

**IN THE COURT OF SENIOR CIVIL JUDGE- 2
AIZAWL DISTRICT: AIZAWL, MIZORAM**

DECLARATORY SUIT NO. 10 OF 2011

Plaintiff:

Smt. M.C. Sangmuani
W/o Ramhmasawna (L)
Chanmari, Aizawl

By Advocate's

: Mr. James Lalrintluanga

Versus

Defendants:

1. Smt. H. Vanlalpeki
D/o H. Khawtina
Tuikual North, Aizawl
2. Smt. C. Nuchhungi
Thuampui, Aizawl
3. Smt. Lalthangmawii
Bethlehem Veng, Aizawl

Proforma defendants:

1. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
2. The ASO- I
Aizawl District: Aizawl

By Advocates:

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

Date of Judgment & Order

: 29-07-2011

JUDGMENT & ORDER

GERMINATION OF THE CASE

The plaintiff in her plaint submitted that on dated 10th August, 2009, the defendants and the plaintiff made an Agreement Deed (Pawisa Puka Intiamkamna) where the defendant parties borrowed Rs. 4,50,000/- (rupees four lakhs fifty thousands only) from the plaintiff with a condition that the defendant shall pay the said money alongwith 20% interest within 1 month (i.e. on or before 10th September, 2009) to the plaintiff without fail. Photo copy of the said Pawisa Puka Intiamkamna made on dated 10th August, 2009 is also annexed and marked as ANNEXURE-I. That in the said Agreement Deed (Pawisa Puka Intiamkamna) para No. 2, it was mentioned that as a security of the said loan, the defendant H. Vanlalpeki had submitted her LSC No. AZL-881 of 1977. In the same agreement, it was also further clearly mentioned that if a defendant failed to repay the said loan within 1 month (i.e on or before 10th September, 2009) the plaintiff shall

have full ownership and right to own, possess and enjoy over the said land covered by LSC No. AZL-881 of 1977. (Photo copy of the said LSC No. AZL-881 of 1977 is also annexed and marked as ANNEXURE-II. Although the plaintiff very often requested the defendants to realized the said loan as per the terms and conditions made in the above said agreement on dated 10.08.09. However, the defendant intentionally ignored to realized the said loan inspite of several request. And the defendant H. Vanlalpeki (in whose name the LSC was made) in reply stated that plaintiff could take any step/action as she wish for realizing the said loan. The plaintiff therefore prayed to kindly admit the suit and declare the petitioner as a legal and rightful owner of the said landed property covered by LSC No. AZL-881 of 1977 and allowed the petitioner peaceful possession and mutation as per the provisions of law.

Whilst the suit is filed on 12/4/2011 and served service of summons to all defendants even through publication in the local daily newspapers viz. Vanglaini Daily Newspaper Dt. 11th June, 2011 and 13th June, 2011, none contested and appeared in the suit. Thus, proceeded the case ex parte.

POINTS FOR DETERMINATION

The following points should determine the case as follows-

1. Whether the suit is maintainable or not
2. Whether the plaintiff had given a loan to the defendants or not
3. Whether LSC No. Azl. 881 of 1977 is mortgaged to the plaintiff by the defendants. If so, under what conditions
4. Whether the defendants had made recovery of loan amount to the plaintiff. If not, whether LSC No. Azl. 881 of 1977 is liable to declare as under the title and ownership of the plaintiff.

EVIDENCE

The plaintiff had produced the following witnesses namely-

1. Smt. Lallawmzuali, W/o Lalthantluanga, aged about 38, R/o Chanmari 'W', Aizawl (Hereinafter referred to as PW-1)
2. Smt. M.C. Sangmuani, W/o Ramhmasawna (L), aged about 36, R/o Chanmari, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Lalthanpari, W/o Lalthanmawia, aged about 47, R/o Chanmari 'W', Aizawl (Hereinafter referred to as PW-3)

The PW- 1 deposed that, the petitioner MC Sangmuani had given a loan to the defendants namely H. Vanlalpeki, C. Nuchhungi and Lalthangmawii on their request amounting to Rs. 4,50,000/- (rupees four lakhs fifty thousand) only on dated 10.08.2009, on deposited of LSC No. Azl-881 of 1977, located at Bethlehem Veng, Aizawl by mortgaging against the said loan with a condition that if the loanee/defendants fail to pay the said loan within one month (i.e dt. 10.09.2009) from the date of their loan agreement. The loanee could not make repayment of the said loan till today, as such, as per the terms and condition of loan, the loanee (i.e. the defendants namely H. Vanlalpeki, C. Nuchhungi and Lalthangmawii) are liable to forfeit the said LSC (LSC No. Azl-881 of 1977). She was one of the witness and actually seen when the plaintiff given money as a loan to the defendants on dated 10.08.2009, Exbt. P-1(b) is my signature.

The PW-2 deposed that on dated 10.08.2009 the defendants namely H. Vanlalpeki, C. Nuchhungi and Lalthangmawii requested me to give them

loan amounting to Rs. 4,50,000/- (rupees four lakhs fifty thousand) only. She have provided them loan amounting to Rs. 4,50,000/- (rupees four lakhs fifty thousand) only by executing loan agreement deed dated 10.08.2009. Exbt. P-1 is the agreement deed executed on dated 10.08.2009. The defendants thereby mortgaged LSC No. Azl-881 of 1977, located at Bethlehem Veng, Aizawl against the said loan. Exbt. P-2 is the photo copy of LSC No. Azl-881 of 1977 which was mortgage against the said loan on dated 10.08.2009. The condition of the said agreement is that, the defendants shall repay the loan within one(1) month i.e. on or before 10.09.2009, and in default such a repayment, the defendants are liable to forfeit the said LSC (LSC No. Azl-881 of 1977). The loanee could not make repayment of the said loan till today, as such, as per the terms and condition of loan, the loanee (i.e. the defendants namely H. Vanlalpeki, C. Nuchhungi and Lalthangmawii) are liable to forfeit the said LSC (LSC No. Azl-881 of 1977). She was the plaintiff who had given money as a loan to the defendants on dated 10.08.2009, Exbt. P-1(a) is my signature.

The PW-3 deposed that the petitioner MC Sangmuani had given a loan to the defendants namely H. Vanlalpeki, C. Nuchhungi and Lalthangmawii on their request amounting to Rs. 4,50,000/- (rupees four lakhs fifty thousand) only on dated 10.08.2009, on deposition of LSC No. Azl-881 of 1977, located at Bethlehem Veng, Aizawl by mortgaging against the said loan with a condition that if the loanee/defendants fail to pay the said loan within one month (i.e dt. 10.09.2009) from the date of their loan agreement. The loanee could not make repayment of the said loan till today, as such, as per the terms and condition of loan, the loanee (i.e. the defendants namely H. Vanlalpeki, C. Nuchhungi and Lalthangmawii) are liable to forfeit the said LSC (LSC No. Azl-881 of 1977). She was one of the witness and actually seen when the plaintiff given money as a loan to the defendants on dated 10.08.2009, Exbt. P-1(c) is my signature.

Since none of the defendants contested in the suit, none appeared for cross examination of PWs and also no other evidence is adduced.

FINDINGS

Point No. 1

Whether the suit is maintainable or not

The plaint is duly supported by the Affidavit and verification duly sworn and signed by the plaintiff. Being declaratory suit, court fees of Rs. 30/- is also paid. On perusal of the relief claimed in the suit, only declaration of title or ownership is claimed, as held in the case of **Vanlalveni vs Tlanglawma** decided on 15/11/2002 and reported in (2005) 1 GLR 240 and in the case of **State Of M.P. vs Mangilal Sharma** decided on 18 December, 1997 reported in AIR 1998 SC 743, 1998 (1) ALT 11 SC, 1998 (1) CTC 271. The point no. 1 is decided in favour of the plaintiff as purely declaratory suit.

Point No. 2

Whether the plaintiff had given a loan to the defendants or not

No diverse points can be had except evidences adduced by the plaintiff which is truly corroborated with the plaint. On perusal of the contents of Deed Dt. 10/8/2009 executed in between the plaintiff and the defendants which is witnessed by the PWs 1 and 3, cogently, it reveals that by mortgaging landed property under LSC No. Azl. 881 of 1977 with an area of 106.20 Sq. m, located at Bethlehem Veng, Aizawl the defendants had

borrowed a sum of Rs. 4,50,000/- (rupees four lakhs fifty thousand) only on dated 10.08.2009 to make recovery of the same within one month i.e. 10/8/2009 to 10/9/2009, failing which, forfeiture of ownership of the mortgaged property. This point is again decided in favour of the plaintiff.

Point No. 3

Whether LSC No. Azl. 881 of 1977 is mortgaged to the plaintiff by the defendants. If so, under what conditions

The point is already decided under Point No. 2 of the above and is no need of further discussion.

Point No. 4

Whether the defendants had made recovery of loan amount to the plaintiff. If not, whether LSC No. Azl. 881 of 1977 is liable to declare as under the title and ownership of the plaintiff.

As uncontested proceedings, no averments and evidence is found eliciting that the defendants had made recovery of the borrowed money to the plaintiff. So is the failure of the defendants, as per the conditions already decided under point no. 2, the mortgaged property viz. LSC No. Azl. 881 of 1977 with an area of 106.20 Sq. m, located at Bethlehem Veng, Aizawl is liable to declare under the tile and ownership of the plaintiff.

ORDER

UPON the findings as above, it is hereby ORDERED and DECREED that the plaintiff namely- Smt. M.C. Sangmuani W/o Ramhmasawna (L), Chanmari- Aizawl is hereby declared as the rightful and legal owner of the properties located and situated under LSC No. Azl. 881 of 1977 with an area of 106.20 Sq. m, located at Bethlehem Veng, Aizawl.

No order as to costs of the suit, the case shall stand disposed of

Give this copy with decree to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. DS/10/2011, Sr. CJ (A)/

Dated Aizawl, the 29th July, 2011

Copy to:

1. Smt. M.C. Sangmuani W/o Ramhmasawna (L), Chanmari- Aizawl through Mr. James Lalrintluanga, Adv.
2. Smt. H. Vanlalpeki D/o H. Khawtina, Tuikual North, Aizawl through Mr. James Lalrintluanga, Adv.
3. Smt. C. Nuchhungi, Thuampui, Aizawl through Mr. James Lalrintluanga, Adv.
4. Smt. Lalthangmawii, Bethlehem Veng, Aizawl through Mr. James Lalrintluanga, Adv.
5. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA

6. The ASO- I, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
7. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District-
Aizawl
8. Case record

PESKAR