out that Hon'ble Supreme Court in and vide order dated 10.01.2022 in **In Re: cognizance for extension of limitation** in suo motu **Writ Petition(C) No. 3 of 2020** excluded the period (limitation) from 15.03.2020 to 28.02.2022 across the board owing to COVID-19 pandemic. Learned counsel also submitted that after 28.02.2022, unfortunate violence broke out in Manipur in early 2023 this led to further delay and this has also not been taken note of by said Senior Division Trial Court. In this view of the matter, learned counsel submitted that the revision petitioners not letting in evidence in the II suit-specific performance suit is neither wilful nor wanton but only owing to unforeseen circumstances which were beyond the control of anyone.

[9] In support of his contention, learned counsel pressed into service **Chitivalasa Jute Mills** Case reported in **(2004) 3 SCC 85**. Facts in **Chitivalasa Jute Mills** are that there was a commercial dispute between **Willard India** and

Jaypee Rewa. To be noted, **Chitivalasa Jute Mills** is a Division of **Willard India**. While **Willard India** filed a suit in 1997 claiming a sum of a little over 48 Lakhs towards Jute sold i.e. goods supplied/sold and delivered, **Jaypee Rewa** in 1988 filed a subsequent suit against **Willard India** praying for a decree for a little over 45 lakhs inter alia claiming that the jute supplied were defective and not of ISI standard. The question was whether these two suits should be tried together. The ratio is, when issues arising for decision would be substantially common, almost the same set of oral, documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the suits before two different courts, the same will lead to duplication and two judgments by two different courts leading to the possibility of inconsistent findings and conflicting decrees cannot be ruled out and therefore two such suits should not be tried by two different courts. Learned counsel also pressed into service **K.K. Velusamy** case reported in **(2011) 11 SCC 275**. On facts, **K.K. Velusamy** was also a specific performance suit and the question there was whether Section 151 of CPC can be resorted to for recalling a witness on the teeth of Order XVIII Rule 17 of CPC which is a specific provision in this regard. The ratio is, though Section 151 will have to be used with circumspection and care, only when there is no provision in CPC governing the matter, when bonafides of the applicant cannot be doubted and when exercise is to meet the ends of justice the same can be entertained. In the case on hand, as regards the 30.04.2024 order of the 'said Sr. Div. Trial Court' (to be noted 'Sr.' is abbreviation for 'Senior' and 'Div.' is abbreviation for 'Division'), recall was sought on the ground that it is an erroneous order which causes prejudice to both parties which falls within one of the recall parameters adverted to supra. It was also pointed out that as regards recalling a witness, though Order XVIII Rule 17 CPC is available, there is no specific

provision in CPC for reopening plaintiffs' side and prayer in any event was not to recall a witness and it was to recall a judicial order. As regards filing the transfer petition only on 06.01.2024, learned counsel for revision petitioners submitted that the revision petitioners were waiting for issues to be framed in the II suit-specific performance suit so that it can be demonstrated in a section 24 legal drill that the issues in the I suit -eviction suit and II suit-special performance are almost similar and there is a huge overlap. After 2019, as already alluded to supra, COVID-19 pandemic broke out (which none could portend) followed by unfortunate violence in Manipur.

[10] In response to the aforesaid arguments, Mr. Rajendra, learned senior counsel predicated his submission on the primary plank that the I suit-eviction suit is at a very advanced stage as plaintiff's side evidence has been completed on 29.05.2017 itself, the plaintiff (respondent in CRPs) having examined 3 witnesses and the defendants (revision petitioners) also having examined as many as 5 witnesses (DW1 to DW5) and only 1 witness remains to be examined namely DW6. To be noted, this Court is informed that the Scribe of what according to revision petitioners is a Kutcha Sale Deed dated 08.12.2000 on which the II suit-specific performance suit is predicated. It was submitted that as regards the II suit-specific performance suit, even evidence has not been let in by the plaintiffs and plaintiffs' plea for recalling an order closing their side has been negated and therefore transferring I suit-eviction suit now would only cause delay of the conclusion of the I suit-eviction suit. It was submitted that the respondent is a 78 years old bachelor and the transfer petition has been filed only with the intention of delaying the I suit- eviction suit which is at an advanced stage.

[11] By way of reply, Mr. Henba Thokchom, learned counsel submitted that if transfer plea is acceded to, evidence already recorded thus far in I suit-eviction suit will suffice and examination of DW6 who is scribe of the 08.12.2000 kutcha sale deed on which the specific performance suit is predicated remains. To be noted, as regards the defendant in the II suit-specific performance suit i.e., respondent in the CRPs, defendant's side evidence has commenced, DW1 has been examined and DW2 is scheduled to be examined in the next date. This submission of learned counsel for revision petitioners that the deposition recorded in the I suit-eviction suit and the exhibits marked in the I suit-eviction suit will suffice and can be treated as evidence on the side of the plaintiff in the II suit-specific performance suit (subject only to examination of DW6 scribe) is recorded and it is recorded as an undertaking given to this Court.

[12] It is deemed appropriate to write that learned senior counsel pressed into service **Gopinath Deb** case reported in **AIR 1999 SC 2089 = (1999) 4 SCC 396** for the proposition and **Satyam Fibres** case reported in **AIR 1996 SC 2592 = (1996) 5 SCC 550 (Indian Bank vs. M/S Satyam Fibres (India) Pvt. Ltd)** for the proposition that Section 151 CPC ought not to have been resorted to for recalling. As regards **Gopinath Deb** case, it was a case of settlement by a Collector in favour of a Deity by exercise of powers under Section 151 of CPC . As regards **Satyam Fibres** case, on facts it pertains to invocation of bank guarantee qua a commercial contract.

[13] This Court carefully considered the rival submissions and the dispositive reasoning of this Court is as follows:

- i) The suit land, suit ingkhol and suit shop plot are the same in the I suit-eviction suit and II suit-specific performance suit.

The cap qua pecuniary jurisdiction of Jr. Div. Trial Court (to be noted, 'Jr.' is an abbreviation for 'Junior' and 'Div.' as already alluded to elsewhere supra in this order is an abbreviation for 'Division') is 1 Lakh and as regards Sr. Div. Trial Court pecuniary jurisdiction is unlimited. There is no dispute on this obtaining position. Therefore, the I suit- eviction suit was rightly filed in the Jr. Div. Trial Court in the light of Section 15 of CPC which prescribes that every suit should be instituted in a Court of the lowest grade competent to try the same. The same will apply to the II suit-specific performance suit as the value of the suit is well above Rupees 1 lakh. As regards the territorial jurisdiction also there is no dispute.

- ii) This Court finds that as regards the 1st impugned order, there is no impediment in resorting to Section 151 of CPC as there is no specific provision in CPC and as regards the recall order prayer, it is clearly a case of an erroneous order which causes prejudice to both sides as the 30.04.2024 order has not taken into account the COVID 19 pandemic, exclusion of the period from 15.03.2022 to 28.02.2022 by the Hon'ble Supreme Court and the subsequent unfortunate violence that unfurled in Manipur. Therefore, the 1st impugned order clearly deserves to be interfered with and the sequitur is, same is set-aside.
- iii) As regards the 2nd impugned order, the reasoning of the said District Court that Section 10 CPC should have been resorted to i.e., stay of subsequent suit on the same issue and that

Section 11 (res judicata) would contain the situation is unacceptable as trial is underway in both suits at an advanced stage. Other reasons are, Section 10 would only stay the subsequent suit and verdict in I suit-eviction suit will not contain any finding regarding determinants of a specific performance plea, this being the sheet anchor of revision petitioners' II suit-specific performance. For this suit same reason Section 11 (res judicata) will also be of no avail. In any event, dismissing II Suit-specific performance suit on the basis of verdict in I suit-eviction suit will result in miscarriage of justice as I suit-eviction suit will not contain any findings on specific performance determinants.

- iv) It is also to be noted that revision petitioners (defendants in I suit-eviction suit and plaintiffs in II suit-specific performance suit) have made a categorical statement in this court that the deposition and exhibits in the I suit-eviction suit thus far (subject only to examination of DW6) can be treated as deposition and exhibits in the II suit-specific performance suit also and the same has been recorded as an undertaking given to this Court. This means that both the suits can be taken up for arguments and concluded quickly if the I suit-eviction suit is transferred to the Court of Senior Division Trial Court to be tried jointly with II suit-specific performance suit. This completely neutralizes and takes the wind out of the sails qua the CRPs respondent's argument that the transfer petition has been filed only to delay the I suit-eviction suit. On the contrary

one common verdict covering all issues between the parties will only expedite quietus one way or the other. In this view of the matter, the 2nd impugned order also deserves to be interfered with and the sequitur is, the same is also set-aside.

- v) As regards the case laws, this Court is of the considered view that **Chitivalasa Jute Mills** case and **K.K. Velusamy** case come to the aid of the revision petitioners for the propositions that when there is overlap qua issues and possibility of conflicting verdicts, suits have to be tried together and for the proposition that Section 151 CPC can be resorted to for recall respectively.
- vi) As regards the **Gopinath Deb** case, this Court has no hesitation in coming to the conclusion that 30.04.2024 order of the Senior Division Trial Court will certainly come within one of the parameters for recall, namely, an erroneous order which causes prejudice to the parties as it has overlooked COVID 19 and subsequent violence in Manipur, as already alluded to supra. As regards **Satyam Fibres**, it is completely distinguishable on facts as that was a case of invocation of bank guarantee qua a commercial contract. The facts of instant case are closer to **K.K. Velusamy** which arises out of a specific performance suit.
- vii) This Court deems it appropriate to write that it has noticed that there is no disputation or contestation about the position that there is huge overlap of issues, parties are same, every issues are common and entire suit land, suit Ingkhol and suit

shop plot are the same in I suit-eviction suit and II suit-specific performance suit.

[14] In the light of the narrative, discussion and dispositive reasoning thus far, the following common order is made:

- i) 1st impugned order being order dated 09.10.2024 made in Judl. Misc. Case No. 416 of 2024 in Original Suit No. 73 of 2017 on the file of Court of Civil Judge Senior Division Imphal West, Manipur is set aside;
- ii) 2nd impugned order being order dated 19.10.2024 made in Judl. Misc. Case No. 02 of 2024 {Ref: Original Suit No. 32 of 2014 on the file of Court of Civil Judge (Junior Division), Imphal West, Manipur} on the file of the Court of District Judge, Imphal West is set aside;
- iii) The I suit-eviction suit being O.S. No. 32 of 2014 on the file of the Civil Judge Junior Division Imphal West-I will now stand transferred to the Court of Civil Judge Senior Division Imphal West for being tried jointly with O.S. No. 73 of 2017 albeit subject to the condition that deposition already recorded and documents already exhibited in the I suit, i.e., O.S. No. 32 of 2014 shall be treated as deposition and exhibits on the side of the plaintiffs subject only to examination of the Scribe of the purported Kutcha Sale deed dated 08.12.2000 and marking of exhibits through him. As regards the defendant in the II suit-specific performance suit (respondent before this Court), the defendant side evidence can continue after examination of the

Scribe and necessary orders for facilitating this course of trial shall be made by the transferee Trial Court on the basis of this Judicial Order;

- iv) For the sake of specificity, it is clarified that post transfer, the scribe who was scheduled to be examined as DW6 in the I suit- eviction suit shall now be examined as revision petitioners' side witness, and his/her deposition and documents (if any) marked through him/her shall be appreciated and looked into in addition to the evidence already let in and the documents already marked vide DW1 to DW5 in the I suit- eviction suit;
- v) The Senior Division Trial Court i.e., Civil Judge Senior Division Imphal West, shall, subject to pendency of cases, make every effort to dispose of both the suits as expeditiously as the official business of Court would permit.

[15] Captioned 2(two) CRPs are allowed albeit with observations and recording of stated position of the revision petitioners regarding deposition and exhibits as recorded supra. Consequently, captioned MC is disposed of as closed. There shall be no order as to costs.

CHIEF JUSTICE

Indrajeet

FR/NFR