(2014) 06 GAU CK 0040

In the Gauhati High Court

Case No : RFA No. 33 of 2012

Sh. Chalzika APPELLANT

Vs

State of Mizoram and Others RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Citation : (2014) 2 GLD 37

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : L.H. Lianhrima, Advocates for the Appellant; C. Lalramzauva, Sr. Adv. and A. Lallawmzuala, Addl. A.G, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—This regular first appeal is against the judgment and order dated 28.6.2012 passed by the Sr. Civil Judge, Aizawl District, Aizawl in Title Suit No. 04/2007 dismissing the suit that was filed by the present appellant. As the facts in detail are available in the impugned judgment and order, instead of repeating the same, only the relevant facts pleaded in the plaint are referred to herein below.

"i. Mr. Thanzama (since deceased) was the owner of the immovable property covered under LSC No. 386 of 1976, a portion of the land was given to his wife Kapthangi (since deceased) and the same was put as LSC No. AZL 722 of 1992. However, in the year 1995, LSC No. 722 of 1992 was put in the name of Thanzama and the LSC No. 386 of 1976 was put in the name of his wife Kapthangi.

ii. Kapthangi sold the LSC No. 386/1976 to the plaintiff with the consent of her husband on 28.3.2002. The sale deed (Ext. P/3) was signed not only by Kapthangi but also her husband Thanzama and was also signed by two witnesses. In paragraph-2 of the plaint, the plaintiff/appellant has pleaded thus:

"That in the year 1995 at the instance of the respondents Pi Kapliani and other children of the deceased Pu Thanzama the LSC No. 722 of 1992 was transferred in the name of the deceased Pu Thanzama and the LSC No. 386 of 1976 in the name of the deceased Pi Kapthangi vide order No. R. 20011/6/95-DC(A)/95, dt. 27.3.1995."

iii. The plaintiff/appellant was issued with the duplicate LSC pertaining to LSC No. 386/1976 on 6.12.2004 on the basis of his application praying for the same on the ground of the original being gutted in fire. As pleaded in the plaint, the application submitted by the plaintiff/appellant before the revenue authority for issuance of duplicate LSC was notified in the newspaper calling for objection, if any. However, when no objection was filed, the duplicate LSC was issued in favour of the plaintiff/appellant.

iv. In the plaint, it was contended that LSC No. 386/1976 was transferred in the name of the plaintiff/appellant during the life time of both Thanzama and Kapthangi and thus the defendants/respondents No. 5, 6 and 7 had no right to interfere with the same.

v. During later part of February, 2007, the appellant could come to know that the defendants/respondents Nos. 5, 6 and 7 had obtained the heirship certificate in respect of the land under LSC No. 386/1976 and on enquiry also come to know that the heirship certificate No. 235/2005 was issued vide Memo dated 18.7.2005. Approach being made to the revenue authority, the plaintiff/appellant could come to know that by order dated 2.5.2005 only the LSC No. 722/1992 was cancelled and not LSC No. 386/1976. However, the revenue authority by its order dated 23.2.2007 declared the earlier LSC No. 386/1976 invalid and re-issued the same in the name of Thanzama, although he was no longer alive having died on 1.3.2005."

It was in the aforesaid factual back ground, coupled with the other relevant facts stated in the plaint and discussed in the impugned judgment and order, the plaintiff/appellant filed the suit with the following prayer.

"(a) Let the decree be passed declaring that the plaintiff is the legal and rightful owner of the land and building covered under LSC No. 386 of 1976 and has title, interest and possession of the said land covered under the said LSC.

(b) Let the decree be pass declaring that the order issued vide Memo No. R.21011/91/92-DC(A) VOL-1/391 dated 23rd Feb/07 is illegal and to be set aside and declare that the LSC No. 386 of 1976 in the name of the plaintiff is valid.

(c) Let a decree be passed declaring that the fresh LSC issued by the defendant Nos. 1 to 4 in the name of H. Thanzama (L) at the instance of the defendants'' Nos. 5 to 7 is invalid and void.

(d) By way of permanent and mandatory injunction the defendants especially the defendants Nos. 5 to 7 be restrained from dispossessing the plaintiff from the suit land and the plaintiff be allowed to enjoy peaceful possession.

(e) By way of permanent and mandatory injunction the defendants from doing anything detrimental to the interest of the plaintiff.

(f) Let any other relief to which the plaintiff is entitled according to Justice, Equity and Good Conscience be decreed in favour of the plaintiff."

2. The respondents No. 5, 6 and 7 filed their written statement resisting the claim of the plaintiff/appellant and it was contended that Thanzama had met with an accident on 31.1.1992 because of which he remained unconscious and had to be admitted at Aizawl Civil Hospital where he remained for a number of days. After release from the hospital, he underwent further treatment at home. It was alleged that during that time, his wife Kapthangi had clandestinely taken out his LSC No. 386/1976 and cause transfer of the same to her name by slicing out LSC No. 722/1992 from LSC No. 386/1976. She then transferred both the LSC to her name without the knowledge of her husband and thereafter sold the LSC No. 386/1976 to her brother, who is the plaintiff/appellant. It was alleged that the signature of Thanzama appearing in the sale deed was the product of forgery.

3. Along with the written statement, Ext. D-2 was annexed, which is the purported application submitted by Thanzama to the revenue department seeking reversion the LSC in question. The said application was filed on 21.9.2004, when he was 84 years of age and soon thereafter he died on 1.3.2005. According to the defendant/respondents No. 5, 6 and 7, the original LSC was restored in the name of their deceased father. In the written statement filed by the official respondents i.e. respondents No. 1 to 4, they justified the impugned order of the revenue authority towards restoration of LSC No. 386/1976.

4. On the basis of the pleadings, the learned Trial Court framed the following issues for determination.

"1. Whether the suit is maintainable in its present form and style.

2. Whether there is any cause of action in favour of the plaintiff against the defendants.

3. Whether the plaintiff has any locus standi to file the present suit.

4. Whether Thanzama (L) had given the portion of his land under LSC No. 386 of 1976 to his wife Smt. Kapthangi (L).

5. Whether the LSC No. AZL-722 of 1992 issued in the name of Smt. Kapthangi (L) was valid in the eye of law.

6. Whether LSC No. 386 of 1976 was rightly/validly transferred in the name of the deceased Smt. Kapthangi (L).

7. Whether Smt. Kapthangi (L) had sold the LSC No. 387 of 1976 to the plaintiff with the consent of her husband Shri H. Thanzama (L).

8. Whether the decision of the Government for restoration of the LSC No. 386 of 1976 (Original) in the name of Shri H. Thanzama vide letter dt. 23/2/07 is valid

or not.

9. Whether the plaintiff is entitled to the reliefs claimed. If so, to what extend."

5. While answering the issues No. 1, 2 and 3 (wrongly recorded as issue No. 2) in favour of the plaintiff, the learned Trial Court answered the issue No. 5, 6, 7, 8 and 9 (wrongly recorded as issue No. 4, 5, 6, 7 and 8) against the plaintiff/ appellant towards dismissal of the suit filed by him. Being aggrieved, the plaintiff has preferred the present appeal.

6. I have heard Mr. L.H. Lianhrima, the learned counsel representing the plaintiff/ appellant and so also Mr. A. Lallawmzuala, Addl. A.G., Mizoram, representing the official respondents. I have also heard Mr. C. Lalramzauva, learned Sr. Counsel assisted by Mr. Johny L. Tochhawng, the learned counsel representing the respondents No. 5, 6 and 7. Learned State Counsel submitted that since the matter pertains to land dispute between the private parties, the State may not have any stake in the matter. However, he submitted that the order of the revenue authority restoring the LSC No. 386/1976 in the name of Thanzama is legally valid.

7. The learned counsel for the appellant referring to the evidence on record and also the impugned judgment and order submitted that the learned Trial Court having not pronounced the judgment on all the issues referred to above, on that score alone, the same is liable to be set aside and quashed. Referring to the judgment and order dated 11.7.2002 passed by this Court in RSA No. 8/2001, he submitted that the land could not have been restored in the name of a dead person as by the time order for restoration was made, Thanzama was no longer alive, he having died on 1.3.2005. He also submitted that the original LSC having been sliced to two parts with the conferment of absolute right to Kapthangi in respect of LSC No. 386/1976, the defendants/respondents cannot claim any heirship in respect of the said land as the same no longer existed in the name of their father since 1992. He also submitted that the other portion of the land covered under LSC No. 722/1992 being with the defendants/respondents, they should be satisfied with the same instead of trying to fraudulently obtained the other part of the land covered by LSC No. 386/1976.

8. The learned counsel, representing the respondents No. 5, 6 and 7 submitted that since the land was restored on the basis of the above referred application filed by Thanzama during his life time, it cannot be said to be a case of restoration of the land in the name of a death person, although during the pendency of adjudication of the said application, he died on 1.3.2005. Referring to the evidence on record, he also submitted that the transaction of 2002, by which, the land was shown to have been sold to the plaintiff/appellant being not valid in the eye of law, the plaintiff cannot claim any right under the said transaction. Referring to the provision of Registration Act, 1908 and also the Indian Stamp (Mizoram amendment) Act, 1997, he submitted that the Ext. P/3 sale deed being neither a registered one nor being accompanied with the

requisite stamp duty, the same is non-est in the eye of law and thus could not have been acted upon. He has also referred to two decisions of the Apex Court reported in Sewa Ram and others Vs. Union of India and others, and State of U.P. Vs. Amar Singh etc., .

9. While the decision in Sewa Ram (supra) has been referred to, to emphasis that the purchaser cannot have better title than the seller himself had, the decision in Amar Singh (supra), has been pressed into service that the plaintiff/appellant cannot derive any title on the basis of Ext. P/3 sale deed in absence of due execution of the same with stamp duty and registration.

10. I have given my anxious considerations to the submissions made by the learned counsel for the parties and have also gone through the entire materials on record. My conclusions and findings are as follows.

11. As noted above, the learned Trial Court while answering the issues framed, which have been referred to above, answered the Issue No. 1, 2 and 3 in favour of the plaintiff/appellant. However, clubbing the issues No. 4 and 5 (wrongly recorded as Issue No. 3 and 4) answered the same against the plaintiff/appellant and so also the issue No. 7, 8 and 9 (wrongly recorded as Issue No. 6, 7 and 8).

12. The answer to the Issue No. 4 and 5 as recorded in the impugned judgment and order is quoted below :

"Issue No. 3/4

Whether Thanzama (L) had given the portion of his land under LSC No. 386 of 1976 to his wife Smt. Kapthangi (L).

No documentary evidence was made for revealing the gifted of some portion of land under LSC No. 386 of 1976 to his wife Sm. Kapthangi by late Thanzama whilst undisputably, the original holder/owner of LSC No. 387 of 1976 was late Thanzama. The defendants 5-7 till arguments alleged that during hospitalized of the late Thanzama as met accident on 13/1/1992 and hereby nursed in his bed during three months as deposed by DW-1 for defendants 5- 7, his second wife clandestinely took of the copy of LSC No. 386 of 1976 and hereby manipulated in her favour.

The PW-1 also admitted during his cross-examination that Mr. Thanzama was hospitalized due to accident on 13/1/1992 by rolling down in the slope below his house which is the version of the defendants 5-7. DW-1 for defendants 5-7 deposed that her late father Mr. Thanzama was not in a position to give consent for mutation of the suit LSC No. 386 of 1976 in the name of Smt. Kapthangi as he was seriously ill health and being a daughter, she looked after her father and stayed with the said Mr. Thanzama. During her cross-examination, she denied that LSC No. 386 of 1976 was partitioned and mutated with the consent of Mr. ''Thanzama. Her version is corroborated by other DWs of defendants 5-7. In this issue, the plaintiff failed to prove that LSC No. 386 of 1976 was given to Mr. Thanzama to his wife Smt. Kapthangi as the witnesses of plaintiff silent on such issue by mainly delving on the crux on transfer of the suit land to Chalzika from Smt. Kapthangi.

Issue No. 4/5

Whether the LSC No. AZL-722 of 1992 issued in the name of Smt. Kapthangi (L) was valid in the eye of law.

Admittedly, although LSC No. AZL-722 of 1992 was firstly issued in the name of Smt. Kapthangi and thereafter reverted back into the name of Mr. Thanzama. Whether the said LSC No. AZL 722/1992 was issued in the name of Smt. Kapthangi validly or not is already answered by the findings under Issue No. 3."

13. On the face of it, there is no discussion of the evidence on record, more, particularly in respect of the Ext. P/3 sale deed. While discussing the Issue No. 4, the learned Trial Court has only referred to the purported manipulation made by Kapthangi in respect of LSC No. 386/1976. However, nothing has been discussed as to how such manipulation was done. Merely because Thanzama was hospitalized and was ill for some time, in absence of anything to show that slicing of the original land under LSC No. 386/1976 to that of LSC No. 722/1992 and LSC No. 386/1976 was the product of forgery/fraud committed by Kapthangi, the issue could not have been answered against the plaintiff/appellant. Moreover, there is also no definite finding recorded in respect of the said issue.

14. Another relevant fact of the matter is that it was nearly about 13 years after such diversion of the land with the conferment of LSC No. 386/1976 to his wife Kapthangi, he purportedly made the Ext. D-2 application on 21.9.2004 and soon thereafter died on 1.3.2005. Thus, the question which necessarily falls for consideration is as to whether a man, who was all along silent for long 12/13 years, whether was entitled to raise any objection in respect of the said LSC and also as to whether the same was out of his own volition or under any compulsion. It is in this context, the learned counsel for the appellant submitted that the Ext. D-2 (Annexure-2) was the product of manipulation on the part of the respondents No. 5, 6 and 7.

15. The learned Trial Court while shifting the burden on the plaintiff/appellant to prove that Thanzama had given the LSC No. 386/1976 to Kapthangi has also not discussed the issue in reference to the entire evidence on record. At the same time, while answering the Issue No. 5 clubbed the same with that of Issue No. 4. The learned Trial Court was also required to answer the question as to whether the LSC, which stood in the name of Kapthangi over the years without any objection whatsoever, could have been cancelled at the instance of the respondents No. 5, 6 and 7 and that too in reference to the order dated 2.5.2005, which was pertaining to LSC No. 722/1992, which was never in the name of the plaintiff/appellant. Thus, it was incumbent on the part of the learned Trial Court to decide the issue as to whether the order dated 23.2.2007 was legally valid or not. The learned Trial Court while referring to the evidence adduced by the defendants/respondents has also not referred to the evidence of

the plaintiff/appellant as available on record.

16. As regards the Issue No. 6 - whether ISC No. 386 of 1976 was rightly/validly transferred in the name of the deceased Smt. Kapthangi (L), the learned Trial Court instead of answering the same has dealt with the sale deed dated 28.3.2002 (Ext. P/3), by which Kapthangi had sold out the land to the plaintiff. The issue being not that of the validity or otherwise of the transfer to the plaintiff/ appellant, but being transfer in the name of the deceased Smt. Kapthangi, the same could not have been answered referring to the said sale deed. While it is true that as to whether the Ext. P/3 sale deed was validly executed or not may be a question for consideration, but at the same time, the issue being that of validity or otherwise of the transfer of LSC No. 386/1976 to Kapthangi, it was irrelevant to answer the said question in that issue. Admittedly, when the land stood transferred in the name of Kapthangi in the year 1992/1995, the Registration Act, 1908 was not applicable as it was made applicable to the State of Mizoram only in 1997. Even in respect of the Ext. P/3 sale deed, which was duly not registered nor duly stamped, a question may also arise as to whether irrespective of the said position, the principle of promissory estoppel would arise in the given facts and circumstances.

17. As regards the Issue No. 7, whether Smt. Kapthangi (L) had sold the LSC No. 386 of 1976 to the plaintiff with the consent of her husband Shri H. Thanzama (L), if the land had already been transferred in the name of Kapthangi, it was immaterial as to whether Thanzama had signed the sale deed or not. In the sale deed, there is also clear signature of Thanzama. Although, the learned Trial Court has referred to the evidence of PW-5 to hold that the said witness in cross-examination had deposed that Thanzama did not put his signature in the sale deed, but has failed to appreciate the same in its true perspective, as the said witness upon re-examination clarified the position by stating that his statement that Thanzama did not sign the sale deed was only to mean that since the incident took place long back, he was exactly not sure whether he had signed or not. This aspect of the matter does not find mention in the impugned judgment and order while answering the Issue No. 7.

18. As regards the Issue No. 8 -Whether the decision of the Government for restoration of the LSC No. 386 of 1976 (Original) in the name of Shri 11. Thanzama vide letter dt. 23/2/07 is valid or not, the learned Trial Court while answering the said issue dealt with the purported foul play committed by the plaintiff/appellant and Smt. Kapthangi. Although while answering the issue, the learned Trial Court has referred to the admission on the part of the defendants/ respondents No. 5, 6 and 7 that the Government approval for cancellation was not LSC No. 386/1976 has elicited by Ext. P/8. However, without delving with the same any further has only referred to the purported intention of the Government to restore the LSC No. 386/1976 and not to cancel the LSC No. 722/1992, although the evidence is otherwise. The learned Trial Court has brushed aside the same as a minor discrepancy. While dealing with the issue, the learned Trial

Court has referred to the issue of transfer of the land through sale to the plaintiff/ appellant by Kapthangi.

19. Ext. P/8 is the letter dated 2.5.2005 addressed to the Director, Land Revenue by the Government of Mizoram in the Revenue Department conveying the approval of the Government to the proposal for cancellation of LSC No. 722/1992. Ext. P/9 is the communication made to the plaintiff/appellant by the Assistant Settlement Officer alleging alteration/partition of LSC No. 386/1976 by him without the approval of Thanzama. By the said letter, referring to the Ext. P/8 letter, the plaintiff was informed that his land pass was invalid and accordingly directed him to submit the LSC as LSC No. 386/1976 which was freshly issued to Thanzama. Taking into account the Ext. P/8 and P/9 letters together, it is apparent that there is wide variation between the same. While the Government had approved only the cancellation of LSC No. 722/1992, but the Assistant Settlement Officer, going a step further freshly issued the LSC No. 386/1976 in the name of Thanzama, who had already expired upon cancellation of the LSC standing in the name of the plaintiff.

20. In the written statement filed by the defendants/respondents No. 1 to 4, referring to the said Annexure-P/9 communication dated 23.2.2007, it was contended that LSC No. 386/1976 was re-issued in the name of the deceased Thanzama. When the defendant witness namely Sri R.L. Rindika, Superintendent, Land Revenue Department was cross-examined, he made the following significant statements.

"2. It is a fact that the LSC No. 386 of 76 was put in the name of Chalgika much before Thanzama had died.

3. Kapuang and two sisters namely Lalzawm Thangi, Lalthanpuii had made the complaint before the Revenue Deptt. after that death of H. Thanzama.

....

7. It is a fact that the LSC No. 386 of 76 was issued afresh in the name of Thanzama after his death on the basis of the complaint submitted by Kaliani along with the heirship certificate issued on 18th July 2005.

8. It is a fact that as per the approval of the Government, the approval was granted for cancellation of the LSC No. of 722 of 1992, and there was no approval for the Government for declaring the LSC No. 386 of 76 as invalid.

9. It is a fact that I cannot produce any document of approval of the Government in respect of cancellation of LSC No. 386 of 76 as well as declaring of the said LSC No. 386 of 76 as invalid in the Court today.

10. It is a fact that I have perused Ext. 9 issued by Assistant Settlement Officer-I letters/memo No. R. 21011/71/92 dt. 23.2.2007 and in the said letter there is no mention about the direction given by either the Director of Land Revenue Settlement or the Government for cancellation or declaring invalid the LSC No. of

386 of 76.

11. I know Kapliani very well since a long time as I am from the same locality."

21. From the above, what is clear is that the Government approval was for cancellation of LSC No. 722/1992 and not for LSC No. 386/1976. This witness in his deposition categorically admitted that there was no direction either from the Government or from the Director of Land Revenue for declaring the LSC No. 386/1976 as invalid. However, this aspect of the matter has not been discussed by the learned Trial Court while answering the issue in favour of the defendants/ respondents and against the plaintiff/appellant.

22. Finally while deciding the Issue No. 9 - whether the plaintiff is entitled to the reliefs claimed. If so, to what extent, the learned Trial Court while holding that the plaintiff/appellant was not entitled to any relief due to lack of merit and consequently dismissing the suit has returned the finding that while transferring the LSC No. 386/1976 in the name of Kapthangi, the signature of Thanzama was forged, without, however there being any evidence on record to that affect. In absence of any categorical evidence that such transfer was affected by Kapthangi when her husband was in hospital due to the accident met by him, which fact was required to be appreciated in reference to the fact that there was no objection whatsoever from Thanzama for all the years till purported filing of the application on 21.9.2004, just before 5 months of his death, the learned Trial Court could not have returned the finding that it was duly proved from the evidence on record that the transfer of LSC No. 386/1976 was illegal and unauthorized.

23. Above apart, it is in the evidence that by the time the purported Ext. D-2 application was filed by Thanzama on 1.3.2005, his wife Kapthangi already died on 16.7.2004, a fact which the defendant No. 5 admitted in her evidence with the statement that they had submitted a complaint to the revenue department on 21.9.2004 seeking reversion of the LSC in question. Another aspect of the matter, which required consideration, was that as to whether the defendant/ respondent, who admittedly had been living separately from their father with their respective families, could have claimed restoration of LSC No. 386/1976, which already stood transferred to his wife Kapthangi. Further, with the said established fact of transfer of the land in the name of Kapthangi with further devolution of the same with the plaintiff/appellant who was also subsequently issued with duplicate LSC without any objection whatsoever, whether, the revenue authority could have restored the LSC No. 386/1976 in the name of the original holder who was no longer in existence having died on 1.3.2005 was also a relevant consideration for the learned Trial Court to deal with, but the same was not dealt with.

24. For all the aforesaid reasons, while setting aside the impugned judgment and order dated 28.6.2012 passed by the learned Sr. Civil Judge, Aizawl District, Aizawl in T.S. No. 04/2007, the matter is remanded back to the said Court to re-

decide the issues on the basis of the evidence already available on record along with the following additional issues towards arriving at a just and proper decision in the suit.

"(i) Whether by virtue of possession of land under LSC No. 386/1976 since 1992/1995 by Smt. Kapthangi without there being any objection from anyone including her husband, the defendants/respondents are precluded from raising objection to the same after so many years of possession of the land by her.

(ii) Whether the alleged complaint (Ext. D-2) was validly made by the deceased husband of Kapthangi and the same could have been acted upon after so many years of bestowing of the land with Kapthangi.

(iii) Whether irrespective of validity or otherwise of the Ext. P/3 sale deed dated 28.2.2002, the defendants could have claimed the land under LSC No. 386/1976, which stood in the name of their step mother Kapthangi over the years since 1992/1995 till was disposed of vide the said sale deed.

(iv) Whether in the suit filed by the plaintiff any declaration can be made in respect of validity or otherwise of the sale deed (Ext. P/3) without there being any formal challenge to the same by the defendants/respondents."

25. The learned Trial Court shall proceed with the matter afresh as directed above and shall allow the parties to adduce evidence on the additional issues. It is expected that the matter shall be decided as expeditiously as possible, preferably within six months. With the above direction, the appeal is disposed of. Registry shall send down the LCR along with the copy of this judgment and order after observing the due formalities.

