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

DECLARATORY SUIT NO. 24 OF 2008

Plaintiff:

Mr. Vanremmawia
S/o Ramhluna (L)
Tuikual 'N', Aizawl

By Advocate's : Mr. L.H. Lianhrima

Versus

Defendants:

1. Mr. Robert Vanlalruata
   S/o V. Thangliana
   Dinthar- I, Aizawl

2. Smt. Lalzawmliani
   W/o Lalauva
   Tuikual 'D', Aizawl

By Advocates :
For the defendant no. 2 1. Mr. M. Zothankhuma, Sr. Adv.
2.Mr. R. Laltanpuia

Proforma defendants:

1. The Director
   Land Revenue and Settlement Department
   Govt. of Mizoram

2. The Assistant Settlement Officer-I
   Land Revenue and Settlement Department
   Govt. of Mizoram
   Aizawl District: Aizawl

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

Date of Arguments : 13-03-2012
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 Inpukna' Dt. 1-12-2007 as null and void and unenforceable and to direct the defendant no. 1 to give back the original documents pertaining to LSC No. 103902/01/191 of 2003 to the plaintiff. The plaintiff in his plaint submitted that as persuaded by the defendant no. 2, he lend his LSC No. 103902/01/191 of 2003 for earning Rs. 10,000/- for a period of four months as covenanted to return in the said period of time. Without knowing fully the contents thereof, he signed 'Pawisa Inpukna' Dt. 01-12-2007. 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. The plaintiff therefore prays that (i) a decree be passed declaring that the agreement Dt. 1/12/2007 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. 103902/01/191 of 2003 (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. 103902/01/191 of 2003 and be restrained from dispossessing the plaintiff from the said property and doing any act detrimental to the interest of the plaintiff (iv) cost of the suit and (v) 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 suit is bad for non-joinder of necessary parties and no cause of action had arisen in favour of the plaintiff and the suit is not maintainable and also barred by estoppel and acquiescence. The defendant no. 2 never approached the plaintiff for borrowing the said LSC No. 103902/01/191 of 2003 and to return within four months. No undertaking was given by the defendant no. 2 to the plaintiff for the same. The plaintiff on his volition entered into agreement dt. 1.12.2007 and the defendant no. 2 only acted as witness for the same. A Mizo language written with small paragraph should be well aware by the plaintiff. By executing 'Pawisa Inpukna Dt. 1.12.2007', the plaintiff is estopped from challenging the contents or the validity of the document. Without any coerce, inducement or any force, the plaintiff executed the said 'Pawisa Inpukna Dt. 1.12.2007'. The plaintiff on his own free will executed 'Pawisa Inpukna Dt. 1.12.2007' by mortgaging his LSC for a loan amounting to Rs. 1 lakh and most probably spent the same. Thus, prayed to dismiss of the suit.

The other defendants did not contest in the suit.

ISSUES

The issues were framed on 20/10/2009 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 suit is bad for non-joinder of necessary parties or not
4. Whether the Agreement dt. 01.12.2007 is validly made 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. Vanremmawia S/o Ramhluna (L), Tuikual 'N', Aizawl (Hereinafter referred to as PW-1)
2. Smt. Hauzavungi D/o Khamkapa, Bawngkawn, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Lalrammawii W/o Vanremmawia, Tuikual 'N', Aizawl (Hereinafter referred to as PW-3)

The **PW-1** in his examination in chief reiterated the gist of his plaint being the plaintiff. He further deposed that –

Ext. P-1 is plaint submitted by him
Ext. P-1 (a) and (b) are his true signatures
Ext. P-2 is a copy of 'Pawisa Inpukna' Dt. 1/12/2007
Ext. P- 2 (a) is his signature
Ext. P-3 is a copy of Intiamna executed by him and Lalzawmliani
Ext. P-4 is a copy of LSC No. 103902/01/191 of 2003

In his cross examination, he admitted that he is matriculated from R.M. High School but denied that he read the contents of Ext. P-2 before giving his signature. He admitted that no physical force was inflicted for compelling him to sign in Ext. P- 2. He also admitted that LSC No. 103902/01/191 of 2003 is under the possession of defendant no. 1. He admitted that paragraphs 1 and 2 of Intiamkamna Letter Ext. P-3 was written down by him.

In his re-examination, he deposed that he signed Ext. P-2 as he was informed by the defendant no. 2 that this document would enable to recover one lakh rupees from the defendant no. 1.

The **PW-2** in her examination in chief deposed that the plaintiff is the husband of her younger sister and also often stayed with them. She also well acquainted with the defendant no. 2 as she used to ask the plaintiff for borrowing money. She witnessed that the plaintiff lend his LSC No. 103902/01/191 of 2003 to the defendant no. 2 for a period of two months as covenanted by the defendant no. 2. She further witnessed that the plaintiff also received Rs. 10,000/- for lending his LSC to the defendant no.

2. The defendant no. 2 rather mortgaged the said LSC to the defendant no. 1 for borrowing Rs. 1 lakh.

In her cross examination, she deposed that she studied upto Class-VI and divorced by her husband in 2004. Before living at Bawngkawn in 2006, she lived with the plaintiff for sometime. The wife of the plaintiff also permitted to lend their LSC to the defendant no. 2 for two months. She admitted as a fact that she did not see while execution of Ext. P-2.

The **PW-3** in her examination in chief deposed that she is the wife of the plaintiff. She witnessed that the plaintiff lend his LSC No. 103902/01/191 of 2003 to the defendant no. 2 for a period of two months as covenanted by the defendant no. 2. She further witnessed that the plaintiff also received Rs. 10,000/- for lending his LSC to the defendant no. 2. The defendant no. 2 rather mortgaged the said LSC to the defendant no. 1 for borrowing Rs. 1 lakh. Ext. P- 3 (b) is her signature.

In her cross examination, she further deposed that her husband was matriculate and well acquainted with Mizo language. She did not see while the executants in Ext. P-2 put their signatures in Ext. P-2. She came to know about existence of Ext. P-2 when there was dispute on payments of interest dues. She denied that her husband neglect to pay interest to the defendant no. 1. As requested her by the defendant no. 2, she asked her husband to lend their LSC to the defendant for two months. The plaintiff never informed her about execution of Ext. P- 2 in between the plaintiff and the defendant no. 1 but she denied that the plaintiff mortgaged the suit LSC to the defendant no. 1. She did not peruse the contents of Ext. P-2 except for showing in the court room. She says that Ext. P-3 is not false.

For the defendant no. 2:

The defendant no. 2 had produced only one witness namely- Smt. Lalzawmliani W/o Lalauva, Tuikual 'D', Aizawl (Hereinafter referred to as DW for defendant no. 2). The **DW for deft. No. 2** in her examination in chief, she deposed that the plaintiff is her neighbours but not relatives in any way. She never know the defendant no. 1 before execution of Pawisa Inpukna Dt. 1.12.2007. She never approached the plaintiff for borrowing his LSC for four months and meant to earn Rs. 10,000/-. Being a police constable, the plaintiff is expected to well known the contents of Pawisa Inpukna Dt. 1.12.2007 as written in Mizo language with few lines. The plaintiff executed Pawisa Inpukna Dt. 1.12.2007 without any coercion, inducement and force. The plaintiff mortgaged his LSC to the defendant no. 1 most probably having spent the same is trying to wriggle out his liability of repaying the loan amount to the defendant no. 1. The plaintiff being a police man rather forced her to sign Intiamkamna Dt. 1.12.2007 which shows that it was inadmissible documents. The principle amount has been received and spent by Smt. Vanlalnghaki who clearly admitted before the police and she also given back Rs. 5000/- which was given back to her by Smt. Vanlalnghaki through police force.

During cross examination, she deposed that before execution of Pawisa Inpukna, she never knew the defendant no. 1. She also knew Smt. Vanlalnghaki who appeared as the borrowers of the suit LSC. So far as her knowledge concerned, Smt. T. Thankhumi who appeared in Ext. P-2 is the wife of defendant no. 1. She put her signature in Ext. P-2 at the residence of the defendant no. 1. On the basis of the FIR lodged by the plaintiff, the police called upon them in police custody and she repaid Rs. 5000/- but Smt. Vanlalnghaki fails to repay the same although promised the same.

FINDINGS

Issue No. 1
Whether the suit is maintainable or not

The suit is accompanied by only verification. Meanwhile, court fees at Rs. 30/- only is paid whilst valued the suit at Rs. 10 lakhs under paragraph 21 of the plaint. Being declaratory suit with consequential relief is sought, advolorem court fees as per the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is a *sine quo non*. In this moot point, the Hon'ble Supreme Court in **Bachhaj Nahar vs. Nilima Mandal and Anr** (2008) 17 SCC 491. It is relevant to extract the principles enunciated in para 23 of the judgment which is as follows.

> "23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof."

In short without requisite court fees in the lis, the suit will not cogently maintainable for investigation as well. It is again attracted the provisions of Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) vis. *'Consequential relief'*. The 43 years old precedent in the case of **Chief Inspector Of Stamps, U.P., Allahabad vs Mahanth Laxmi Narain And Ors**. decided on 29 October, 1969 reported in AIR 1970 All 488, Full Bench of the Allahabad High Court observed in respect of 'Consequential relief' that-

> "18. The words 'consequential relief have not been defined in the Court-Fees Act The meaning, which should be given to a word or expression riot defined in an enactment, should be its ordinary dictionary meaning or a meaning which is necessarily implied by the context in which it is used or by the object of the provisions or by the scheme of the enactment. The ordinary dictionary meaning of the word 'consequential' is "following as a result or inference". This meaning justified the first test laid down in Kalu Ram's case, AIR 1932 All 485 (FB). The Judgment in that case does not disclose or indicate the basis for the second, third and fourth tests. There is nothing in the language

of Section 7 or in the context in which the word 'consequential' has been used to support these tests. The objects of the Court-Fees Act are to collect revenue and to prevent frivolous suits being filed. Neither from these objects nor from the scheme of the Act can these three tests be necessarily implied...

...It is well settled that the Court-fees Act is a fiscal measure and is to be strictly construed in favour of the subject. (See Sri Krishna Chandra v. Mahabir Prasad, AIR 1933 All 488 (FB)). If the language of the provision is capable of two interpretations, then that interpretation should be accepted which is in favour of the subject. It must be kept in mind that the declaratory relief and the consequential relief falling under Section 7(iv)(a) in respect of immovable property have to be valued as one relief and that relief is the consequential relief. What has then to be seen is whether the relief, which has been prayed for as a consequential relief, is capable of valuation or not. When the Act itself provides the manner or method of valuation of a particular relief, how can it be said that that relief is incapable of valuation? If the relief, which is prayed for as a consequential relief, is specifically provided for in the Act, then it is capable of valuation and must be valued according to the provision made in respect of it; but, if the relief is one which is not specifically provided for in the Act, then it is not capable of valuation under the Act and must be valued according to the value of the immovable property in respect of which it has been prayed. Simply because an injunction is sought in conjunction with a declaratory relief, thereby becoming a consequential relief, it does not cease to be a relief of injunction. The value of the suit is the value of the consequential relief that is to say the value of the relief of injunction. The method for valuation of a relief of injunction is specifically provided in Sub-section (iv-B). Where the relief, which is prayed for as a consequential relief, is the relief of injunction, it is capable of valuation under Sub-section (iv-B) and must be valued according to the provisions of this subsection.

24. In Suit No. 83 of 1953, out of which the special appeals arise, both the Civil Judge as well as the learned Single Judge in appeal have held that the suit was for a declaratory decree in which the consequential relief of injunction was prayed for and was, therefore, governed by Sub-section (iv) (a). This finding is correct. The consequential relief sought was for an injunction, restraining the defendants from obstructing the plaintiffs from using the hall belonging to the Mandali. The Civil Judge held that the relief of injunction was in respect of immovable property, that it was incapable of valuation and, therefore, must be valued at the market value of the immovable property (hall) which was Rs. 12,000/-. The learned Single Judge held that the relief of injunction was not in respect of any immovable property and that the court-fee was payable on the amount at which the two reliefs were valued in the plaint, i.e., Rs. 5,200/-. Both these views are erroneous. The injunction is

> clearly in respect of immovable property, i.e., the hall, and this relief is capable of valuation. As held above, the suit has to be valued according to the value of the relief of injunction and the relief of injunction has to be valued in accordance with the provisions of Sub-section (iv-B)."

Although the instant suit may be proper to nomenclature as Declaratory suit, relief sought like (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. 103902/01/191 of 2003 and be restrained from dispossessing the plaintiff from the said property and doing any act detrimental to the interest of the plaintiff is certainly consequential relief as also held in **Radha Krishna vs Ram Narain And Ors**. decided on 19 January, 1931 reported in AIR 1931 All 369. In short, court fees at Rs. 30/- is inadequate in the instant suit.

Moreover, the plaint contains 24 paragraphs, the plaintiff simply verified that the paragraphs nos 1 to 24 are true to the best of his 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 lack of proper court fees and 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."

In the plaint, the plaintiff submitted that he lend his LSC for four months which is also corroborate by deposition of PW-1, but PWs 2 and 3 deposed that it was for a period of two months. How the court act upon the case of the plaintiff in such major discrepancy. 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.)

Furthermore, the plaintiff mostly relied in Ext. P-3 viz. undertaking of the defendant no. 2 and Smt. Vanlalnghaki. During cross examination, the plaintiff being PW-1 admitted that paragraphs 1 and 2 of Ext. P-3 was written by him/drafted by him. Evidence of the defendant no. 2 also disclosed that Ext. P-3 was executed in police custody on the basis of the FIR lodged by the plaintiff. It is therefore doubtful that Ext. P-3 was executed without any coercion and made voluntarily. Such is the case, how the court relied on it. As submitted by the defendant no. 2 and even on bare perusal of the 'Pawisa Inpukna' Dt. 1/12/2007 marked as Ext. P-2, the plaintiff as PW-1 admitted Ext. P- 2(a) is his true signature which was written in Mizo language only small four paragraphs, the plaintiff as matriculation in his education as deposed by PWs 1 and 3 should well aware of the contents thereof. Which leads incredibility of the plaintiff case. Thus, this issue is also decided negatively for the plaintiff.

Issue No. 3
Whether the suit is bad for non-joinder of necessary parties or not

Necessary parties in the suit was dealt in **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on 20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, wherein, the Hon'ble Supreme Court sum up the law that-

> "The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681."

And in **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera & Anr**. decided on 16/03/1999 reported in 1999 AIR 1341, 1999 (1) SCR 1097, 1999 (3) SCC 457, 1999 (2) SCALE 108, 1999 (2) JT 250, it was held that-

> "These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."

In the light of the above, if Smt. Vanlalnghaki was called upon and also had undertaken in Ext. P-3, as submitted by the defendant no. 2 and supported by her evidence, without impleadment of Smt. Vanlalnghaki, the suit is certainly bad for non-joinder of necessary parties. In a nutshell, undertaking as Ext. P-3 was executed by the defendant no. 2 and Smt. Vanlalnghaki but exonerated of the said Smt. Vanlalnghaki in the plaint and in the case is no basis inimical to fair justice.

Issue No. 4
Whether the Agreement dt. 01.12.2007 is validly made or not

The plaintiff challenged that said 'Pawisa Inpukna' Dt. 1/12/2007 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. 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) Stemships 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, Ext. P-2 written in Mizo language whilst the plaintiff is matriculation in his education, there can be no presumption that the plaintiff without knowing fully the contents of Ext. P-2 subscribed his signature as Ext. P-2 (a) as the borrower of Rs. 1 lakh from the defendant no. 1 in the said 'Pawisa Inpukna' Dt. 1/12/2007 as it is admitted that his mortgaged LSC No. 103902/01/191 of 2003 is his own valuable property where he dwelled with family. 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 plaintiff 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 plaintiff recognizing the status and position of the plaintiff.

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/24/2008, Sr. CJ (A)/ Dated Aizawl, the 20th March, 2012

Copy to:

1. Mr. Vanremmawia S/o Ramhluna (L), Tuikual 'N', Aizawl through Mr. L.H. Lianhrima, Adv.
2. Mr. Robert Vanlalruata S/o V. Thangliana, Dinthar- I, Aizawl
3. Smt. Lalzawmliani W/o Lalauva, Tuikual 'D', Aizawl through Mr. M. Zothankhuma, Sr. Adv.
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer-I, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
6. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR