

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

DECLARATORY SUIT NO. 25 OF 2011

Plaintiff:

Smt. Saphmuaki
W/o Zasanga (L)
Saikhamakawn, Aizawl

By Advocates

: 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra
3. Mr. Joseph Lalfakawma
4. Mr. K. Laldinliana
5. Miss Lalramsangzuali
6. Miss Venus H. Zomuankimi

Versus

Defendants:

1. Smt. Ramsangi
C/o Joseph Lalrinchhana
S/o R. Sangzuala
Kulikawn, Aizawl
2. Smt. Lalrinzuali
D/o Ramsangi
C/o Joseph Lalrinchhana
S/o R. Sangzuala
Kulikawn, Aizawl
3. Mr. Lalchhanhima (Constable 3rd I.R. Bn)
Saikhamakawn, Aizawl
4. Mizoram Rural Bank
Khatla Branch, Aizawl
Represented by its Branch Manager

By Advocates

:

For the defendant no. 3

: 1. Mr. Haulianthanga
2. Miss Lalthianghlimi
3. Mr. Tommy Hmingdailova

For the defendant no. 4

: Mr. L.R. Tluanga

Date of Hearing

: 10-07-2012

Date of Order

: 11-07-2012

BEFORE

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

ORDER

BRIEF STORY OF THE CASE

The plaintiff has been instituted the instant suit for declaration that the Plaintiff is entitled to restoration of her LSC No. 104603/01/239 of 2005 to her by the defendant no. 4 as alleged fraudulently and by deceitful means mortgaged by the defendant no. 1 for obtaining a Bank loan @ Rs. 3 lakhs in the name of defendant no. 2. The plaintiff also prayed an injunction against defendant no. 4 not to interfere in the peaceful possession of the plaintiff over the land and building under the said LSC No. 104603/01/239 of 2005. Court fees at Rs. 5000/- is also paid by the plaintiff.

The defendant no. 3 by contesting in the case filed written statement stating that the suit is not maintainable as no cause of action and locus standi in favour of the plaintiff. The suit is also barred by Res Judicata as the Lok Adalat in I.A. Case No. 11/2008 passed an award on 24th April, 2008 and Dt. 14th July, 2008 pertaining to Civil Suit No. 45 of 2007. The said award with case record of Civil Suit No. 45 of 2007 was thereby returned/endorsed to the court of Senior Civil Judge, Aizawl under I.A. Case No. 11/2008 Dt. 12th August, 2009 by the Member Secretary, Mizoram State Legal Services Authority for execution.

The defendant no. 4 by contesting in the case also filed written statements stating that the suit is bad for insufficient court fees, barred by law of limitation. The plaintiff gave a consent for mortgaging the suit property by executing an affidavit before the Notary Public at Aizawl on 20-03-2006 under Registration No. 326/2006. Loan agreement, guarantee agreement were validly executed by the plaintiff for sanctioning the instant loan amount. The plaintiff therefore has no locus standi or cause of action in the instant case.

At the time of first hearing of the suit, learned counsels of parties remain stood in their respective pleadings, the admitted factual scenario of the case germinated as below-

1. The defendant no. 1 is the daughter of the plaintiff, the defendant no. 2 is again the daughter of defendant no. 1. It means that the plaintiff, defendants 1 and 2 are close relatives whilst the defendants 1 and 2 are not contested in the instant case.
2. In the proceedings at Lok Adalat, the plaintiff was also a party who appeared before the Lok Adalat.
3. The Lok Adalat dealt about the outstanding liabilities of the defendant no. 1 to the defendant no. 4. In that loan, the defendant no. 3 stood

as guarantor. On admission of their respective liabilities of the plaintiff, defendant no. 1 and the defendant no. 3, the Lok Adalat passed an Award for healthy and regular recovery of outstanding loan amount by the defendant no. 1 to the defendant no. 4.

FINDINGS AND REASONS

To avoid unnecessary pending/trial of the case, the following law points emerged for scrutinization of the case namely- "Whether the suit is barred by Res Judicata or not."

In the case at hand, the Lok Adalat dealt a case on the outstanding loan amount of the defendant no. 1 pertaining to their loan agreements wherein, the plaintiff was also appeared and involved in the proceedings of the said Lok Adalat. Meanwhile, Mr. A. Rinliana Malhotra contended that all the parties in the instant case were not involved in the proceedings of Lok Adalat, it is already answered by Hon'ble Supreme Court in **Ishwardas Vs. the State of Madhya Pradesh and others** [AIR 1979 SC 551], the Supreme Court held:

"In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim"

Thus, the ground of the plaintiff on that point is not tenable in law. The entity of award passed by the Lok Adalat is clearly settled in **State of Punjab & Anr. Vs. Jalour Singh & Ors.** decided on 18/01/2008 in connection with Appeal (civil) 522 of 2008 and reported in 2008 AIR 1209, 2008 (1) SCR 922, 2008 (2) SCC 660, 2008 (2) SCALE 52, 2008 (2) JT 83, their Lordship of Hon'ble Supreme Court went on that-

"12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits."

And in **P.T. Thomas vs Thomas Job** decided on 4 August, 2005 in connection with Appeal (civil) 4677 of 2005 reported in 2005 AIR 3575, 2005 (2) Suppl. SCR 20, 2005 (6) SCC 478, 2005 (6) SCALE 85, 2005 (10) JT 304, the Supreme Court has held thus -

“The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following the legal principles, equity and natural justice. Ultimately the Lok Adalat passes an award, and every such award shall be deemed to be a decree of Civil Court or as the case may be which is final.”

Recently in **K.N. Govindan Kutty Menon vs C.D. Shaji** decided on 28 November, 2011 in connection with Civil Appeal No. 10209 of 2011 (Arising out of SLP (C) No.2798 of 2010), the Supreme Court has resolved by summing up all the moot points on the functioning of Lok Adalat in the following terms that-

“17) From the above discussion, the following propositions emerge:

- 1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.
- 2) The Act does not make out any such distinction between the reference made by a civil court and criminal court.
- 3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.
- 4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.”

In the instant case, no challenge is made on the validity of the award passed by the Lok Adalat as it may not be appropriate forum.

Under paragraph no. 14 of the plaint, the plaintiff submitted that the cause of action firstly arose when the defendant no. 1 had obtained possession of the suit LSC and again arose when the defendants 1 and 2 had deposited the said LSC to the defendant no. 4 as security for obtaining loan. The plaintiff thereby annexed Loan Agreement as Annexure- 8 and Letter of Guarantee as Annexure- 9, Recital as Annexure-10 in the plaint. The plaintiff rather annexed Affidavit sworn by her before Notary Public, Aizawl or her consent to mortgage the said LSC No. 104603/01/239 of 2005 to the defendant no. 4 by the defendant no. 2.

However, the very entity of Res judicata is streak out in **Bhanu Kumar Jain v. Archana Kumar and Anr.**, [2005] 1 SCC 787, it was held:

"It is now well-settled that principles of res judicata applies in different stages of the same proceedings. [See Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr., AIR (1960) SC 941 and Prahlad Singh v. Col. Sukhdev Singh, [1987] 1 SCC 727]."

And in **Brij Narain Singh Vs. Adya Prasad (dead) & Ors.** decided on 18/02/2008 in connection with Appeal (civil) 5689 of 2000 reported in 2008 AIR 1553, 2008 (2) SCR 1114, 2008 (2) SCALE 676, 2008 (3) JT 1, the Supreme Court observed thus-

"11. Res Judicata is a principle of judicial administration and is based on the common law maxim of public policy aiming at finality of litigation and preventing a litigant from being tried twice over on the same issue."

Also in **Union of India Vs. Pramod Gupta (D) by LRs. & Ors..** decided on 07/09/2005 in connection with Appeal (civil) 6825-26 of 2003 reported in 2005 AIR 3708, 2005 (3) Suppl. SCR 48, 2005 (12) SCC 1, 2005 (7) SCALE 187, 2005 (8) JT 203

"The principle of res judicata would apply only when the lis was interparties and had attained finality in respect of the issues involved. The said principle will, however, have no application inter alia in a case where the judgment and/ or order had been passed by a court having no jurisdiction therefor and / or in a case involving pure question of law. It will also have no application in a case where the judgment is not a speaking one."

For that purpose, a copies of the award of the Lok Adalat in I.A. Case No. 11/2008 Dt 24th April, 2008 and Dt. 14th July, 2008 are also annexed in the plaint as Annexure 4 and 5, a copy of returned/endorsed the Lok Adalat Award to the court of Senior Civil Judge, Aizawl under I.A. Case No. 11/2008 Dt. 12th August, 2009 by the Member Secretary, Mizoram State Legal Services Authority is also rather annexed as Annexure 6. All the said documents of the plaintiff clearly revealed that –

- (i) In the proceedings at Lok Adalat, the plaintiff was also a party who appeared before the Lok Adalat.
- (ii) The Lok Adalat dealt about the outstanding liabilities of the defendant no. 1 to the defendant no. 4. In that loan, the defendant no. 3 stood as guarantor. On admission of their respective liabilities of the plaintiff, defendant no. 1 and the defendant no. 3, the Lok Adalat passed an Award for healthy and regular recovery of outstanding loan amount by the defendant no. 1 to the defendant no. 4.

So is the case barred by Res Judicata, by virtue of O. VII, R. 11 (d) of the Code of Civil Procedure, 1908, the suit is inevitably liable to reject at this threshold.

ORDER

UPON hearing of learned counsels of both parties and as per the findings discussed as above, it is hereby ORDERED that the suit is hereby rejected due to barred by Res Judicata.

Before parting with the case, pertinently the admitted facts is that the defendant no. 1 is the daughter of the plaintiff, the defendant no. 2 is again the daughter of defendant no. 1. It means that the plaintiff, defendants 1 and 2 are close relatives whilst the defendants 1 and 2 are not contested in the instant case leads the opinion of this court about the foul play committed by the plaintiff and defendants 1 and 2 about their common interest on the properties under LSC No. 104603/01/239 of 2005 reminding the efficacy of the observations in **Ramjas Foundation & Ors. vs Union Of India & Ors.** decided on 9 November, 2010 in connection with Civil Appeal No.6662 of 2004, the Supreme Court has held that-

“14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.”

Parties are directed to bear their own costs, the case shall stand disposed of accordingly.

Give this copy to both parties and all concerned.

Given under my hand and seal of this court on this 11th July, 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

Copy to:

1. Smt. Saphmuaki W/o Zasanga (L), Saikhamakawn, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
2. Smt. Ramsangi C/o Joseph Lalrinchhana S/o R. Sangzuala, Kulikawn, Aizawl
3. Smt. Lalrinzuali D/o Ramsangi C/o Joseph Lalrinchhana S/o R. Sangzuala, Kulikawn, Aizawl
4. Mr. Lalchhanhima (Constable 3rd I.R. Bn), Saikhamakawn, Aizawl through Mr. Haulianthanga, Adv.
5. Mizoram Rural Bank, Khatla Branch, Aizawl Represented by its Branch Manager through Mr. L.R. Tluanga, Adv.
6. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District-Aizawl
7. Case Record.

PESKAR