

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL, MIZORAM**

MONEYSUIT NO. 50 OF 2010

Plaintiff:

Mr. K. Lalnuntluanga
S/o K. Buana (L)
Ramhlun North, Aizawl

By Advocates

: 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Versus

Defendants:

1. Mr. M.C. Lalfala
S/o M.C. Hrangluia
Nursery Veng, Aizawl
2. The Secretary to the
Govt. of Mizoram
Public Works Department
3. The Engineer in Chief
Public Works Department
Govt. of Mizoram
4. The Superintending Engineer
Public Works Department
Govt. of Mizoram
Lunglei Circle, Lunglei
5. The Executive Engineer
Public Works Department
Lawngtlai Division, Lawngtlai
Govt. of Mizoram

By Advocates

:

For the defendant no. 1

: 1. Mr. S. Pradhan
2. Mr. Albert V.L. Nghaka
3. Mr. Lalropara Singson

For the defendants 2-5

: 1. Miss Bobita Lalhmingmawii, AGA
2. Mr. Joseph Lalfakawma, AGA

Date of Arguments : 03-12-2012
Date of Judgment & Order : 04-12-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGEMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiff in his plaint submitted that being the worker of Mizo National Front Political party who previously ruled the state, he was offered to allot some government contract works by using the name of registered contractor. The defendant no. 1 unconditionally and voluntarily allowed to execute the work in his name by the plaintiff by executing Power of Attorney. The plaintiff was therefore allotted Work Order for construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 for a sum of Rs. 1,20,45,270.71p (Rupees one crore twenty lakhs, forty five thousand, two hundred seventy and seventy one paisa) with a condition to complete the work within six months from 19th January, 2007. Accordingly, the plaintiff carried out of the entire work on the strength of Power of Attorney duly executed by the defendant no. 1 on 08-01-2007. After completion of the entire work by the plaintiff, the defendant no. 1 clandestinely and illegally filed the so called Revocation of Power of Attorney on 23.9.2008 before the Notary Public without giving opportunity of being heard to the plaintiff. On that strength, the defendant no. 1 had illegally and unreasonably taken out the final bill amounting to Rs. 22,27,700/- Vide, Cheque No. SB 00/359-0512551 from the defendant no. 5. According to the Certificate Dt. 11-06-2009 issued by the defendant no. 5, the said work was carried out by the plaintiff and completed the same before the end of December, 2008. The defendant did not contribute any efforts or any amount for the said work. When the plaintiff approached the authority after the maintenance period of one year is elapsed, embarrassingly, performance security of Rs. 6,03,000/- was also already withdrawn by the defendant no. 1 from the Addl. Divisional Accountant in the office of Engineer in Chief, PWD. The plaintiff therefore prayed that (i) a decree be passed declaring that the plaintiff is entitled to receive the final bill amount of Rs. 28,30,700/- for the construction of Permanent works on Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 (ii) cost of the suit (iii) any other relief which this court deems fit and proper.

The defendant no. 1 in his written statement contended that the attorney holder cannot sue the executants, the documents relied upon by the plaintiff having not been registered under the Registration Act cannot be considered. The suit is also bad for non compliance of section 80 of the CPC. Whilst the plaintiff was supposed to pay an amount of Rs. 10 lakhs to the MNF party, he failed to pay and the defendant no. 1 paid the same during 2006 which is liable to repay by the plaintiff to the defendant no. 1.

The rate of using the name of contractor is 5% of the total contractual amount @ Rs. 6 lakhs which the plaintiff fails to pay, the verbal agreement of the plaintiff and the defendant no. 1 was not fulfilled by the plaintiff to distribute profits on completion of the work. The defendant no. 1 has every right to revoke the Power of Attorney as it is not irrevocable one. It is the contractor who was allotted the work can take final bill amount and thereby no illegality was committed by the defendant no. 1 for taking the final bill amount. Thus, prayed to dismiss of the suit with costs.

The defendants 2-5 also submitted their joint written statements stating that the suit is bad for non compliance of section 80 of CPC. As the Work Order for construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 was allotted to the defendant no. 1, there is no illegality to release final bill and performance security bill to the defendant no. 1. They therefore have no liabilities as the crux is in between the plaintiff and the defendant no. 1.

ISSUES

Issues were framed on 11.05.2011 and amended towards correctly adjudication of the lis as follows-

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiff has locus standi to file the instant suit or not
3. Whether the defendant no. 1 has a right to revoke the Power of Attorney Dt. 8/1/2007 without prior notice to the plaintiff or not
4. Whether there was any agreement made between the plaintiff and the defendant no. 1 in respect of Work Order for construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451
5. Whether all labour charges, investments and works were carried out by the plaintiff from his own expenses or not in respect of Work Order for construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451
6. Whether the defendants 1-5 are jointly liable to pay Rs. 28,30,700/- directly to the plaintiff or not
7. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff's had produced the following witnesses namely-

1. Mr. K. Lalnuntluanga S/o K. Buana (L), Ramhlun 'N', Aizawl (Hereinafter referred to as PW-1)
2. Mr. Vanlalzela S/o Lalmuanga Sailo (L), Khatla 'S', Aizawl (Hereinafter referred to as PW-2)
3. Mr. Malsawma Royte, Khatla South, Aizawl (Hereinafter referred to as PW-3)
4. Mr. J. Sangkhuma, E.E. Monitoring Cell, Office of the E-in-C, PWD

The **PW -1** in his examination in chief mainly reiterated and affirmed the contents of the plaint being the plaintiff himself. He further exhibited that-

Ext. P-1 is the plaint

Ext. P-1 (a), (b) and (c) are his signatures

Ext. P-2 is Power of Attorney Dt. 8/1/2007

Ext. P-2 (a) is his signature

Ext. P-3 is a copy of Work Order Dt. 8/1/2007

Ext. P- 4 and 5 are a copy of Agreement Dt. 9/1/2007

Ext. P-6 is a copy of Revocation of Power of Attorney Dt. 23/9/2008

Ext. P-7 is a Certificate Dt. 11/6/2009

Ext. P-8 is a copy of letter Dt. 28th Jan., 2009

Ext. P-9 is a copy of term deposit receipt Dt. 16/12/2008

Ext. P-10 is a copy of application Dt. 12/8/2010

Ext. P-11 to 11 (p) are court fees

During cross examination, he admitted that the Department allotted the contract work to the defendant no. 1, he also admitted that their documents were not registered under the Registration Act. He also admitted that he did not file any documents showing his own expenditure on the work. He also admitted that he is the attorney holder of the defendant no. 1 and carried out the work only for and on behalf of the defendant no. 1. He admitted that there was no agreement in between himself and the Department. He denied that he is liable to pay Rs. 20 lakhs including 6% rate of using the name of contractor.

The **PW -2** in his examination in chief deposed that he is the main person entrusted to look after the work executed by the plaintiff, all the final bill and security amount were withdrawn by the defendant no. 1 without the knowledge of the plaintiff. As instructed by the plaintiff, he acted as envoy to receive back of the said amount from the defendant no. 1, the defendant no. 1 promised them to give after return from Guwahati but the defendant no. 1 failed to realize. He witnessed that the defendant no. 1 never put any effort or never expend any amount for the work executed by the plaintiff.

In his cross examination, he admitted that there was no agreement in between himself and the plaintiff.

The **PW -3** in his examination in chief he is well acquainted with the plaintiff and the defendant no. 1. As entrusted by the plaintiff, he along with Mr. P.L. Liandinga and Mr. Vanlalzela Sailo went as envoy to the defendant no. 1 to receive back of the amount drawn by the defendant no. 1 for three or four times. As insisted, they also produced Tax Clearance Certificate Form No. 39 but the defendant no. 1 did not repay the said amount. Meanwhile, the defendant no. 1 never denied of his drawn amount from the instant contract work.

In his cross examination, he admitted that he did not know the terms and conditions of the contract work. He also never visited the place of contract work executed by the plaintiff.

The **PW-4** in his examination in chief deposed that his official position was misused by the defendant no. 1 in the pretext of lie. Although Class-1 Contractor supposed to work for development, he is familiar with the malpractices committed by the defendant no. 1 and the defendant no. 1 is also further liable to cancel his registration as Class-I Contractor as he often committed malpractices. Ext. P- 7 (a) is his signature

During cross examination, **PW-4** stated that there is no agreement in between the Department and the plaintiff. He also admitted that he did not know the terms and conditions executed in between the plaintiff and the defendant no. 1. He also admitted that he have not made any enquiry to ascertain the version of the plaintiff.

For the defendant no. 1:

The defendant no. 1 had produced the following witnesses namely-

1. Mr. M.C. Lalfala S/o M.C. Hrangluaia, Nursery Veng, Aizawl (Hereinafter referred to as DW-1)
2. Smt. Ngurdingiani W/o M.C. Lalfala (Hereinafter referred to as DW-2)
3. Mr. R. Khawpuithanga Ex. MLA, Tlangnuam, Aizawl (Hereinafter referred to as DW-3)

The **DW-1** in his examination in chief mainly affirmed the contents of his written statements being the defendant no. 1.

In his cross examination, he deposed that he knew the plaintiff since 1984. He also knew the plaintiff witnesses namely Mr. Vanlalzela, Mr. Malsawma Royte and Mr. P.L. Liandinga and also admitted that the said PWs came to his house more than house as envoy of the plaintiff. He admitted that he executed Power of Attorney Ext. P-2 in favour of the plaintiff for execution of the Work Order for construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 (SH Construction of culvert and retaining wall). He also admitted that the plaintiff completely carried out of the entire work to the satisfaction of the concerned authority. He also admitted that he did not contribute any single paisa for doing the said work.

The **DW-2** in her examination in chief deposed that she is the wife of the defendant no. 1. She further deposed that she was present and knew that there was verbal agreement in between the plaintiff and the defendant no. 1 to share profits from the work and further covenanted to pay Rs. 10 lakhs to the MNF party by the plaintiff as party fund but the defendant no. 1 paid the said party fund in 2006. Since the plaintiff failed to share profit to the defendant no. 1 and also fails to pay MNF party fund, power of attorney was revoked by the defendant no. 1.

In her cross examination, she stated that work was allotted in the name of her husband in respect of construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 but carried out by the plaintiff on the strength of power of attorney executed by her husband. She admitted that no written agreement was executed by the plaintiff and the defendant no. 1 in respect of the said contract work.

The **DW- 3** in his examination in chief deposed that there was an agreement in between the plaintiff and the defendant no. 1 that the plaintiff would pay Rs. 10 lakhs to the MNF party as a fund from the first running bill but the plaintiff failed to pay the same. Being the then Adviser of the MNF party, he received the said Rs. 10 lakhs from the defendant no. 1 in 2006. Thereafter, the defendant no. 1 further paid Rs. 4 lakhs to the MNF party fund on 18/6/2007 which was also received by him.

In his cross examination, he deposed that there was no written agreement in between the plaintiff and the defendant no. 1 to pay Rs. 10 lakhs to the MNF party fund and no receipt for receiving Rs. 14 lakhs from the defendant no. 1 by the MNF party is found in the court.

For the defendants 2-5:

The defendants 2-5 had produced had produced only one witness namely Smt. Lalhrangliani, Under Secretary, PWD and she only exhibited that Ext. D-1 is their written statement. Ext. D-1 (a) is her true signature.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

A requisite court fees at Rs. 5000/- is make up as directed by the plaintiffs. Plaint is also accompanied by paragraph wise verification with affidavit. With regards to legal notice to state defendants, as per this court order Dt. 30/8/2010 in CMA No. 214 of 2010, plaintiff was exempted from the rigour of section 80 of the CPC for filing the instant suit. This issue is therefore decided in favour of the plaintiff.

Issue No. 2

Whether the plaintiff has locus standi to file the instant suit or not

As admitted by the defendant no. 1 as DW-1 that it is he who executed Power of Attorney marked as Ext. P-2 in favour of the plaintiff in respect of construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 and also further admitted by the defendant no. 1 that it was the plaintiff who carried out the work by his own expenses, the plaintiff must have locus standi to file the suit. Pertinently, although, Ext. P-2 was not registered under the Registration Act, 1908, the plaintiff must have right to sue as held by Hon'ble Supreme Court in **Ahmedsaheb (D) By Lrs.& Ors. vs Sayed Ismail** decided on 19 July, 2012 in connection with Civil Appeal Nos. 5316-5318 of 2012 (@ SLP (C) Nos. 26049-51 of 2011), wherein, the Supreme Court has held that-

“10. Keeping the above undisputed facts in mind, when we examine the legal issue, at the very outset, it will have to be stated that even while holding that Exhibits 68-69 being unregistered documents cannot be accepted in evidence, the relationship of the appellants and the respondent as landlord and tenant was not in controversy. Even according to the

respondent himself the rent payable was Rs.800/- per year which was admittedly not paid by him right from day one when the tenancy commenced. It was an admitted case of the respondent that the rent was due from him from October, 1971 till the third suit was filed. We are unable to appreciate as to how the appellants could have been non-suited solely on the ground that Exhibit-69 was not admissible in evidence. It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. In our considered opinion, that vital aspect in the case (viz) the admission of the respondent in the written statement about the rate of rent and the further admission about its non- payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor while deciding the Second Appeal which led to the dismissal of the appeals. Even while eschewing Exhibit-69 from consideration, the High Court should have noted that the relationship of landlord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs. 800/- per year.

15. We are, therefore, of the view that the dismissal of the suit on the simple ground that Exhibit 69 was not a registered document cannot be accepted. Having regard to our above conclusion, the appeals deserve to be allowed.....”

This issue is again decided in favour of the plaintiff. In advertently, whether Ext. P-6 viz. Revocation of Power of Attorney Dt. 23rd Sept., 2008 is registrable or not. If so, whether it can be acted on the basis of the same is questionable and hazy.

Issue No. 3

Whether the defendant no. 1 has a right to revoke the Power of Attorney Dt. 8/1/2007 without prior notice to the plaintiff or not

Delving on documentary and oral evidences adduced by parties in the lis, there is no evidence to show that Ext. P-6 viz. Revocation of Power of Attorney Dt. 23rd Sept., 2008 was done with the concurrence/consent of the plaintiff. Moreover, no evidence is adduced eliciting that the plaintiff being the Attorney Holder knows execution of the said Ext. P-6 viz. Revocation of Power of Attorney Dt. 23rd Sept., 2008 for such execution. Law on revocation of power of attorney is settled in **Seth Loon Karan Sethiya vs Ivan E. John And Ors.** decided on 25 April, 1968 reported in AIR 1969 SC 73, 1968 38 CompCas 760 SC, 1969 1 SCR 122, wherein, Hon’ble Supreme Court has held thus-

“8. There is hardly any doubt that the power given by the appellant in favour of the bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which

forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked.”

In the instant case, the Power of Attorney Dt. 8/1/2007 executed by the defendant no. 1 reads thus-

“This power of Attorney includes and enables the attorney holder to work tender No. D. 24016/2/03-SEL/122 Dt. 7th Nov., 2006 order of Superintending Engineer, PWD, Lunglei Circle, Lunglei, Mizoram and the work name is Chawngte ‘P’- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 (SH Construction of culvert and retaining wall). I hand over the attorney holder to work the said work and I also hand over the attorney holder to draw any money/cheque and all the securities to the attorney holder for the mentioned work or in whatever manner for his own benefits”

However, without giving opportunity of being heard and without the consent of the attorney holder, revocation of the said power of attorney will be illegal as settled the law in **Seth Loon Karan Sethiya vs Ivan E. John And Ors.** (supra.) followed by Hon’ble Madras High Court in **Goutham Surana And Sons vs K. Kesavakrishnan And Ors.** decided on 3 January, 1995 reported in (1995) 1 MLJ 493. This issue is therefore again decided in favour of the plaintiff.

Issue No. 4

Whether there was any agreement made between the plaintiff and the defendant no. 1 in respect of Work Order for construction of Chawngte ‘P’- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451

The DWs 1 and 2 of the defendant no. 1 being the husband and the wife alleged that there was verbal agreement in between the plaintiff and the defendant no. 1 to share profits and for payment of MNF party fund out of the contractual amount. No corroborative documentary or oral evidence for the same was on record. Thus, except Power of Attorney marked as Ext. P-2, no other agreements in between the plaintiff and the defendant no. 1 existed pursuant to construction of Chawngte ‘P’- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451.

Issue No. 5

Whether all labour charges, investments and works were carried out by the plaintiff from his own expenses or not in respect of Work Order for construction of Chawngte ‘P’- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451

As fairly admitted by the defendant no. 1 through DWs 1 and 2, all labour charges, investments and works were carried out by the plaintiff

from his own expenses in respect of Work Order for construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451 as corroborated by evidence adduced by PWs 1 and 2.

Issue No. 6

Whether the defendants 1-5 are jointly liable to pay Rs. 28,30,700/- directly to the plaintiff or not

Although it was the defendants 2-5 had disbursed final bill amounting to Rs. 22,27,700/- Vide, Cheque No. SB 00/359-0512551 and performance security of Rs. 6,03,000/- to the defendant no. 1, on the strength of the invalid Revocation of Power of attorney marked as Ext. P-6 and as the work was allotted in the name of the defendant no. 1, no liabilities can be embarked to the defendants 2-5.

Issue No. 7

Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

Embarrassingly, the DW-3 being the MNF Party Adviser and the then MLA deposed that he received Rs. 14 lakhs from the defendant no. 1 as their Party fund in respect of work order with regards to construction of Chawngte 'P'- Hmunlai Road (0.00-12.00 Kms) Package No. MZ 0451. How the MNF party committed such kind of serious malpractices out of the estimated amount for development infra-structure is beyond the pleadings. So is the ridiculous expenditure received by the DW-3 for defendant no. 1. The plaintiff will entitle to receive the amount calculated as below-

Rs. 28,30,700/-

-Rs. 14,00,000/-

= Rs. 14,30,700/- (Rupees fourteen lakhs, thirty thousand and seven hundred)

Although learned counsel for the plaintiff at the time of arguments contended that the said MNF party fund was paid by the defendant no. 1 without the knowledge of the plaintiff, the defendant no. 1 alone will be liable to re-imburse the same to the plaintiff, as insisted by the MNF party who gave government contract work, either the plaintiff or the defendant no. 1 cannot be escaped from such malpractices. If remain aggrieved on such malpractices, the plaintiff remain having right to sue by impleading all necessary parties on the said MNF party fund.

Thus, the defendant no. 1 is liable to pay Rs. 14,30,700/- (Rupees fourteen lakhs, thirty thousand and seven hundred) with an interest rate @ 12% per annum with effect from 27/8/2010 (When institution of the suit).

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, the defendant no. 1 is directed to pay Rs. 14,30,700/- (Rupees fourteen lakhs, thirty thousand and seven hundred) with an

interest rate @ 12% per annum with effect from 27/8/2010 (When institution of the suit) to the plaintiff within a period of sixty days from the date of this order.

No order as to costs of the suit.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 4th Dec., 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. MS/50/2010, Sr. CJ (A)/

Dated Aizawl, the 4th Dec., 2012

Copy to:

1. Mr. K. Lalnuntluanga S/o K. Buana (L), Ramhlun North, Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. M.C. Lalfala S/o M.C. Hrangluia, Nursery Veng, Aizawl through Mr. S. Pradhan, Adv.
3. The Secretary to the Govt. of Mizoram, Public Works Department through Miss Bobita Lalhmingmawii, AGA
4. The Engineer in Chief, Public Works Department, Govt. of Mizoram through Miss Bobita Lalhmingmawii, AGA
5. The Superintending Engineer, Public Works Department, Govt. of Mizoram, Lunglei Circle, Lunglei through Miss Bobita Lalhmingmawii, AGA
6. The Executive Engineer, Public Works Department, Lawngtlai Division, Lawngtlai- Govt. of Mizoram through Miss Bobita Lalhmingmawii, AGA
7. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR