

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

AIZAWL BENCH

**RFA No. 26 of 2011**

APPELLANT :

Smt. Zampuii,  
D/o Rosiama,  
R/o Chanmari West, Aizawl.

By Advocate :

Mr. A.R. Malhotra.

RESPONDENTS :

1. State of Mizoram through the  
Chief Secretary to the Govt. of  
Mizoram, Aizawl.
2. Secretary to the Govt. of Mizoram,  
Revenue Department, Aizawl, Mizoram.
3. Director,  
Land Revenue & Settlement  
Department, Govt. of Mizoram,  
Aizawl.
4. Assistant Settlement Officer-I  
Land Revenue & Settlement  
Department, Govt. of Mizoram,  
Aizawl.
5. Smt. Lalmalsawmi,  
D/o Sawichhinga (L),  
R/o Near Baptish Church,  
Ramhlun North, Aizawl.

By Advocate:

Mr. Aldrin Lallawmzuala, Addl. A.G., Mizoram.

**BEFORE  
HON'BLE MR. JUSTICE L.S. JAMIR**

Date of hearing : 01.08.2013

Date of judgment and order : 01.08.2013

**JUDGMENT AND ORDER (ORAL)**

Heard Mr. A.R. Malhotra, learned counsel appearing for the appellant as well as Mr. Aldrin Lallawmzuala, learned counsel appearing for respondent Nos. 1 to 4 and Mr. L.H. Lianhrima, learned counsel appearing for respondent No. 5.

2. The appellant/plaintiff had applied for a plot of land situated at Chanmari West in the year 1989. After due verification, the appellant was allotted the plot of land measuring about 302.50 Sq. metre vide House Pass No. 539 of 1989 by the Revenue Department. Thereafter, the appellant took possession of the land and constructed the building in the year 1989 as per the terms and conditions of the House Pass. On application by the appellant, Land Settlement Certificate No. AZL.394 of 1990 was issued to the appellant by converting the said house pass. The appellant has been paying tax and other necessary fees in respect of the said land and she has also cleared all the taxes dues upto 2001-2002.

3. While matters rest thus, the plaintiff received a letter dated 03.04.1996 issued by the ASO-I addressed to Shri H. Zabiaka, S/R-III stating that Smt. Lalmalsawmi(respondent No. 5) had submitted a letter stating that her land covered under LSC No. 3126 of 1985 is overlapping with the land of the plaintiff covered under LSC No. AZL. 394 of 1990 and that the surveyor was directed to make spot verification. After spot verification, the appellant did not receive any communication from the Revenue Department until she received the show cause notice dated 29.06.1998 stating as to why the LSC should not be transferred and the building be demolished. On receipt of the show cause notice, the appellant submitted a reply stating that she has constructed a building in 1989 and the respondent No. 5 had not done anything to show that the land belongs to her and, therefore, she requested the ASO-I to give an alternative site to the respondent No. 5. However, the Assistant Settlement Officer-I issued an order dated 19.06.2010 informing the appellant that as the house pass and LSC of respondent No. 5 is senior, the respondent No. 5 shall have the land and the appellant shall be provided an alternative land and the cost of the building will be borne by the respondent No. 5.

4. The appellant also received an order from the Director, Land Revenue and Settlement Department, Mizoram, Aizawl stating that for settling this type of dispute, they could rely only on the letter of the Government which says that the senior pass holder will have the said land and the junior pass holder will have to relinquish her right. In the, order the appellant was also directed to look for a vacant land for transfer. Being agrieved, the appellant had approached the learned Court below by way of Title Suit No. 11 of 2002 praying for a decree declaring right title and interest in the suit land in favour of the appellant/plaintiff besides others.

5. The learned Court below after framing two issues and adducing three witnesses had dismissed the suit by judgment and order dated 04.08.2011. Hence, the present first appeal.

6. I have considered the judgment and order dated 04.08.2011 as well as perused the record of the learned Court below. On examination of the records, it is seen that the learned Court below had framed only two issues that is-

1) whether the suit is maintainable or not.

2) whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

On further perusal of the record, it is seen that only three witnesses were examined which were the plaintiff, the President of the Village Council, Chanmari West during the period 1987 and the defendant No. 5 (respondent No. 5 herein).

It is also seen that the learned Court below has failed to appreciate any of the deposition of the witnesses and had confined his observation and discussion only on the case laws relied by the plaintiff and the respondent No. 5.

7. In the facts and circumstances of the case, this Court finds it difficult to come to take an appropriate decision in the matter at hand in as much as both the issues as well as the evidence are not conclusive. This Court, therefore, finds it appropriate that the judgment and order dated 04.08.2011 passed in Title Suit No. 11 of 2002 by the learned Senior Civil Judge-II, Aizawl District, Aizawl, Mizoram is liable to be set aside and quashed and the same is, accordingly, set aside and quashed. The case is remanded back to the learned Court of Senior Civil Judge-II, Aizawl District, Aizawl, Mizoram to take up the matter afresh from the stage of framing issues. Needless to say that all the contesting parties shall

be at liberty to submit suggested issues. As considerable period of time has lapsed since the institution of Title Suit No. 11 of 2002, it is also directed that the learned Court below shall try and dispose of the matter as early as possible and not later than a period of 6 (six) months from the date of receipt of this judgment and order. It is also provided that all the parties concerned in the title suit should be restrained from taking unnecessary adjournment.

8. Accordingly, this appeal stands disposed of.
9. Registry is directed to transmit back the LCR forthwith.

JUDGE

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