

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

Declaratory Suit No.19/2009

Zotawna,
S/o Hrangkawlhla (L)
R/o Falkland Veng, Aizawl

.....Plaintiff

-Versus-

1. Laizovi,
W/o R.Lalrinzauva (L)
Galili Veng, Zemabawk.
2. The Secretary to the Govt. of Mizoram,
Land Revenue & Settlement Department,
Aizawl.
3. The Director,
Land Revenue & Settlement Department,
Aizawl.
4. The Asst. Assistant Settlement officer
Land Revenue & Settlement Department,
Aizawl.

..... Defendants.

BEFORE

R.VANLALENA, Senior Civil Judge

For the Plaintiff : Shri H.Lalrinthanga & Shri
J.N.Bualteng, Advocates.

For the Defendant : Shri Saihmingliana Sailo, Advocate and
Asst. Govt. Advocates.

ORDER

Dated 18.05 .2012

The brief facts of the case as reflected in the plaint may be stated as below:-

The plaintiff is a citizen of India belonging to Mizo Community and is residing at Falkland Veng, Zemabawk Aizawl and the defendant No.1 is a resident of Galili Veng, Zemabawk, Aizawl and defendants No.2-4 are the Departments of Government of Mizoram. The Defendant No.1 requested the plaintiff to lend her money amounting to Rs.4,00,000/- (Rupees four

lakhs) with interest @ 10% per month for opening Hardware Store business at Aizawl. The plaintiff carefully considered the request of the Defendant no.1 and before lending the money he enquired as to whether the request of the Defendant was according to the consensus of the family members of the Defendant. For this purpose, the plaintiff went to the house of the Defendant while all the family members were present. After verifying the consensus of the family members, the plaintiff decided to give loan money to the Defendant No.1 as requested for which an Agreement Deed (Pawisa Inpuktirna) dated 4th August,2008 was made. As per the Agreement Deed, the Defendant no.1 shall borrow a sum of money amounting to Rs.4,00,000/- (Rupees four lakhs) with interest @ Rs.10% per month from the plaintiff by mortgaging a landed property covered by LSC No.103101/01/124 of 2007 with the dwelling house building over the said land. The said borrowed money i.e. loan shall be repaid by the Defendant no.1 within four months i.e.5.8.2012 – 5.12.2008 in full while the interest shall be paid every month till full realization. As per the terms and conditions of the said Agreement Deed, in default of repayment of the loan, the said LSC No.103101/01/124 of 2007 with the house building over it shall be transferred to the plaintiff who shall become the owner of the said LSC and its house building and the possession for the same shall be given to the plaintiff. The instrument of Agreement Deed was duly signed and registered before Notary Public vide Notarial Registration No.516/8 dated 5.8.2008. The said LSC was registered in the name of Shri R.Lalrinzauva S/o Rozika, Galili Veng, Zemabawk, Aizawl who was the husband of the present Defendant no.1 since dead. During the course of time, the defendant No 1 had paid the interest for a period of three months but leaving a balance of one month interest with the principal amount. As requested by the said defendant, the plaintiff allowed the interest for another remaining one month be paid later on. Even after time went by, the said defendant still could not repay the interest and the principal amount. In the meantime, the said defendant filed a suit which was registered as T.S.No.3/2009 with Misc. Appln.No.21/2009 for title over the mortgaged property LSC No.103101/01/124 of 2007 before the Civil Judge, Aizawl District, Aizawl in the month of March,2009, however the said suit had been withdrawn by the petitioner shortly for reasons not known to others. As the said Defendant failed to repay the loan even after extended period of time, the plaintiff by instructing his lawyer had served a Legal Notice to the Defendant on 05.05.2009 demanding either to pay Rs.6,08,000/- or deliver the mortgaged property, but the Defendant still adamant to fulfill the terms and conditions of the said Agreement of Deed.

The present suit is valued at Rs.6,08,000/- and the plaintiff paid Rs.5000/- of court fees as required by the Mizoram Court fees (Amendment) Act, 1995. The suit filed bonafide for the ends of justice.

The plaintiff therefore prays the following reliefs:

- 1) The plaintiff may be declared as the legal and lawful owner of the immovable property described under LSC No.103101/01/124 of 2007.
- 2) The Defendant No.1 should vacate and the premises and deliver peaceful possession of the mortgaged property described under the said LSC.
- 3) Cost of the suit may be decreed in favour of the plaintiff and against the Defendant No.1.

On the other hand, the Defendant No.1 contested the case and submitted her written statement stating the suit is not maintainable in its present form and style, and is bad for non-joinder of necessary parties. It is barred by law of limitation, and the required amount of court has not been paid. The plaintiff has no locus standi to file the suit. The defendant categorically denied all the averments except what is specifically admitted herein. The Defendant submitted that she never asked the plaintiff for borrowing money from him. In July 2008, one woman namely Lalchhuanthangi @ CHTI of Khatla approached her for lending LSC for a period of 4 month and if she lent the LSC to her, she would give Rs.10,000/- per month and the said LSC would be returned to her after the four month. On 5.8.2008, the said Lalchhuanthangi asked the defendant and her daughter Rohlupuii to accompany her stating she would be repaying the full amount of money for lending rent of the said LSC for which they had to give their respective signature as witnesses. Accordingly, on that day, the defendant with her daughter accompanied Lalchhuanthangi to D.C. Office Complex, Aizawl, but were left outside while Lalchhuanthangi went straight inside the office. After a little moment, they all returned home to the residence of defendant and gave their signatures on a paper of alleged Deed of Agreement. Defendant submitted that she and her daughter Rohlupuii did not present while the alleged Deed of Agreement was signed and did not know the contents of the document, but the Defendant and her daughter Rohlupuii did sign the document. The Defendant submitted that she did not make repayment of money to the plaintiff as alleged, but Lalchhuanthangi paid some money to her. The Defendant submitted that she did not receive Rs.4,00,000/- from the plaintiff or from any other person. However, she received Rs.40,000/- from Lalchhuanthangi for the cost of lending the LSC No.103101/01/124 of 2007 for a period of four months. Hence, the Defendant prayed to give back peaceful possession of the said LSC to the rightful owner.

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 Agreement dated 5.8.2008 vide Notarial Regn.No.516/2008 between plaintiff and Defendant No.1 was valid or not?
- 3) Whether the plaintiff is entitled to the relief claimed ? If so, to what extent and who will pay ?

The plaintiff examined six witnesses including himself while the Defendant examined two witnesses including herself.

Issue No.1 : This issue relates to the maintainability of the suit. The instant suit had been filed by presenting plaint with required number of photo copies of plaint for supply to the defendants. It had been properly valued for the purpose of pecuniary jurisdiction. Required amount of court fees had been paid. The issue of maintainability had been heard by this court on 15.12.2009 in presence of parties, and the court had decided the suit to be maintained. As it had been already decided, it is not necessary to discuss the issue at this stage.

Issue No.2 : This issue relates to the validity of the Agreement Deedd (Pawisa Inpuktirna) dated 05.08.2008 made between the plaintiff and the Defendant. There had been alleged Deed of Agreement dated 5.8.2008 purportedly made between the plaintiff and the Defendant. The plaintiff deposed that a deed of agreement for lending money amounting to Rs.4,00,000/- (Rupees four lakhs) had been made on 5.8.2008 between the plaintiff and the Defendant with terms and conditions by which the plaintiff should disburse Rs.4,00,000/- (Rupees four lakhs) only with interest @10% per month as a loan to the Defendant for which the Defendant would mortgaged the LSC No.103101/01/124 of 2007 with the dwelling House on it and the said loan was to be repaid within four months (i.e.5.8.2008-5.12.2008) in full and final. The interest was to be paid every month and the full amount of the principal was to be paid on the fourth month of the loan period. In case of default in repayment of loan within the time fixed, the plaintiff shall automatically become the owner of the mortgaged LSC with the dwelling house over it. The said Agreement deed had been made with such terms and conditions had been registered vide Notarial Regn. No.516/8 dated 5.8.2008 and has been made in presence of two witnesses namely Lalsanghliri and Rohlupuii Pw 6 namely Shri R.Lalremruata who drafted the Deed of Agreement between the plaintiff and the Defendant in the instant case deposed that he had identified the plaintiff and the Defendant while making the said Deed. He added that as per the Deed of Agreement the Defendant would borrow Rs.4,00,000/- (Rupees four lakhs from the plaintiff with interest @ 10%

per month for a period of four months for which the Defendant mortgaged a LSC No.103101/01/124 of 2007 which would be liable to forfeiture in case of default in repayment. He further stated that after having read all the contents of the said deed of agreement, the parties signed the document before him. From the evidence deposed by the Pws, it has been proved that the defendant NO.1 had borrowed money amounting to Rs.4,00,000/- from the plaintiff with interest @10% per month would be repaid within four months w.e.f. 5.8.2008. It is also proved that in spite of the fact that the Defendant no.1 was the debtor, still she could not repay the debt within time as per the Deed and still failed till date. The Deed of Agreement had been made willingly between the parties in presence of two witness and identified by an Advocate who drafted the Deed and further got registered with Notary Public, Aizawl. On perusal of the said Deed of Agreement, this court finds nothing doubtful about its reality and genuiness. Hence, issue no.2 is decided in favour of the plaintiff.

Issue No.3 : This issue relates to the entitlement of the relief claimed by the plaintiff. Since the foregoing two issues have been decided in favour of the plaintiff, this issue does not seem to pose an abstacle in deciding the issue in favour of the plaintiff. Accordingly the issue no.3 is decided in favour of the plaintiff. However, the relief granted to the plaintiff would be confined only the Principal Loan Amount i.e. Rs.4,00,000/- (Rupees four lakhs) with interest @ 6% per annum with effect from 10 December, 2008 till full realization of the principal amount and the said interest.

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

1. The Defendant No.1 Laizovi W/o R.Lalrinzauva(L) resident of Zemabawk shall repay the principal loan amount of Rs.4,00,000/- (Rupees four lakhs) with interest @ 6% per annum w.e.f. December 2008 till full realization to the plaintiff within a period of four months from the date of this order by deposit of cash into court either by four installments which will be disbursed to the plaintiff.
2. In case of default in repayment or failure to repay the said loan amount with interest aforesaid, within the fixed period, the mortgaged property i.e.LSC No.103101/01/124 of 2007 with the Assam Type building over it shall become forfeited automatically and the plaintiff will become the legal and rightful owner of the said mortgaged properties. The Defendant No.1 shall have to vacate the premises and deliver peaceful possession of the same to the plaintiff.

3. On the liquidation of the said loan with the interest, the plaintiff shall return the mortgaged properties to the Defendant No.1 through this court as soon as the loan has become liquidated.
4. Parties shall bear their own cost.

Pronounced in open court in presence of parties.

With this the case stands disposed of.

Sd/-R.VANLALENA
Senior Civil Judge -2
Aizawl District : Aizawl

Memo No. /SCJ-II(A)/2012 : Dated Aizawl, the 16th June, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District for information.
2. Zotawna, S/o Hrangkawlhla (L) R/o Falkland Veng, Aizawl C/o H.Lalrinthanga and J.N.Bualteng, Advocates.
3. Laizovi, W/o R.Lalrinzauva (L) Galili Veng, Zemabawk C/o Saihmingliana Sailo, Advocate.
4. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department, Aizawl C/o Asst. Govt. Advocates.
5. The Director, Land Revenue & Settlement Department, Aizawl C/o Asst. Govt. Advocates.
6. The Asst. Assistant Settlement officer, Land Revenue & Settlement Department, Aizawl C/o Asst. Govt. Advocates.
7. Registry section.
8. Case record.

PESHKAR