

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

CIVIL SUIT NO. 73 OF 2009

Plaintiff:

Smt. Thankimi (L)
Substituted/Represented by
Smt. Lalziki
W/o Chalmawia (L)
Ramhlun Venglai, Aizawl

By Advocate's : Mr. Robert L. Hnamte

Versus

Defendants:

1. Smt. Vanlalhriati
W/o R. Rammawia
Govt. Complex
Luangmual, Aizawl
2. Mr. Tlanglawma
F/o Vanlalhriati
Luangmual, Aizawl
3. Mr. Zoparlana
S/o H. Thansanga
Luangmual, Aizawl
4. The Director
Land Revenue & Settlement Department
Govt. of Mizoram

By Advocates :

For the defendant no. 1	: Smt. C. Lalremruati
For the defendant no. 2	: Mr. H. Vanlallawmzuala
For the defendant no. 4	: 1. Mr. R. Lalremruata, AGA 2. Miss Bobita Lalhmingmawii, AGA

Date of hearing : 21-02-2012

Date of Judgment & Order : 21-02-2012

BEFORE

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

JUDGMENT & ORDER

BRIEF FACTS

The defendant no. 1 had borrowed a sum of Rs. 2,00,000/- from the plaintiff on 23.02.2007 by mortgaging the land and building of the said defendant no. 1 under LSC No. Azl. – 1484 of 1986 and further covenanted to pay interest rate at 10% per month on the principal amount to be repaid the entire amount within five months from the date of borrowing. The said LSC No. Azl. – 1484 of 1986 is already mutated in the name of the plaintiff. In the plaint, as the defendant no. 1 fails to repay the same within a stipulated period of time, it is prayed to declare the plaintiff as the rightful owner of the land and building of the said defendant no. 1 under LSC No. Azl. – 1484 of 1986 and is liable to evict and also further liable to pay rental charges by the defendant no. 1 from Sept., 2009 till eviction @ Rs. 3000/- per mensem, cost of the suit and other consequential relief.

The defendant no. 1 by contesting in the suit filed written statements stated that she admitted that she had borrowed a sum of Rs. 2,00,000/- from the plaintiff on 23.02.2007 by mortgaging the land and building of the said defendant no. 1 under LSC No. Azl. – 1484 of 1986 and further covenanted to pay interest rate at 10% per month on the principal amount to be repaid the entire amount within five months from the date of borrowing. But she denied that the interest rate was highly excessive and is not in conformity with the rate of interest imposed by the Reserve Bank of India from time to time. More so, no sale deed was executed by her voluntarily. The building and the land is estimated the cost of not less than Rs. 20 lakhs. Thus, it is not proportionate with the amount due by her for transfer of ownership to the plaintiff.

LEGAL PRINCIPLES

Very cogently, the provisions of O. XXXIV of the CPC is relevant like in the instant mortgaged of immoveable properties case, thus, subject to fulfillment of preliminary decree, the plaintiff will be entitled for foreclosure and sale of the mortgaged landed property under LSC No. Azl. – 1484 of 1986 by taking reliance in the case of **Kumar Sudhendu Narain Deb vs Mrs. Renuka Biswas And Ors** decided on 13 November, 1991 and reported in 1992 AIR 385, 1991 SCR Supl. (2) 233. The instant case is within the ambit of English Mortgage as held in **Raj Kishore(Dead)By Lrs. vs Prem Singh And Ors.** decided on 10 December, 2010 in connection with Civil Appeal No. 7471 of 2003, the Supreme Court has held that-

“16. A plain reading of the above would show that for a transaction to constitute an English mortgage the following essential conditions must be satisfied:

(1) The Mortgagor must bind himself to re-pay the mortgage money on a certain date.

(2) The property mortgaged should be transferred absolutely to the Mortgagee.

(3) Such absolute transfer should be made subject to proviso that the Mortgagee shall re-convey the property to the Mortgagor upon payment by him of the mortgage money on the date the Mortgagor binds himself to pay the same."

However, although put the suit as Civil Suit, it should be termed as Title Suit on Mortgage as held by the Hon'ble Gauhati High Court in the case of **Vanlalveni vs Tlanglawma** decided on 15/11/2002 and reported in (2005) 1 GLR 240 but which may not vitiate the proceedings as the well settled law is that procedure is the handmaid of justice vide in **Shreenath & Another vs Rajesh & Others** decided on 13 April, 1998 reported in 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244.

Although the said LSC No. Azl. – 1484 of 1986 is already mutated in the name of the plaintiff, meanwhile, "It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession, but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per the Stamp Act and registered under the Registration Act." As held in the case of **State of U. P. v. Amar Singh & Ors.** reported in 1997 (1) SCC 734 at 738. And also in **Sawarni (Smt.) v. Inder Kaur (Smt.) & Ors.** decided on 23 August, 1996 reported in 1996 (6) SCC 223 at 227, 1996 SCALE (6) 333, the Supreme Court has observed thus-

"Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question."

And in **Sankatchan Jaychandbhai Palet & Ors. v. Vithalbhai Jaychandbhai Patel & Ors.** decided on 13 September, 1996 and reported in 1996 (6) SCC 433 at 435, the Supreme Court has held that-

"It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein."

The relevancy of the provisions of O. XXXIV of CPC or the provisions of Code of Civil Procedure, 1908 for the sake of justice enormously dealt in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), wherein, the Supreme Court has held that-

“70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of ‘civil disputes’ governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction.”

With regard to rate interest, the law is very clear that excessive interest rate like 10% per mensem is inimical to the provisions of the Usurious Loans Act, 1918 (Act No. 10 of 1918).

FINDINGS ON ADMISSIONS

Learned counsels of both parties present on today, the defendant no. 1 admitted his liabilities to make repayment of her due to the plaintiff with reasonable interest rate. Parties fairly admitted the legal provisions and principles enunciated above which will obviously govern the instant case, no other figment provisions can be invoked except O. XXXIV of the CPC. The very evidential value of admission is already settled in **Seth Ramdayal Jat Vs. Laxmi Prasad** decided on April 15, 2009 in connection with Civil Appeal No. 2543 of 2009 [Arising out of SLP (Civil) No. 23441 of 2007], the Hon’ble Apex Court has held that-

“.....In view of the aforementioned provision, there cannot be any doubt or dispute that a thing admitted need not be proved. [See Vice-Chairman, Kendriya Vidyalaya Sangathan and Another v. Girdharilal Yadav (2004) SCC 325, L.K. Verma v. HMT Ltd. and Another (2006) 2 SCC 269, Avtar Singh and Others v. Gurdial Singh and Others (2006) 12 SCC 552, Gannmani Anasuya and Others v. Parvatini Amarendra Chowdhary and Others (2007) 10 SCC 296]”

Thus, to avoid undue protracted of the suit, in accordance with law and its procedure, adjudication deserved to be made on admissions with reasonable rate of interest.

Pertinently, the impleadment of other defendants like the defendant no. 4 are proforma in nature.

ORDER

By taking reliance in the case of **Kumar Sudhendu Narain Deb vs Mrs. Renuka Biswas And Ors** decided on 13 November, 1991 and reported in 1992 AIR 385, 1991 SCR Supl. (2) 233 and as per the findings mentioned above, preliminary decree in the following terms is granted/awarded that due to the plaintiff on his mortgage mentioned in the plaint calculated up to 23.02.2007 is the sum of Rs. 2,00,000/- (Rupees two lakhs) with interest rate at 9% per annum with effect from 24-02-2007 till realization. And it is hereby ordered and decreed that the defendants do pay into Court on or before for 21st day of March, 2012 or any later date up to which time for payment may be extended by the Court of the said sum till realization

To epitomize, if the defendant remains fail to make repayment of the above accrued amount on or before 21st March, 2012, the said mortgage landed property will be liable to foreclosure and sale as final decree.

Parties also have a right to approach the court when changes of the circumstances and situations occur even during the above stipulated period. Preliminary decree shall be drawn forthwith.

Give this copy along with preliminary decree to both parties.

Given under my hand and seal of this court on this 21st Feb., 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. CS/73/2009, Sr. CJ (A)/

Dated Aizawl, the 21st Feb., 2012

Copy to:

1. Smt. Thankimi (L) Substituted/Represented by Smt. Lalziki W/o Chalmawia (L), Ramhlun Venglai, Aizawl through Mr. Robert L. Hnamte, Adv.
2. Smt. Vanlalhriati W/o R. Rammawia, Govt. Complex, Luangmual, Aizawl through Smt. C. Lalremruati, Adv.
3. Mr. Tlanglawma F/o Vanlalhriati, Luangmual, Aizawl through Mr. H. Vanlallawmzuala, Adv.
4. Mr. Zoparlana S/o H. Thansanga, Luangmual, Aizawl

5. The Director, Land Revenue & Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR