

(2016) 04 GAU CK 0048

GAUHATI HIGH COURT (AIZAWL BENCH)

Case No: RFA No. 3 of 2015.

Union of India, Represented by
the Defence Secretary,
Government of India, South
Block, New Delhi - 1 -
Appellants/Defendants @HASH
Sh. P. Lalbiaka, Ex-MLA, S/o.
Selthuma (L), R/o. Luangmual,
Aizawl /Plaintiffs

APPELLANT

Vs

RESPONDENT

Date of Decision: April 27, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 5, Order 23 Rule 3

Citation: (2016) 5 GauLR 692

Hon'ble Judges: M.R. Pathak, J.

Bench: Single Bench

Advocate: Bibhash Pathak, Advocate, for the Appellants; Mr. Mr. C. Lalramzauva, Sr. Advocate, Mrs. K. Lalramnghaki, Advocate, for the Respondents; Mr. A. K. Rokhum, Advocate, for the Respondent Nos. 1 to 6; Addl. Advocate General, Mizoram, for the State/Respondent

Final Decision: Allowed

Judgement

Mr. M.R. Pathak, J.(Oral) - Heard Mr. Bibhash Pathak, learned counsel for the appellants/defendant Nos. 5, 7 & 8. Also heard Mr. C. Lalramzauva, leaned senior counsel assisted by Mrs. K. Lalramnghaki for the respondent Nos. 1 to 6/plaintiff Nos. 1 to 6 and Mr. A. K. Rokhum, learned Additional Advocate General for the respondent Nos. 8 to 11/defendant Nos. 1 to 4.

2. This appeal under Order 41 of the Court of Civil Procedure read with Section 17 (2)(b) of the Mizoram Civil Courts Act, 2005 have been filed by the appellants Union

of India in the Defence Department against the judgment & order dated 28.08.2014 passed by learned Civil Judge-I, Lunglei District, Lunglei in Civil Suit No. 13 of 2010 preferred by the respondents as plaintiffs.

3. It is stated that from June 1967 the appellants herein are in occupation of the garden land of the respondents/plaintiffs located at Pukpui (Kawmzawl) in the District of Lunglei for security purpose since the days of the insurgency period in the State. The respondents/plaintiffs alleged that they are the owners of their said land on the strength of Village Council Passes/Periodic Pattas and Land Settlement Certificates (LSC) issued by the Pukpui Village Council and the Revenue Department of the State respectively. As they did not receive any compensation for their land which is under occupation of the appellants/defendants since June 1967, even after the peace accord dated 30.06.1986 signed between the Government of India and the Mizo National Front, being aggrieved, the respondents herein as plaintiffs, in June 2010 preferred the said Civil Suit No. 13 of 2010 before the learned Civil Judge at Lunglei, praying for, amongst others -

(i) for a decree in favour of the plaintiffs and against the defendants declaring that the defendants are in illegal and forceful occupation of the suit land belonging to the plaintiffs and that the plaintiffs are entitled to payment of rental compensation in respect of the suit land occupied by the defendants Nos. 5 to 8 for the period from August 1967 till the date of filling the suit or till vacant and peaceful possession of the suit land that are to be formally handed over to the plaintiffs in accordance with the entitlement @ Rs. 1.249 per square feet per year or as was done in the case of Sh. C. Lalhmingliana and two others, whichever is the higher and

(ii) for a decree declaring that the defendant Nos. 5 to 8 are liable to pay rental compensation to the plaintiffs for a total area of the suit land belonging to the plaintiffs which are occupied by said defendants as may be calculated under (i) above for the period from June 1967 till the date of filling the suit or till vacant and peaceful possession that is returned to the plaintiffs along with pended light @ 9% per annum.

4. The appellants/defendants contested the said Civil Suit No. 13/2010 of the respondents/plaintiffs by filling their written statements in June 2011 stating that the said suit is not maintainable, the same has not been properly valued and requisite court fees has not been paid, barred by limitation, notice under Section 80 Cr.P.C. have not been duly served upon the defendants etc. In their written statement the present appellants stated that the Government of India, Ministry of Home have already sanctioned an amount of Rs. 14,05,73,313/- towards rental compensation for the period from 1966 to 30.08.1986 for the areas occupied by the Security Forces in the State of Mizoram and for that purpose Government of India has already paid an amount of Rs. 5,19,93,771/- for the period from 01.09.1986 to 31.12.1997 and another amount of Rs. 8,86,64,648/- for the period from 01.01.1998 to 31.12.2005 to the Government of Mizoram towards rental compensation of

various land that were under occupation of the Defence Department in the State of Mizoram and further paid an amount of Rs. 1,98,30,370/- for the period from 2006-2007 and that these payments were made as per the calculation submitted by the Government of Mizoram, based on joint inspection/verification and as such it is the duty of the Government of Mizoram to disburse the said amount paid by the Central Government to the individual land owners in the proportion of their entitlement and the actual disbursement of money to be made after such payment made by the Central Government is a matter of record of the State of Mizoram in which the Union of India has no liability or legal duty in the matter as all rental compensation of land occupied by the Defence Department/Security Forces of the country in the State of Mizoram has already been paid in full up to December 2005 to the Government of Mizoram.

5. Perused the records of the case. It is seen that the on 17.01.2013 the Trial Court framed the following issues:

(i) Whether the land of the plaintiffs are occupied by the Army/Military personnel from 1996 till date. If so, whether the plaintiffs are entitled for assessment/payment of rental charges in respect of their lands?

(ii) Whether the rental charges already received by the plaintiffs are adequate or not?

(iii) Whether the plaintiffs are entitled to the relief(s) claimed by them? If so, to what extend?

6. It is seen that on 23.07.2013 the plaintiffs filed their affidavits-in evidence and on 27.08.2013 the PW1 was cross examined by the defendants including the present appellants and the evidence of the plaintiffs side was closed and the matter was fixed for evidence of the defendants. On 12.11.2013 learned Trial Court directed the plaintiffs to submit the joint verification report conducted in 2009 regarding the land occupied by the appellants in the Defence Department. Instead of submitting the said join verification report, the plaintiffs on 27.05.2014 submitted a photo copy of a map of land of Kawmzawl area that was under occupation the Defence Department/Security Forces of the Country. On 27.05.2014 itself, the Trial Court fixed the matter for hearing regarding the documents submitted by the plaintiffs. On 12.08.2014 it was submitted on behalf of the plaintiffs that it is not disputed that the land of the plaintiffs are not occupied by the Security Forces and part of rental compensation were also paid to them and the grievance of the plaintiffs are that they have not been paid adequate rental compensation in respect of their land that is under possession of the Security Forces. It was also stated on behalf of the plaintiffs that their names along with their land had been included in the Blue Print for the area occupied the Security forces that was prepared by the appropriate authority and therefore, it was urged that the plaintiff are entitled to the relief claim by them. On the other hand on 12.08.2014 itself, the learned counsel appeared on

behalf of the defendants, i.e. present appellants made a submission before the Trial Court that if the plaintiffs have genuine land certificates of their land and if the assessing authority opines that the plaintiffs are entitled to received rental compensation as claimed by then he has no objection to the claims of the plaintiffs.

7. After the said submissions of the parties, the Trial Court, by the impugned judgment & order dated 28.08.2014 came to a finding that the parties to the proceeding have no further submission to make and agreed that the matter be put in the hands of the Deputy Commissioner, Lunglei to take necessary action and if the land of the plaintiffs are in the Blue Print prepared in respect of the area within Kawmzawl (Pukpui) occupied by the Security forces and if the land certificates of the plaintiffs are genuine, the Deputy Commissioner, Lunglei shall make necessary assessment and the same shall be sent to the concerned Ministry for according sanction and passed the following decree :

"DECREE

In view of the above agreement, the Deputy Commissioner, Lunglei District is directed to take necessary action to ascertain whether the plaintiffs land are occupied by Defendant No. 5 - 8 and if their lands are occupied than to make necessary assessment of rental compensation @ 1.249 per square feet per year in respect of the area of lands occupied by the Security Forces less the amount already received by the Plaintiffs as rental charges/compensation within a period of 2 months from the date of judgment. The period of assessment should start from the date of occupation of the Plaintiffs" land till date or till it is vacated or de-hired as per law. The Defendant No. 5 - 8 are directed to sanction the assessed amount of rental charges/compensation prepared by the Deputy Commissioner, Lunglei in favour of the Plaintiffs, as the case may be, within a period of 3 months failing which the assessed amount shall bear an interest @ 6% p.a. from the date of default till final realization.

With the above, the case is disposed of.

Given under my hand and seal of the Court, the 28th day of August, 2014."

8. The appellants herein are aggrieved with the aforesaid impugned judgment & decree dated 28.08.2014 of the learned Trial Court i.e. the Court of learned Senior Civil Judge-I, Lunglei District, Lunglei in the manner by which the said Civil Suit No. 13 of 2010 has been disposed of without any finding based on evidence, adjudicating the said suit in a summary manner without stating its finding and decision on the issues already framed in the said suit, without exercising the fact finding powers in its original jurisdiction. The appellants are also aggrieved that the Trial Court failed to appreciate that a suit can be adjusted and/or settled between the parties only within the ambit of Order 23, Rule 3 of the Code of Civil Procedure and in the absence of the same there cannot be any presumption of their being an agreement between the parties.

9. Learned counsel for the appellants submitted that the Trial Court failed to appreciate the concession of the counsel for the defendants/appellants regarding a point of fact that is not supported by the records in the suit, which is not binding and the impugned judgment ought to have been passed upon careful appreciation of the materials on record. Learned counsel for the appellants also submitted that the impugned judgment & decree dated 28.08.2014 is not in with law as prescribed in the Code of Civil Procedure and therefore, the same needs to be set aside.

10. Order 20 of the Code of Civil Procedure provides for Judgment and Decree and Order 20, Rule 5 of the Code provides that the Court shall state its decision on each issue and it reads as follows:

"Or. 20, R. 5. Court to state its decision on each issue ♦

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit."

11. As provided under Order 20, Rule 5 of the Code of Civil Procedure, the Court is required to state its findings or decision with reason thereof upon each separate issue and the distinct issue(s) have to be answered by the findings supported by reasons and where no reason was given in support its finding the Suit has to be remanded back with direction to rehear and record finding on each issue separately.

12. In the case of **Swaran Lata Ghosh v. H.K. Banerjee, reported in (1969) 1 SCC 709**, the Hon"ble Supreme Court have held that ♦

"6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practise of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more

so, when the judgment is subject to appeal. The appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.

7. ❖❖❖❖❖ The burden of proving the claim in all its details lay upon the plaintiff. Absence of documentary evidence in support of the case made the burden more onerous.

10. ❖❖❖❖❖ The function of a judicial trial is to hear and decide a matter in contest between the parties in open court in the presence of parties according to the procedure prescribed for investigation of the dispute, and the rules of evidence. The conclusion of the court ought normally to be supported by reasons duly recorded. This requirement transcends all technical rules of procedure.

11. We may assume that the learned trial Judge was satisfied that the claim of the plaintiff deserved to be decreed. But the judgment of the learned trial Judge was not final: it was subject to appeal and unless there was a reasoned judgment recorded by the trial Judge, an appeal against the judgment may turn out to be an empty formality. A court of appeal generally attaches great value to the views formed by the Judge of First Instance who had seen the witnesses and noted their demeanour. How the Judge who tried the suit reacted to the evidence of a witness may not always be found from the printed record."

13. From the impugned judgment & decree dated 28.08.2014 it is seen that it does not contain any finding and/or decision with reasons with regard to the issues that were framed on 17.01.2013 in the suit in question and the Trial Court without adjudicating the issues of the suit passed the impugned judgment & decree delegating the Deputy Commissioner of Lunglei District to carry out the exercise that had been entrusted to him by law.

14. Order 23 of the Code of Civil Procedure provides for withdrawal and adjustment of suits and Order 23, Rule 3 of the Code provides for compromise of the suit, which reads as follows:

"Or. 23, R. 3. Compromise of suit ❖ Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

15. Order 23, Rule 3 gives a mandate to the Court to record a lawful adjustment or compromise and pass a decree in terms of such compromise or adjustment, the conditions of which normally must be satisfied for validly invoking the said provision of Code of Civil Procedure, i.e. (i) there should be lawful agreement or compromise, (ii) the compromise has to be in writing and signed by the parties, (iii) the compromise must be recorded by the Court and (iv) a decree on such compromise can be passed so far it relates to the parties to the Suit but may extend to a special matter which is not the subject matter of the Suit.

16. The Hon"ble Supreme Court in the case of **Oriental Bank of Commerce v. Sunder Lal Jain, reported in (2008) 2 SCC 280** have held that ♦

"A statement by a counsel for a party that his client will consider a particular suggestion given by the other side would not amount to consent by the party concerned and an order passed on such a statement of the counsel cannot be said to be an order passed on consent. It is, therefore, not possible to accept the contention raised by learned counsel for the respondents that the impugned order of the High Court has been passed on the consent of the appellant Bank and consequently the present appeal is not maintainable."

17. Though the impugned judgment & decree dated 28.08.2014 reflects about an agreement between the parties, but from the records of the case, it is seen that there was no such agreement between the parties of the suit in writing which they arrived at between them and the parties to the said suit neither individually nor jointly filed any such compromise in writing regarding the agreement referred to by the learned Trial Court in the impugned judgment & decree.

18. Moreover, the learned counsel representing the respondents No. 5 - 8, i.e. the present appellants as such did not give any such concession that can be considered as consent.

19. After hearing the parties, considering the entire aspect of the matter and on perusing the records, the Court has come to the conclusion that there has been no real trial of the suit as per law and has to remand the suit for trial according to law.

20. Accordingly, the impugned Judgment & Decree dated 28.08.2014 of the learned Senior Civil Judge-I, Lunglei District, Lunglei in the Civil Suit No. 13/2010 being not in conformity in law is hereby set aside and the said suit stands remanded to the said

court of first instance for trial in accordance with law.

21. The learned concerned Trial Judge who tries the said the Civil Suit No. 13/2010 shall now proceed the said suit from the stage of defendants" evidence and if the plaintiffs desire to lead any additional evidence and documents, on their necessary application, the Trial Court will give them opportunity in that behalf. Further, the learned Trial Judge is of the opinion that the plaintiffs" witness should be examined over again before it, the Trial Court may also adopt that course.

22. The parties herein shall appear before the Trial Court, i.e. the Court of leaned Senior Civil Judge-I, Lunglei District, Lunglei on 03.06.2016. As this order has been passed in presence of the learned Counsels for the appellants/defendants, the respondents/plaintiffs and proforma respondent Nos. 8 to 11/defendants No. 1 to 4, the Trial Court need not sent any fresh notice to the parties of the Civil Suit No. 13/2010 for their appearance. It is expected that the learned Trial Court shall dispose of the said Civil Suit No. 13/2010 at an early date preferably within a period of 6 months form the appearances of the parties on 03.06.2016.

23. A copy of this order along with the record of the Civil Suit No. 13 of 2010 be sent down to the Court of leaned Senior Civil Judge-I, Lunglei District, Lunglei forthwith.

24. With the above observation and direction, this appeal stands allowed.

25. No order as to costs.