

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

AIZAWL BENCH

RFA No. 2 of 2012

APPELLANT:

Smt. Sawichhungi,
D/o Lalngaiha (L),
Chaltlang Ruamveng, Aizawl,
Aizawl District.

By Advocate :

Mr.Zochhuana,
Ms.Melody
Mr.R.Zothansanga, Advocates.

RESPONDENTS :

Smt. Lalruati,
D/o Lalvuana (L)
Upper Khatla, Aizawl.
Aizawl District.

By Advocates:

Mr.S.N.Meitei,
Mr.Raymond Lalbiakzama.

BEFORE
THE HON'BLE MR. JUSTICE P.K. SAIKIA

Date of hearing : 13.06.2013
&
Date of judgment : 13.06.2013

JUDGMENT AND ORDER (ORAL)

1. This appeal is directed against the judgment and order dated 19.10.2011, passed by learned Senior Civil Judge-I, Aizawl District, Aizawl in Declaratory Suit No. 34/2009 decreeing the suit as prayed for.
2. Heard Mr. Zochhuana, learned counsel for the appellant. Also heard Mr. S.N.Meitei, learned counsel for the respondent.
3. The brief facts which emerge from the judgment, impugned in this appeal and which are necessary for due disposal of the present appeal are that the respondent herein purchased a plot of land covered by LSC No.AZL 1088 of 1997 with houses thereon from one

Smt. Sawichhungi for an amount of Rs.24,000,000/- (Rupees twenty four lakhs) only. The said land with house thereon was purchased under a sale deed which was registered in accordance with law.

4. However, after the purchase of the land, the vendor (who is defendant in Declaratory Suit No.34 of 2009 and appellant herein) did not operate with the vendee (who is respondent in this appeal and plaintiff in Declaratory Suit No.34 of 2009) in processing the proposal for mutating her name in the relevant records of right. Such conduct on the part of vendee has caused huge suspicion in the mind of purchaser of the land in question since it clouded her title over the land, she purchased.

5. Having found no other way out, the vendee, as being plaintiff, approached the court of Senior Civil Judge, Aizawl District, Aizawl and filed a civil suit seeking amongst other things, a decree declaring her right title and interest over properties aforesaid. The properties, aforementioned, would be described as "suit property" in all subsequent references. The suit so instituted was registered as Declaratory Suit No. 34 of 2009.

6. The summons of the suit was served upon the defendant therein. On receiving the summons, the defendant (appellant in the present appeal) entered appearance and having filed written statement, she contested the proceeding. Her case inter-alia was that there was no cause of action for the suit; suit is not maintainable in the present form and that suit is bad for non joinder of necessary parties and also bad for mis-joinder of parties.

7. Her further case was that she is an old and illiterate lady. Sometime before the filing of the suit aforesaid, two persons, namely, Rami and Nubuangi came to her with a request to give them her LSC and in return, they proposed to give her some money as well for renting out her LSC to them. Sometime thereafter, Rami came to her and told her that they obtained an amount to the tune of Rs.10 lakhs from the plaintiff as well as from one Vanlalchhuangi on mortgaging her LSC.

8. But Rami could not pay back the money to the plaintiff and aforesaid Vanlalchhuangi. In the meantime, Rami had paid her Rs.1 lakh out of aforesaid Rs.10 lakhs, they obtained from the aforesaid persons on utilizing the LSC of the defendant. Since Rami could not pay back the money to the plaintiff and Vanlalchhuangi, they advised Rami to approach the defendant and took her signature on sale deed duly prepared by the plaintiff.

9. Since the defendant did not know the nature of such document because of her illiteracy and old age, she put her signature in such sale deed considering the same to be document of ordinary nature. She later came to know that the document on which she put her signature is nothing but sale deed transferring suit property to the plaintiff. She, therefore, submits that the transaction aforesaid are nothing but bogus and fraudulent one and as such, she prays the court to dismiss the suit with exemplary cost.

10. Upon the above pleadings following issues were framed by trial court:-

1. Whether the suit is maintainable or not
2. Whether the defendant sold the land to the plaintiff under LSC No. AZL.1088 of 1997 by executing a valid Sale Deed or not
3. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

11. In the course of trial, the plaintiff had adduced the evidence as many as 4 (four) witnesses who were cross examined by the defendant at length. Thereafter, on 19.11.2011, the case was fixed for adducing the evidence from the side of the defendant. Unfortunately, the learned counsel, engaged by the defendant, recorded the date fixed for defence evidence as 21.10.2011. On 20.10.2011, the learned counsel for the defendant submitted an application before the trial court giving a list of witnesses to be examined from the side of defendant.

12. In the memo of appeal, it may be noticed, there was a statement that a friendly football match between the Bar Association and some other institutions was arranged on 21.10.2011 and all the courts were requested to take notice of such facts while dealing with cases/suits on that day. However, to his utter dismay, the learned counsel for the defendant came to know that the suit

aforementioned was posted for evidence of the defendant side---- not on 21.10.2011----- but ----on 19.10.2011 instead. He also came to know that having found the defendant and her counsel absent in the court on 19.10.2011, the learned trial court disposed of the suit on that day itself taking recourse to the Order XVI Rule 10 of the CPC and decreed the suit as prayed for.

13. According to learned counsel for the appellant, such an order which hardly satisfies the requirement of law has also caused enormous hardship and injustice to the appellant/defendant. Learned counsel, therefore, urges this court to remand the case to the trial court on setting aside the judgment impugned with a further direction to dispose of the suit in accordance with law on giving defendant/appellant an opportunity of adducing her evidence to substantiate her claim, made in the written statement.

14. I have heard learned counsel for the appellant/defendant. Also heard learned counsel for the plaintiff/respondent having regard to the statements, made in the memo of appeal. Though I have noticed some slip-ups on the part of appellant/defendant in resisting the suit, instituted by plaintiff/respondent, yet, I have also found that those slip-ups were unintentional and occurred mainly for inadvertence on the part of the defendant and her counsel.

15. However, by no stretched of imagination, those errors/omissions can be said to be ones requiring the court to debar the defendant from participating in the proceeding aforesaid, more so, when it has repeatedly been held that technicalities of law should not be allowed to come in the way of justice unless such technicalities having nexus with the lapses on the part of the party(s) to a proceeding are of such nature that they should not be condoned under any circumstances.

16. I may not here that the Mizoram Civil Court Act, 2005 also declares that in the State of Mizoram, the Civil Procedure Code would be followed in spirit only. Situations being such, the strict adherence of provisions of law, incorporated in CPC may many a times result in miscarriage of justice as in our instant case.

17. In the compactus of above discussion, I am of the opinion that it is a fit case when the case under consideration needs to be remanded to the trial court on setting aside the judgment, impugned requiring the trial court to allow the defendant to adduce her evidence and then to dispose of the suit before it in accordance with law.

18. Resultantly, the judgment of the trial court is set aside and the case is remanded to the trial court with a direction to allow the defendant to adduce her evidence in term of list of witnesses furnished before it by the defendant on 20.10.2011 and then to dispose of the suit before it in accordance with law.

19. The LCR be returned to the trial court forthwith. The parties are directed to appear before the trial court on 28.6.2013 at 10:30 A.M. without fail.

20. As the matter is pending before the trial court since 2009, I find it necessary to direct the trial court to dispose of the suit as early as possible, preferably within a period of 6 (six) months from the date of receipt of the LCR.

JUDGE

Zh/Kv