

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

**Declaratory Suit No. 41/2009**

Smt. Lalbiaksangi,  
R/o Khatla, Aizawl,  
Mizoram.

.....Plaintiff.

-Versus-

1. Smt.Laltanpuui,  
D/o Rotluanga(L)  
R/o Chaltlang, Lily veng,  
Near Guest House,  
Aizawl, Mizoram.

2. Smt. Lalrintluangi,  
D/o Rotluanga(L)  
R/o Chaltlang, Lily veng,  
Near Guest House,  
Aizawl, Mizoram.

....Defendants.

3. The Director,  
Land Revenue & Settlement Deptt.,  
Mizoram, Aizawl.

4. Assistant Settlement Officer –II,  
Land Revenue & Settlement Deptt.,  
Mizoram, Aizawl.

..... Proforma Defendants.

**BEFORE**

**R.VANLALENA, Senior Civil Judge-2**

For the Plaintiff : Shri R.Lalhmingmawia, Advocate.

For the Defendants

No. 1-2 : Shri Lalawmpuia Ralte, Advocate

For the Defendants

No.3-4 : Shri R.K.Malsawmkima and Joseph  
Lalfakawma  
Asst. Govt. Advocates.

Date of Hearing : 10.08.2012

Date of Judgement: 24.08.2012

### **JUDGEMENT AND DECREE**

The facts of the case leading to the filing of the instant Declaratory Suit No.41 of 2009 as reflected in the plaint may be stated as belows:-

The Plaintiff and the Defendants are permanent resident of Aizawl and are bonafide citizens of India belonging to Mizo community. That on 30.10.2007, the Defendant no.2 approached the Plaintiff in her residence at Chaltlang with her two friends namely Thangpuii R/o Mission veng and Lalzikpuii R/o Laipuitlang Aizawl after duly obtaining authorization from the Defendant no.1 who is her own sister and thus borrowed Rs.2,00,000/- (Rupees two lakhs) at the rate of 10% interest per month which was to be repaid within a period of three months i.e. 30.10.2007 – 30.01.2008 for which the Defendant mortgaged Land Settlement Certificate (hereinafter referred to as LSC) No.103901/01/357 of 2007 which is located at Tuikual North, Aizawl. The said LSC is belonging to the Defendant no.2 and the building standing on the land covered by the said LSC was also mortgaged. The Defendant no.2 and the Plaintiff made an Agreement in the name of Defendant no.1 namely Smt.Laltanpuii as the Deponent/borrower. The said Agreement was registered and duly sworn before a Notary Public without pressure, threat or coercion or undue influence. As per the said Agreement, the borrowed money was to be paid after three months while the monthly interest was to be repaid every month from the date of borrowed. The said borrowed principal amount was thus received/taken by the Defendant no.2 on behalf of Defendant no.1 (her own sister). At the time of making the Agreement, both the Defendants promised the Plaintiff that if the borrowed money (principal amount) alongwith the interest at the rate of 10% per month was not paid within the promised period, the Plaintiff (money lender) shall have the right to dispose of or change the ownership of the mortgaged LSC No.103901/01/357 of 2007.

However, the Defendants no.1&2 failed to repay the borrowed money even after the expiry of the stipulated period of three months. Consequently, the Plaintiff had served a Legal Notice u/s 80(2) CPC 1908 upon the Defendants on 09.11.2009. Despite the Legal Notice, the Defendants still failed to repay the borrowed money till date.

The cause of action arose on 30.10.2007 in favour of the Plaintiff when the Defendants borrowed the money. The Plaintiff deposited court fee stamps of Rs.30/- only at the time of filing the suit

claiming the suit is only in the nature of declaration. The suit is valued at Rs.6,00,000/- for the purpose of jurisdiction.

The Plaintiff filed the suit bonafide and claims the following reliefs :-

- 1) To pass a decree for an amount of Rs.6,80,000/- in favour of the Plaintiff against the Defendants.
- 2) To pass a decree directing the Defendants no.2 to surrender her original LSC No.103901/01/357 of 2007 to the court.
- 3) To pass a decree directing the proforma Defendants no.1&2 to not issue/re-issue new LSC/change ownership/in connection with LSC No.103901/01/357 of 2007 to any person other than the Plaintiff until final disposal of the suit.
- 4) To declare that the mortgaged property LSC No.103901/01/357 of 2007 belongs to the Plaintiff since the Defendant no.1 failed to repay the debt.
- 5) Liberty to the Plaintiff to proceed against other properties of the Defendants in case the sale proceeds of the mortgaged properties does not satisfy the Plaintiff.

On the other hand, the Defendants no.1&2 submitted their respective written statements and contested the suit both stating that the instant suit is liable to be dismissed as the Plaintiff deposited court fee stamps of Rs.30/- only while the suit is valued at Rs.6,00,000/- and the Plaintiff claimed different kinds of relief including an amount of Rs.6,80,000/- against the Defendants. The Defendant no.1 admitted that the Defendant no.2 is her sister. That with regard to para no.4,5,6 &7 of the plaint are denied unequivocally in so far as the Defendants had no liability towards the Plaintiff. Regarding para no.8&9 of the plaint, the Defendant no.1 stated that the suit is false, vexatious and is an abuse of the process of court.

Defendant no.2 contested that on plain reading of the plaint and the documents annexed thereto, there was no cause of action whatsoever in favour of the Plaintiff and against Defendant no.2 and the suit is liable to be dismissed. The Plaintiff has no right to claim any relief from Defendant no.2. There is no cause of action against Defendant no.2. The Defendant no.2 denied all the averments in the plaint unequivocally and unambiguously. The Plaintiff is put to strict proof of what she has stated in the plaint. Defendant no.2 stated that she is not a party to the

alleged Agreement dated 30.10.2007 and is not a party to any such transaction. She added that she is the legal owner of the LSC No.103901/01/357 of 2007 and she never mortgaged, transferred, or alienated the said land at any point of time. Both the Defendants stated that due to false and vexatious claim made by the Plaintiff against them, they are put to undue hardship, physical and mental stress and caused to incur money expenditure and also caused hardship in their daily livelihood. In the premises aforementioned, the Defendants no.1&2 prayed the court to dismiss the suit while the Defendant categorically prayed to strike out her name from the array of Defendants.

The Defendants no.3&4 did not file their written statement claiming they are only proforma Defendants. Hence not filed the written statement.

On the basis of the pleadings of the parties, the court framed the following issues :-

- 1) Whether the suit is maintainable in its present form and style ?
- 2) Whether the Defendant no.2 received the sum of Rs.2,00,000/- @ 10% per month interest from the hand of the Plaintiff on behalf of her sister Defendant no.1?
- 3) Whether the Defendant no.2 gave a permission to her sister Defendant no.1 to mortgage her LSC No.103901/01/357 of 2007 to the Plaintiff.
- 4) Whether the Plaintiff has the right to dispose of the said mortgaged LSC.
- 5) Whether the Defendant no.1 borrowed the sum of Rs.2,00,000/- from the Plaintiff ?
- 6) Whether the Plaintiff is entitled to the relief claimed ?  
If so, from whom and to what extent ?

The Plaintiff examined herself as a witness and other two witnesses while the Defendants no.1&2 examined only one witness. The Defendants No.3 & 4 examined no witnesses who are proforma Defendants.

Issue No.1: Whether the suit is maintainable in its present form and style ? The issue no.1 had been taken up on 11.10.2010 at the preliminary hearing on the issue of maintainability of the suit and had been decided to be maintained in favour of the Plaintiff. I find no reason to raise it at this stage.

Issue No.2: Whether the Defendant no.2 received the sum of Rs.2,00,000/- with 10% interest per month from the hand of the Plaintiff on behalf of the Defendant no.1 ? From the depositions of PW 1,2&3, it is evident that the Defendant no.2 was given the money amounting to Rs.2,00,000/- (Rupees two lakhs) with interest at the rate of 10% per month and the said money was received by the Defendant no.2 from the hand of the Plaintiff. In her cross examination too, the PW 2 stated that he was present at the time the Plaintiff handed over Rs.2,00,000/- to the Defendant no.2 PW3 also deposed the same statement. The Defendant no.2 did not come forward to the court to give her evidence. On careful perusal of all the available evidences, it is evident that the Defendant No.2 received the said money with the said rate of interest from the Plaintiff on behalf of the Defendant no.1. Hence this issue is decided in favour of the Plaintiff.

Issue no.3: Whether the Defendant no.2 gave a permission to her sister Defendant no.1 to mortgage her LSC No.103901/01/357 of 2007 to the Plaintiff ? In her deposition and cross examination, the Defendant no.1(DW1) stated that she has no comments in connection with the LSC No.103901/01/357 of 2007 as she has no right or authority over the said LSC. Nothing about the permission given or not by the Defendant no.2 to the Defendant no.1 for using the said LSC as a mortgage property was mentioned in all the Depositions of all the witnesses. As the Defendant no.2 did not made deposition before the court, it is not known as to whether the Defendant no.2 gave a permission to the Defendant no.1 to mortgage her (Defendant no.2) LSC No.103901/01/357 of 2007. Since the evidences on records are insufficient, the court has been constrained to presume that the Defendant No.2 willingly mortgaged her LSC No.103901/01/357 of 2007 to the Plaintiff without any pressure from someone else.

Issue no.4: Whether the Plaintiff has the right to dispose of the said mortgaged LSC No.103901/01/357 of 2007 ? The evidence deposed by PW1,2&3 revealed that the Defendant no.2 received the money amounting to Rs.2,00,000/- from the Plaintiff in the residence of the Plaintiff and on that very moment the Defendant no.2 mortgaged her LSC No.103901/01/357 of 2007 as a security for the said borrowed money. The evidence on record further show that the said money was given to the hand of the Defendant no.2, but not repaid till date. As the said borrowed money is till date not repaid to the Plaintiff, the only option of steps to be taken by the Plaintiff is to dispose of it by way of sell in order to realize the money borrowed by the Defendants. Hence this issue is decided in favour of the Plaintiff.

Issue no.5 : Whether the Defendant no.1 borrowed Rs.2,00,000/- with 10% interest per month from the Plaintiff ? All the evidences on record show that the said money was taken and received by the Defendant no.2 from the hand of the Plaintiff on 30.10.2007 at the Plaintiff's residence. In fact, the said money was thought to be handed over to the Defendant no.1 by the Defendant no.2, but the Defendant no.1 deposed that she did not receive the alleged borrowed money till date and is not liable to repay it. The evidence of the Defendant no.1 has not been rebutted by the Defendant no.2 as she did not make any deposition of evidence before the court which is presumed to that the Defendant no.1 did not receive the said money. As the said money did not reach the hand of the Defendant no.1, she could not be said that she borrowed the said money holding that Defendant no.1 did not borrow the money. Hence this issue is decided in favour of the Defendant no.1.

Issue no.6: Whether the Plaintiff is entitled to the relief claimed ? If so from whom and to what extent ? The evidences deposed by all the PW 1,2&3 clearly revealed that the said money was taken and received by the Defendant no.2 from the hand of the Plaintiff on 30.01.2007 at Plaintiff's residence in presence of PW 2 & PW3. The said money was allegedly borrowed by the said Defendant no.2 in favour of and behalf of the Defendant no.1. However, the evidence on record revealed that the said money has not reached the Defendant no.1 till date as deposed by the Defendant no.1. In order to rebut all the evidences, the Defendant no.2 has nothing evidence on record. It is therefore evident that the said Rs.2,00,000/- was received by the Defendant No.2 and she became the person who took the loan from the Plaintiff. Hence she would be held liable to repay to the owner of the money as she was the real person who received the money. Hence this issue is decided in favour of the Plaintiff and that she would be entitled to the relief from the Defendant no.2.

Having finally decided as above, the instant suit is decreed as follows:-

- 1) The Plaintiff has now become the Legal owner of the LSC No.103901/01/357 of 2007 which is located at Tuikual North, Aizawl, Mizoram.
- 2) The Defendant no.2 namely Smt.Lalrintluangi D/o Rotluanga (L) R/o Chaltlang Lily veng, Aizawl is hereby directed to deposit Rs.2,00,000/- (Rupees two lakhs) with 10% interest per month into this court within a period of two months which shall be disbursed to the Plaintiff.

Parties shall bear their own cost.

With this order the instant suit is disposed of.

Pronounced in the Open Court in presence of the parties.

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

Memo No.            /SCJ-I I(A)/2012: Dated Aizawl the, 24<sup>th</sup> August, 2012.  
Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Smt. Lalbiaksangi, R/o Khatla, Aizawl, Mizoram through her counsel Shri R.Lalhmingmawia.
3. Smt.Laltanpuui, D/o Rotluanga(L) R/o Chaltlang, Lily veng, Near Guest House, Aizawl, Mizoram through counsel Shri Lalawmpuia Ralte.
4. Smt. Lalrintluangi, D/o Rotluanga(L) R/o Chaltlang, Lily veng, Near Guest House, Aizawl, Mizoram through counsel Shri Lalawmpuia Ralte.
5. The Director, Land Revenue & Settlement Deptt., Mizoram, Aizawl through Asst. Govt. Advocates.
6. Assistant Settlement Officer –II, Land Revenue & Settlement Deptt., Mizoram, Aizawl through Asst. Govt. Advocates.
7. Shri R.K.Malsawmkima and Joseph Lalfakawma, Asst. Govt. Advocates.
8. Registry Section.
9. Case record.

PESHKAR