
(2013) 11 GAU CK 0045
In the Gauhati High Court
Case No : R.F.A. No. 48 of 2012

State of Mizoram and Others

APPELLANT

Vs

Sh. Zosangliana and Another

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : AIR 2014 Guw 1

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—This first appeal u/s 96 of the Civil Procedure Code, 1908 read with Section 17 of the Mizoram Civil Courts Act, 2000 is directed against the judgment and order dated 10.08.2012 passed by the learned Senior Civil Judge-I, Aizawl Judicial District, Aizawl in Civil Suit No. 80/2009. By the said judgment and order, the suit instituted by respondent No. 1 as the plaintiff was decreed and the defendant Nos. 1, 2 and 3 i.e. the appellants herein, were directed to pay compensation of Rs. 3 lakhs with interest at the rate of 9% per annum w.e.f. 16.12.2009 till realisation in full on account of the expenditure incurred in purchasing the suit land. A further sum of Rs. 3 lakhs with interest at the rate of 9% per annum w.e.f. 16.12.2009 till realisation in full was awarded to the plaintiff as compensation to be paid by the said defendants for expenditure incurred in construction of a two storied Assam Type building on the suit land. Respondent No. 1 was the plaintiff in the suit whereas appellants were defendant Nos. 1, 2 and 3. Proforma respondent was the defendant No. 4 in the suit.

2. Pleaded case of the plaintiff as can be seen from the plaint is that he had purchased LSC No. 103103/01/863 of 2003 from one H. Lalchhuanawma, S/o. Ruma (L), Nursery Veng, Aizawl. The said LSC (hereinafter referred to as LSC No. 863/2003) covered an area of 0.28 bighas which is located at Edentharr Veng, Aizawl. Mutation of the said land in favour of the plaintiff was done on 10.05.2005. Plaintiff constructed a two storied Assam Type building on the said

land in the year 2005. However, defendant No. 3 issued stay construction order on 8.4.2005 on receipt of complaint from two persons who claimed that the construction was being carried out over their land. However, the stay construction order was vacated by subsequent order dated 18.5.2005. Thereafter, plaintiff completed construction of his building. Later on, verification of plaintiff's land was ordered by defendant No. 3 on the ground that plaintiff's LSC overlapped land covered by House Pass Nos. 838/90 and 1067/90. However, on the ground that plaintiff's LSC overlapped land covered by the above house passes and LSC of defendant No. 4, plaintiff's LSC was cancelled after giving show-cause notice to him. Plaintiff has contended that he had incurred substantial expenditure in purchasing the land and thereafter in making the construction. He, therefore, instituted Civil Suit No. 80/09 in the Court of Senior Civil Judge, Aizawl seeking a decree of compensation for the loss suffered by him in purchasing the LSC and in also making the construction. Further prayer made was for a decree awarding interest at the rate of 9% per annum from February, 2005 till final payment. Plaintiff also prayed for injunction to restrain the defendants from demolishing the house constructed by him on the land covered by LSC No. 863/2003 and also from dispossessing him from the property.

3. Defendant No. 2 i.e. Director of Land Revenue and Settlement, Govt. of Mizoram {appellant No. 2} filed his written statement. In the written statement, a preliminary objection was taken that the suit was bad for non-joinder of necessary party and, therefore, it should be dismissed. On merit, it was stated that Sri Zaitinrema and Sri Vanlalnghaka were the original allottees of land covered by House Pass Nos. 838/90 and 1067/90. It was further stated that LSC No. 863/2003 was cancelled with the approval of the Government as it overlapped the land covered by the above house passes, which were issued at earlier point of time. However, plaintiff has not returned back his LSC till date. It is stated that plaintiff ought to have been careful before buying the LSC from the previous owner.

4. Other defendant also filed written statement.

5. On the basis of the pleadings, learned trial Court framed the following issues for consideration:--

- 1) Whether the plaintiff had cause of action to institute the suit?
- 2) Whether the suit was bad for non-joinder of necessary parties?
- 3) Whether LSC No. 863/2003 was duly issued to Sri H. Lalchhuanawma and if so, whether it was validly mutated in the name of the plaintiff?
- 4) Whether the plaintiff was entitled to the relief claimed and if so, to what extent and from whom?

6. On behalf of the plaintiff, three witnesses adduced evidence. These three witnesses were the plaintiff himself as P.W. 1, Sri H. Lalchhuanawma, the previous owner of LSC No. 863/2003 from whom the plaintiff had purchased the

said LSC, as PW2 and Sri P.C. Lalrema, the carpenter, who was engaged by the plaintiff in the construction of his building, as PW3. On behalf of defendant Nos. 1, 2 and 3 i.e. the appellants herein, only one witness adduced evidence i.e. Sri K. Lalhmuakliana, Assistant Director, Land Revenue and Settlement Department, Govt. of Mizoram. In addition, defendant No. 4 also adduced evidence as a witness on his behalf.

7. Learned trial Court answered all the issues in favour of the plaintiff and, thereafter decreed the suit in favour of the plaintiff by awarding Rs. 3 lakhs each on both the two counts as noticed above with interest at the rate of 9% per annum. Defendant Nos. 1, 2 and 3 were directed to pay the said amount. It was further ordered that the plaintiff shall dismantle his two storied Assam type building standing on the suit land and after collecting all the materials within one month, hand over the vacant land to defendant No. 4. The plaintiff was further directed to return the original copy of LSC No. 863/2003 to the defendant Nos. 1, 2 and 3.

8. Aggrieved, defendant Nos. 1, 2 and 3 as the appellants have preferred the present appeal.

9. Heard Mr. Aldrin Lallawmzuala, learned Addl. Advocate General appearing for the appellants and Mr. B. Lalramenga, learned counsel for the sole respondent.

10. Learned counsel for the appellants submit that the suit was bad for non-joinder of necessary party. Plaintiff had purchased LSC No. 863/2003 from Sri H. Lalchhuanawma. The LSC was subsequently found to be defective inasmuch as it overlapped land belonging to defendant No. 4 covered by LSC Nos. AZL 2270/1987 and AZL 2267/1987, which were issued at earlier point of time. It was because of that LSC No. 863/2003 was cancelled by the Government after giving due notice to the plaintiff. Therefore, the grievance of the plaintiff ought to have been directed against the previous owner, namely, Sri H. Lalchhuanawma and in the facts and circumstances of the case, he was the most important party. That being the position, he was a necessary party and failure on the part of the plaintiff to implead him as a defendant in the suit had vitiated the entire proceeding. He also submits that a reading of the plaint and the prayer portion does not show that plaintiff had quantified the amount which he claimed as compensation. In such circumstances, awarding of the above compensation by the learned Court below is not at all justified. In any case, there is no discussion or deliberation at all in the impugned judgment to show as to how the aforesaid quantum of compensation could be assessed and arrived at by the learned Court below. He, therefore, seeks quashing of the impugned judgment and order.

11. Submissions made by learned counsel for the appellant has been opposed by learned counsel for the respondent No. 1 (plaintiff). He submits that plaintiff had suffered considerable loss first in purchasing the property and then making the construction thereon. He submits that though initially there was a stay construction order, the same was subsequently withdrawn following which,

plaintiff completed the construction. Therefore, to ask the plaintiff to demolish the construction now is not at all justified. He submits that since order to dismantle the house has been issued by the defendant Nos. 1, 2 and 3, they are the necessary parties and not the previous owner, since relief is sought for from the defendant Nos. 1, 2 and 3. He, therefore, submits that there is no infirmity in the impugned judgment and order and no case for interference is made out.

12. Submissions made have been considered. Also perused the record of the case, which has been received on requisition.

13. Before proceeding further, provisions of Order VII may be looked into. Order VII Rule 1 deals with particulars to be contained in a plaint. Among other requirements, the plaint should contain a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits. As per Order VII Rule 2, where the plaintiff seeks recovery of money, the plaint shall state the precise amount claimed.

14. Having noticed the legal requirement, let us now examine the plaint filed by respondent No. 1. A careful reading of the plaint would show that nowhere in the plaint, respondent No. 1 (plaintiff) had quantified the amount claimed by him. In paragraph 19 of the plaint, plaintiff simply stated that he had spent a lot of money in developing the land and also in constructing the house. In the prayer portion also, he had sought for a decree directing the State defendants to compensate the loss suffered by him in purchasing the LSC and in constructing the building.

15. When a party seeks a decree for recovery of money, it is incumbent on him to state in the plaint the precise amount claimed. In the present case, plaintiff failed to specify in the plaint and in the relief claimed, the precise amount of the claim, which is a fundamental defect striking at the root of the suit.

16. Coming to the judgment under appeal, a perusal thereof does not show any discussion or deliberation by the learned trial Court on the claim made by the plaintiff. Suddenly and abruptly, he came to the conclusion that plaintiff is entitled to Rs. 3,00,000/- (Rupees three lakhs only) each as compensation on account of expenditure incurred in purchasing the suit land and on construction of the house. Such an order cannot be sustained in the eye of law. Awarding of compensation in a civil proceeding cannot be doled out like a charity but must be based on hard facts brought out by adducing evidence, which must be carefully analysed and assessed by the Court.

17. At this stage, we may examine the evidence adduced on behalf of the plaintiff. In his evidence-in-chief, P.W. 1 (plaintiff himself) simply stated in paragraph 9 that he had brought the LSC from PW2 for Rs. 3 lakhs and had constructed his house thereon by spending around Rs. 3 lakhs without any particulars or supporting documents to justify the claim. In his cross-examination, he stated that he did not know from where PW2 (the previous owner) had obtained LSC No. 863/2003 and that he also did not know that PW2

had a defective title. He admitted that LSC of defendant No. 4 was issued prior to his LSC and that his LSC was cancelled by the Government. In his evidence PW2 stated that LSC No. 863/2003 was cancelled by the Government in the year 2006. Thus, on the basis of the above evidence, learned trial Court could not have awarded the decretal amount.

18. Further direction of the learned trial Court to the plaintiff to dismantle his two storied Assam Type building and to collect all the materials within one month and thereafter, to leave the vacant land to the defendant No. 4 is quite baffling to say the least. So is also the further direction to the plaintiff to return the original copy of LSC No. 863/2003 to the defendant Nos. 1, 2 and 3 within one month. If indeed, that is the ultimate direction, there can be no justification to award compensation to the plaintiff.

19. For the aforesaid reasons and without going into other aspects, this Court is of the view that impugned judgment and order is wholly unsustainable in law. Same is hereby set aside and quashed. Appeal is accordingly allowed and the suit is dismissed. However, there shall be no order as to cost.