

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

DECLARATORY SUIT NO. 15 OF 2007

Plaintiffs:

1. Mr. Rengthuama
S/o Bawihbanga (L)
Durtlang Mualveng
2. Mr. Malsawmtluanga
S/o Rengthuama
Durtlang Mualveng

By Advocate's

: Mr. L.H. Lianhrima

Versus

Defendants:

1. Mr. Zothanpuia
S/o Saizika Sailo
Chaltlang, Aizawl
2. Smt. Vanlalremruatfeli
D/o Zahnuna (L)
Dinthar, Aizawl
3. Mr. Lalnghinglova
S/o Thankhuma
Bawngkawn, Aizawl

By Advocates

:

For the defendant no. 1

Dr. C.V.L. Auva

For the defendant no. 2

1. Mr. B. Lalramenga
2. Mr. Hmingthanpuia Ralte
3. Mr. L.R. Tluanga Sailo

Proforma defendants:

1. The Secretary to the Govt. of Mizoram
Revenue Department
2. The Director
Land Revenue and Settlement Department
Govt. of Mizoram

By Advocates : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 15-03-2012
Date of Judgment & Order : 20-03-2012

BEFORE

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

JUDGMENT & ORDER

GERMINATION OF THE CASE

This is a declaratory suit for declaring the 'Pawisa Pukna leh Intiamkamna' Dt. 20-01-2007 as null and void and unenforceable and to direct the defendant no. 1 to give back the original documents pertaining to LSC No. Azl. 133 of 1989 and LSC No. Azl. 134 of 1989 to the plaintiffs. The plaintiffs in his plaint submitted that as persuaded by the defendant no. 2 and 3, they lend their LSC No. Azl. 133 of 1989 and LSC No. Azl. 134 of 1989 for a period of five months as covenanted to return in the said period of time. Without knowing fully the contents thereof, the plaintiff no. 1 signed 'Pawisa Pukna leh Intiamkamna' Dt. 20-01-2007. The said Agreement was not registered as per law and no stamp duty was paid as per the Indian Stamp (Mizoram Amendment) Act, 1996. Court fees at Rs. 30/- is also paid but later make up requisite court fees at Rs. 5000/-. The plaintiff therefore prays that (i) a decree be passed declaring that the 'Pawisa Pukna leh Intiamkamna' Dt. 20-01-2007 as null and void and unenforceable (ii) a decree be passed declaring that the defendant no. 1 is liable to return the original LSC No. Azl. 133 of 1989 and LSC No. Azl. 134 of 1989 to the plaintiffs (iii) a decree be passed declaring that by way of mandatory and permanent injunction that the defendant no. 1 should not disturb the peaceful possession and enjoyment of land and building covered by LSC No. Azl. 133 of 1989 and LSC No. Azl. 134 of 1989 and be restrained from dispossessing the plaintiff from the said property and doing any act detrimental to the interest of the plaintiff (iv) a decree be passed declaring that the defendants 2 and 3 are liable to repay the loan amount with interest as per law to the defendant no. 1 (v) cost of the suit and (vi) any other relief which this court deems fit and proper in favour of the plaintiff.

The defendant no. 2 contesting in the suit filed written statements stating that the plaintiffs have no cause of action and the suit is not maintainable and also barred by estoppel and acquiescence. The defendant no. 2 never approached the plaintiffs but admitted that at the time of receiving of loan, the plaintiff deducted Rs. 30,000/- as commission fee and another Rs. 30,000/- for using of his LSCs for mortgage. The actual amount of loan taken by the defendant no. 2 from the plaintiff was Rs. 2,40,000/- and the defendant no. 2 is not liable to repay the rest Rs. 60,000/-.

The proforma defendants submitted their written statements stating that the plaintiffs have no cause of action and the suit is not maintainable. The proforma defendants have no knowledge and liability on the disputes.

ISSUES

The issues were framed on 11/2/2009 and by virtue of O. XIV, R. 5 of the CPC, the issues were amended and the amended form of issues are as follows -

1. Whether the suit is maintainable or not
2. Whether the plaintiff has cause of action/locus standi to file the suit or not.
3. Whether the Agreement dt. 20.01.2007 is validly made or not
4. Whether the defendants 2 and 3 are liable to repay the loan with interest to the defendant no. 1 or not.
5. 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 had produced the following witnesses namely-

1. Mr. Rengthuama S/o Bawihbanga (L), Durtlang Mualveng (Hereinafter referred to as PW-1)
2. Mr. R. Malsawmtluanga S/o Rengthuama, Durtlang Mualveng (Hereinafter referred to as PW-2)

The **PW-1** in his examination in chief reiterated the gist of his plaint being the plaintiff no. 1. He further deposed that –

Ext. P-1 is plaint submitted by him

Ext. P-1 (a) is his true signature

Ext. P-1 (b) is the signature of his son

Ext. P-2 is a copy of 'Pawisa Pukna leh Intiamkamna' Dt. 20-01-2007

Ext. P- 2 (a) is his signature

Ext. P-3 is a copy of Intiamna letter Dt. 23.1.2007

Ext. P-3 (a) is his signature

Ext. P-4 is a copy of Intiamna Lehkha Dt. 15.6.2009

Ext. P-4 (a) is his signature

In his cross examination, he admitted he had received Rs. 30,000/- from the defendant no. 1 at the time of taking the loan. He admitted as a fact that he allowed the defendant no. 2 to use his LSC No. Azl. 133 of 1989 and LSC No. Azl. 134 of 1989 for taking loan.

The **PW-2** in his examination in chief reiterated the gist of his plaint being the plaintiff no. 2. He further deposed that –

Ext. P-1 (c) (d) are his true signature

Ext. P- 3 (b) is also his signature

Ext. P- 4 (b) is also his signature

In his cross examination, he admitted the plaintiff no. 1 had received Rs. 30,000/- from the defendant no. 1 at the time of taking the loan for mortgaging their LSC but not known another sum of Rs. 30,000/-. He admitted that he did not know the details of transactions in between the plaintiff no. 1 and the defendant no. 2.

The other parties in the *lis* fails to produce their evidence including their written arguments.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

A requisite court fees at Rs. 5000/- is make up by the plaintiffs. The suit is accompanied by only verification. In this catena, the plaint contains 23 paragraphs, the plaintiff simply verified that all are true to the best of their knowledge but not supported by the affidavit, in this task, the Constitution Bench of the Supreme Court in **State of Bombay v. Purushottam Jog Naik**, AIR 1952 SC 317. Vivian Bose, J. speaking for the Court, held:

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed."

And also the Constitution Bench of the Supreme Court in **A. K. K. Nambiar v. Union of India and another**, AIR 1970 SC 652, held as follows:

"The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and

authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

Thus, no proper verification of the plaint and whilst no affidavit to support the plaint is found, I find that it is an irregularities which can vitiate the proceedings as held above and the courts established and constituted under the Mizoram Civil Courts Act, 2005 as no separate procedure is contained in the Act of 2005 although section 21 of the said Act exempted from the rigour of the Code of Civil Procedure, 1908. The relevancy is already settled 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."

This issue is therefore inevitably decided in favour of the defendants as irregularities in supporting affidavit in the plaint in a proper manner.

Issue No. 2

Whether the plaintiff has cause of action/locus standi to file the suit or not.

Whether the case is fit to examine/further investigate is important as observed in the pronouncements of H.L. Anand, J on 23rd May, 1973

reported at 1973 RLR 542 **Gopal Krishan Kapoor Vs. Ramesh Chander**, Hon'ble Delhi High Court considered several prior judicial pronouncements and observed as follows:-

"9. The terms "prima facie" and "prima facie case" are not defined in any statute and although no attempt has been made to encase these terms within the confines of a judicially evolved definition or to evolve an inflexible formula for universal application, the terms have been judicially interpreted to mean a case which is not bound to fail on account of any technical defect and needs investigation."

And in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors.** decided on 22 February, 2011 in connection with IA Nos.16915-16916/2010 & IA No.1218/2011 in CS (OS) No.2528/2010, Hon'ble Justice Gita Mittal for Delhi High Court termed that-

"18. On a consideration of the ordinary meaning of the term 'prima facie' and the trend of judicial pronouncement it appears to me that "prima facie case" would mean a case which is not likely to fail on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, therefore, justify an investigation."

In respect of cause of action, the law is well settled in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr.** decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475, their Lordship of Hon'ble Supreme Court has held that-

"Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily."

For that purpose, the law is further settled in **M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh**, AIR 2001 SC 1684, the Supreme Court observed as under:-

"The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law." (Vide, Vithal

N. Shetti & Anr. Vs. Prakash N. Rudrakar & Ors., (2003) 1 SCC 18; Devasahayam (Dead) by L.Rs. Vs. P. Savithramma & Ors., (2005) 7 SCC 653; and Sait Nagjee Purushottam & Co. Ltd. Vs. Vimalabai Prabhulal & Ors., (2005) 8 SCC 252.)

In the instant case, as admitted by the PW-2, the plaintiffs had received Rs. 30,000/- as mortgaging their LSCs in the disputed loan. I must presume that they must well aware of the consequences for giving signature in Ext. P-2 by the plaintiff no. 1 as Ext. P- 2 (a) which was written in Mizo language only small three paragraphs.

Issue No. 3

Whether the Agreement dt. 20.01.2007 is validly made or not

The plaintiff challenged that said 'Pawisa Pukna leh Intiamkamna' Dt. 20/1/2007 on the grounds that due to non-payment of requisite stamp duty and non-registration. Meanwhile, it was signed and written in Non-Judicial Stamp paper worth Rs. 10/- as it elicited itself as Ext. P-2. Till arguments no reliance on the law points is placed by the plaintiff to null and void the said Deed due to such allegation on non-registration. As unchallenged of the rate of interest therein and in other points, it needs no require to close examine the entity of the same.

Issue No. 4

Whether the defendants 2 and 3 are liable to repay the loan with interest to the defendant no. 1 or not.

Although prayed this issue by the plaintiffs, in the Ext. P- 3 and Ext. P-4, the defendant no. 1 who lend the money to the plaintiff no. 1 on the basis of Ext. P- 2 did not put his signature. How can I shift liabilities due in favour of the defendant no. 1 to other persons whilst the defendant no. 1 and the plaintiff no. 1 executed agreement viz. Ext. P- 2. This issue is therefore negatively answered to the plaintiffs.

Issue No. 5

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

In the estimations of the afore findings in various issues, impelling to negatively answer this issue is a must for the plaintiff. However, It may be relevant to note the position of law on estoppel in **Indira Bai v. Nand Kishore** reported in (1990 (4) SCC 668), it was observed as follows:

"Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustice may have been perpetrated. Present case is a glaring example of it. True no notice was given by the seller but the trial court and the appellate court

concurred that the pre-emptor not only came to know of the sale immediately but he assisted the purchaser-appellant in raising construction which went on for five months. Having thus persuaded, rather mislead, the purchaser by his own conduct that he acquiesced in his ownership he somersaulted to grab the property with constructions by staking his own claim and attempting to unsettle the legal effect of his own conduct by taking recourse to law. To curb and control such unwarranted conduct the courts have extended the broad and paramount considerations of equity, to transactions and assurances, express or implied to avoid injustice."

And in **Depuru Veeraraghava Reddi v. Depuru Kamalamma**, reported in (AIR 1951 Madras 403), Hon'ble Madras High Court has observed thus-

"An estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and be taken away but for that doctrine."

Also in **B.L. Sreedhar & Ors. Vs. K.M. Munireddy (dead) and Ors.** in connection with Appeal (civil) 2972 of 1995 and Appeal (civil) 2971 of 1995 decided on 05/12/2002 reported in 2003 AIR 578, 2002 (4) Suppl. SCR 601, 2003 (2) SCC 355, 2002 (9) SCALE 183, 2002 (10) JT 363, the Supreme Court elucidated that-

"Estoppel is a complex legal notion, involving a combination of several essential elements statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a substantive rule of law... Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action. But the whole case of estoppel fails if the statement is not sufficiently clear and unqualified" (per Lord Wright in *Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Steamships Ltd.* (1946) 3 W.W.R. 759 at p. 764).

.... Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights."

Reckoning all the above findings, by receiving of Rs. 30,000/- by the plaintiffs due to mortgaging their LSCs in the said loan as per Ext. P- 2, the above doctrine of estoppels and acquiescence will also be relevant in this avenue.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, as the plaintiffs fails to proof his case leading inevitably, the suit is dismissed. Although costs of the suit is mandate as recently observed by the Hon'ble Apex Court in **Ramrameshwari Devi & Ors. vs Nirmala Devi & Ors.** decided on 4 July, 2011 in connection with Civil Appeal Nos. 4912-4913 of 2011 (Arising out of SLP(C) Nos. 3157-3158 of 2011). And also in the case of **Vinod Seth vs Devinder Bajaj & Anr.** disposed of on 5 July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], no order as to costs by showing clemency to the plaintiffs recognizing their status and position of the plaintiffs.

In the above terms, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 20th March, 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. DS/15/2007, Sr. CJ (A)/

Dated Aizawl, the 20th March, 2012

Copy to:

1. Mr. Rengthuama S/o Bawihbanga (L), Durtlang Mualveng through Mr. L.H. Lianhrima, Adv.
2. Mr. Malsawmtluanga S/o Rengthuama, Durtlang Mualveng through Mr. L.H. Lianhrima, Adv.
3. Mr. Zothanpuia S/o Saizika Sailo, Chaltlang, Aizawl through Dr. C.V.L. Auva
4. Smt. Vanlalremruatfeli D/o Zahnuna (L), Dinthar, Aizawl through Mr. B. Lalramenga, Adv.
5. Mr. Lalnghinglova S/o Thankhuma, Bawngkawn, Aizawl
6. The Secretary to the Govt. of Mizoram, Revenue Department through Mr. R. Lalremruata, AGA

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

PESKAR