

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL
MIZORAM**

Civil Suit No.91/2011

Garry T.Haukip,
S/o T.Haukip,
Republic Veng, Aizawl.

.....Plaintiff.

- Vrs -

1. Kawlramthangi,
W/o Hrangkiamlova,
Bethlehem Veng, Aizawl.
2. P.C.Sangliana,
S/o P.C.Pahlira (L)
Chhing Veng, Aizawl.

..... Defendants.

BEFORE

R.VANLALENA, Senior Civil Judge-II

For the Plaintiff	:	Shri C.Lalrinchhunga, Advocate.
For the Defendants	:	
Date of Judgement	:	27.4.2012

JUDGEMENT / ORDER

27.4.2012

The brief facts of the case leading to the filing of the instant suit as reflected in the plaint may be stated as follows:

That the plaintiff is a citizen of India permanently residing at Republic Veng, Aizawl and self employed by profession. On dt.16.01.2007, the plaintiff and defendant No.1 namely Smt. Kawlramthangi had made an agreement in the name and style of "PAWISA PUKA INTIAMKAMNA" by which the defendant took loan amounting to Rs.6,00,000/- (Rupees six lakhs) with interest @ 10% per month. The said loan was sanctioned on 16.01.2007 and was to be repaid within three months and latest by 16.04.2007. The said defendant mortgaged her LSC No.Azl. 1835 of 1989 located at Bethlehem veng, Aizawl. As per the agreement, in default of repayment of loan by defendant, the mortgaged property shall be transferred to the plaintiff and therefore, the plaintiff shall become the owner of the said LSC. However, on dt.17.04.2007, the defendant with her friends requested the plaintiff to give her the said LSC stating that she wanted to take Photostat copy of the LSC. The plaintiff in good faith believing that the defendant would return the LSC after making a photo copy of it released the said LSC to the defendant. However, the defendant had never returned the said LSC, rather she went away. Later on, the plaintiff came to know that the defendant had mortgaged the said LSC to another person namely Shri P.C.Sangliana S/o P.C.Pahlira (L) resident of Chhing Veng, Aizawl (Proforma defendant) for loan borrowing money amounting to Rs.3,00,000/- (Rupees three lakhs). The plaintiff had then requested and told the defendant to return the mortgaged LSC or to repay the borrowed money as per the agreement, but the defendant failed to do the same in spite of repeated request. The plaintiff filed the instant suit for the ends of justice. The plaintiff deposited

required amount of court fee of Rs.5,000/-. The suit is filed bona fide for the ends of justice and the plaintiff prays the following reliefs :

- 1) Preliminary as well as Final Decree in favour of plaintiff.
- 2) A decree declaring that the defendant has a due of Rs.34,20,000/- to the plaintiff as on the date of filing of the instant suit as the defendant failed to repay the borrowed money w.e.f. 16.01.2007 with 10% interest per month till date.
- 3) For a decree directing the defendants to hand over the possession including all the relevant documents relating to the said LSC No.Azl.1835 of 1989 to the plaintiff.
- 4) For a decree passing a cost of the suit in favour of the plaintiff.
- 5) For any other order if this court deems fit and proper.

The present money suit was instituted on 07.10.2011. This court issued summons to the defendants to file their respective written statement on or before 11.11.2011. The two defendants failed to appear on the date fixed for filing written objection, if any. As the defendants still failed to appear in court in person or through an Advocate, despite summons issued, this court directed the plaintiff to take step to serve Notice to the defendants through local daily newspaper circulating in the locality. The plaintiff published the summons to both the defendants through Daily Newspaper "Youth Herald" on 29th February, 2012. However, the defendants still failed to appear in person or through counsel. After exhausting all the efforts, the court passed an order for ex-parte proceeding. As the defendants did not contest the case, the suit has been proceeded further uncontested.

The plaintiff has examined three witnesses including himself framed the following issues on the basis of the pleading of the plaintiff only:-

- 1) Whether the suit is maintainable in its present form and style?
- 2) Whether the plaintiff is entitled to the relief claimed ? If so to what extent?

Issue No.1 :

Whether the suit is maintainable in its present form and style ? The plaintiff instituted the instant suit by presenting a plaint with two sets of photo copy of the plaint for supply to both the defendants. It disclosed the cause of action and the relief claimed is properly valued. The plaintiff deposited the required amount of court fees. The plaint appeared to have no defect. Hence the issue no.1 is decided in favour of the plaintiff.

Issue No.2 :

Whether the plaintiff is entitled to the relief claimed ? If so to what extent ? The plaintiff has examined three witnesses including himself. Pw.1 namely Garry T.Haukip deposed that he and the defendant no.1 had signed an Agreement dated 16.01.2007 in the name and style of PAWISA PUKA INTIAMKAMNA which was registered vide Notarial Registration No.243/1 dated 17th January,2007. As per the said agreement, the defendant borrowed Rs.6,00,000/- (Rupees six lakhs) from him (plaintiff) with interest @ 10% per month. The term of loan was three months i.e. 16.01.2007 – 16.04.2007. The defendant no.1 mortgaged her LSC No.Azl. 1835 of 1989 as a security for the borrowed/loan monay. In case of default in repayment of loan/borrowed money, the mortgaged property covered by the said LSC shall be transferred its possession to the plaintiff. However, as the

defendant till date failed to repay the said loan, the loan dues has become Rs.34,20,000/- (Rupees thirty four lakhs, twenty thousand) only. That on 17.04.2007, the defendant and her friends requested the plaintiff to give the said LSC stating she wanted to make a photo copy of it. Believing in good faith that the defendant would return the LSC in time gave the said LSC to defendant no.1 who in turn had never returned to him. Defendant No.1 mortgaged the same LSC to proforma defendant for borrowing money amounting to Rs.3,00,000/- (Rupees three lakhs). Since the defendant neither returned the said LSC nor repay the borrowed money, the plaintiff filed the instant suit and prayed the following reliefs :-

- 1) For a preliminary as well as a final decree in favour of the plaintiff.
- 2) A decree declaring that the defendant has to pay Rs.34,20,000/- to the plaintiff as on the date of filing of the instant suit.
- 3) For a decree directing the defendants to hand over the possession including all relevant documents relating to the said LSC No.1835 of 1989 to plaintiff.
- 4) For a decree passing cost of suit in favour of plaintiff.
- 5) For any other order as this court deems fit and proper.

The plaintiff exhibited the following documents :-

- a) Exhibit –P-I is his plaint.
- b) Exhibit –P-I (a) & (b) are his signatures.
- c) Exhibit –P-2 is an Affidavit in support of his plaint.
- d) Exhibit –P-2(a) is his signature.
- e) Exhibit –P-3 is a copy of mortgaged LSC No.Azl. 1835 of 1989.
- f) Exhibit –P-4 is copy of PAWISA PUKA INTIAMKAMNA Agreement dated 16.01.2007.
- g) Exhibit –P-4(a) is his signature.

Pw 2 namely Smt. Zoramtani deposed that she knew the plaintiff and the defendant for the few years and she is one of the witnesses in respect of the Agreement dated 16.01.2007 - PAWISA PUKA INTIAMKAMNA executed and made between the plaintiff and the defendant. She added that the defendant no.1 approached her stating she wanted to borrow money on furnishing a valuable security and then took her to the plaintiff for the purpose of borrowing money. The plaintiff and defendant no.1 entered into an Agreement dated 16.01.2007 by which the defendant no.1 borrowed Rs.6,00,000/- (Rupees six lakhs) from the plaintiff with interest @ 10% per month for a period of three months for which defendant no1 mortgaged her LSC No. Azl.1835 of 1989. PW No.2 added that the defendant no.1 failed to repay the loan till date. Exhibit No. P-4 (b) is her signature.

Pw 3 namely R.Roliana deposed that he knew the plaintiff and the defendant no.1 for the past many years. He added that even though he was not a witness to the Agreement dated 16.01.2007 between the plaintiff and defendant no.1, he knew that the said Agreement was signed by both the plaintiff and defendant no.1 for borrowing Rs.6,00,000/- (Rupees six lakhs) by defendant no.1 from plaintiff with interest @ 10% per month for a period of three months. The defendant no.1 mortgaged her LSC No.1835 of 1989 to the plaintiff as a security for the said loan and in default of payment of loan, the said LSC be transferred its possession to the plaintiff. The balance amount till date as per the Agreement become Rs.34,20,000/-.

He further deposed that he and the plaintiff used to visit the defendant in demanding her to repay the borrowed money but the defendant failed to repay the money borrowed. On careful perusal of all the depositions recorded and the Exhibits in the plaint, it has appeared to me that the Agreement dated 16.01.2007 had been signed by the plaintiff and the defendant no.1 and the said defendant failed to repay the said borrowed money as per the terms of the Agreement. And thereafter, the said defendant by fraud taken out the mortgaged LSC from the plaintiff and mortgaged again the same LSC to another person (proforma defendant) for borrowing money amounting to Rs.3,00,000/-. On careful consideration of all the evidences, the issue no.2 is decided in favour of the plaintiff that he is entitled to the relief claimed not only the principal amount but with the rate of interest of 10% per month with effect from the time the cause of action had arisen till the institution of the present suit which will now become Rs.34,20,000/- (Rupees thirty four lakhs, twenty thousand) as claimed by the plaintiff.

Having the suit decided as aforesaid it is hereby finally decreed accordingly as follows:-

- 1) The defendant no.1 shall pay Rs.34,20,000/- (Rupees thirty four lakhs, twenty thousand) to the plaintiff within three month from the date of this order.
- 2) The defendants No.1 and Proforma defendant Shri P.C.Sangliana S/o P.C.Pahlira R/o Chhinga Veng, Aizawl shall hand over the LSC No.Az1.1835 of 1989 with its connected documents to the plaintiff within two weeks from the date of this order.
- 3) Parties shall bear their own costs.

Given under my hand and seal of this court on this 17th day of April,2012.

Sd/-R.VANLALENA
Senior Civil Judge – II
Aizawl District : Aizawl.

Memo No..... /SCJ-II(A)/2012: Dated Aizawl the 4th May,2012.
Copy to:

1. The District and Sessions Judge, Aizawl District for information.
2. Garry T.Haukip, S/o T.Haukip, Republic Veng, Aizawl through counsels Shri C.Lalrinchhunga & ors.
3. Kawlramthangi, W/o Hrangkiamlova, Bethlehem Veng, Aizawl.
3. P.C.Sangliana, S/o P.C.Pahlira(L), Chhinga Veng, Aizawl
4. Registry Section.
5. Case record.

PESHKAR

