

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

DECLARATORY SUIT NO. 12 OF 2008

Plaintiff:

Mr. Vanlalnunhlupuia
S/o B. Rotluanga
Ramthar Veng, Aizawl

By Advocate's

: Mr. R. Laltanpuia

Versus

Defendants:

1. Mr. H. Lalchangliana
S/o Varhnawla (L)
College Veng, Aizawl
2. Smt. Thiamsangi
D/o R. Lalrova
Zemabawk, Aizawl

By Advocate

: Abul Hussain

Proforma Defendants:

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

By Advocate's:

: Mr. R. Lalremruata, AGA

BEFORE

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

Date of Judgment & Order

: 18-05-2011

JUDGMENT & ORDER

This is a suit for a decree for declaration that the plaintiff is the owner of the land and building covered by LSC No. 74 of 1977 located at Venghlui College Veng, Aizawl and to direct the defendant no. 1 to give vacant possession of land and building covered by LSC No. 74 of 1977 on the grounds that as approached by the defendant no. 2 and by executing "Pawisa Puka Intiamna" Dt. 20.12.2007 and by mortgaging the LSC No. 74 of 1977 belonging to the defendant no. 1 by executing "LSC hman chungchanga Inremna" Dt. 20.12.2007 in favour of the defendant no. 2, the plaintiff lend Rs. 30 lakhs to the defendant no. 2 with a condition that the said principal amount with interest rate at 10% per month will be repaid within two months from 20-12-2007. Failing on which the mortgaged property under LSC No. 74 of 1977 will be left for the plaintiff without

saying any objections under the already permission of the owner as defendant no. 1.

While the suit is instituted on 23/5/2008 and a summons was duly served to the defendants in time, the defendants also engaged with learned Advocates but fails to file written statements till 19/5/2009 and hence ordered for ex parte proceedings under O. VIII, R. 10 of the CPC.

The following points should be determined in the instant case as framed on 25.6.2009 –

1. Whether the LSC No. 74 of 1977 is mortgaged by the defendant no. 1 with the permission of the defendant no. 2
2. Whether the plaintiff is entitled to the relief claimed or not. If so to what extend.

EVIDENCE

None except the plaintiff produced any witness, the plaintiff produced only one witness namely- Mr. Vanlalnunhlupua S/o B. Rotluanga, Ramthar Veng, Aizawl (hereinafter referred to him as PW). In his examination in chief, he being the plaintiff reiterated the averments and submissions in the plaint. He further added that-

Ext. P- 1 is a copy of LSC Hman chungchanga Inremna Dt. 20/12/2007

Ext. P- 2 is a copy of LSC No. 74 of 1977 located at College Veng, Aizawl

Ext. P- 3 is a copy of Pawisa Puka Intiamkamna Dt. 20.12.2007

Ext. P- 3 (a) is his true signature.

In his cross examination by learned AGA for the proforma defendants, he denied that the defendants repaid the amount lend to defendant no. 2. Only for the purpose of mutation, the proforma state defendants have a role to play in the instant suit.

FINDINGS

Point No. 1

LSC No. 74 of 1977 is duly mortgaged or not

I have no other evidence and factual matrix to divert my findings except the averments and submissions in the plaint and deposition of PW-1 saying that the defendant no. 1 by executing a Deed before the Notary Public, Aizawl Dt. 20.12.2007 in the presence of two reliable witnesses consented to mortgage his LSC No. 74 of 1977 located at Venghlui- College Veng, Aizawl by the defendant no. 2 to borrow Rs. 30 lakhs from the plaintiff within a very short span of time and further covenanted to leave the said LSC into the plaintiff when failure to repay the said borrowed amount in due course of time. Both defendants aware of the proceedings and also engaged learned Advocates but submitted nothing to challenge the allegations and submissions in the plaint must be presumed to have nothing to say in the instant suit.

Point No. 2

Entitlement of relief and it's extend

As discussed in the point no. 1, the plaintiff will be entitled to declare him as the rightful owner of the property lies within LSC No. 74 of 1977

located at Venghlui-College Veng, Aizawl and if it be made, the other relief sought by the plaintiff like vacant position of the suit land, mutation and mandatory and permanent injunction restraining the defendant no. 1 from selling or disturbing the plaintiff's peaceful possession of the suit land will be a sine quo non. Pertinently, the admitted position in the instant factual matrix is that the plaintiff lend Rs. 30 lakhs to the defendant no. 2 but no repayment is not made at all, it will therefore be deserved some alternative to meet justice like in the instant case.

ORDER

The inevitable conclusion and mode of adjudication is that the plaintiff is hereby declared as the rightful owner of the property lies within LSC No. 74 of 1977 located at Venghlui-College Veng, Aizawl with an area of 0.08 Bigha=114.09 Sq. m. including the said LSC.

The defendant no. 1 is directed to vacate the suit land and leave for the plaintiff for his peaceful possession within three months from the date of this order.

The proforma defendants are also directed to mutate the suit land in the name of the plaintiff in accordance with the existing procedures as and when apply by the plaintiff.

The defendant no. 1 is further restrained permanently from disturbing the peaceful possession of the suit land by the plaintiff after the stipulated period of three months from this day and to cooperate the mutation process positively as and when necessary in favour of the plaintiff. No order as to costs of the suit.

The case shall stand disposed of

Give this copy to all concerned including a copy of decree.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. DS/12/2008, Sr. CJ (A)/

Dated Aizawl, the 18th May, 2011

Copy to:

1. Mr. Vanlalnunhlupua S/o B. Rotluanga, Ramthar Veng, Aizawl through Mr. R. Laltanpuia, Adv.
2. Mr. H. Lalchangliana S/o Varhnawla (L), College Veng, Aizawl through Mr. Abul Hussain, Adv.
3. Smt. Thiamsangi D/o R. Lalrova, Zemabawk, Aizawl through Mr. Abul Hussain, Adv.
4. The Secretary to the Govt. of Mizoram, Revenue Department, Mizoram- Aizawl through Mr. R. Lalremruata, Adv.
5. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, Adv.
6. The ASO- I, Aizawl District: Aizawl through Mr. R. Lalremruata, Adv.
7. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR