

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

CIVIL SUIT NO. 55 OF 2008

Plaintiff:

Smt. K. Lalhmingliani
W/o Lalbiakkima
Zemabawk, Aizawl

By Advocates

: 1. M. Zothankhuma, Sr. Adv.
2. Mr. R. Laltanpuia
3. Mr. Vanlalngheta
4. Mr. S. Vanlalhriata
5. Miss Lalrinpuui

Versus

Defendant:

Smt. R. Lalthiamsangi
D/o R. Vanlalrova
Zemabawk, Aizawl

By Advocate's

: Miss Rosy Lahnunluangi

Date of hearing : 12-11-2012

Date of Judgment & Order : 12-11-2012

BEFORE

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

JUDGMENT & ORDER

BRIEF FACTS

This is a suit for recovery of Rs. 20,00,000/- (Rupees twenty lakhs) with interest rate @ 10% per annum with effect from 12.12.2007 or in the alternative for a decree declaring the plaintiff as the owner of land covered by LSC No. Azl. 2918 of 1990 located at Zemabawk, Aizawl on the basis of Deed of Agreement Dt. 12.12.2007 executed in between parties in the lis by lending Rs. 20,00,000/- (Rupees twenty lakhs) to the defendant by the plaintiff and by mortgaging land covered by LSC No. Azl. 2918 of 1990 located at Zemabawk, Aizawl.

The defendant in her written statement contended that there is no mortgaged deed in respect of LSC No. Azl. 2918 of 1990 and the defendant

also denied to borrowed the said sum of Rs. 20,00,000/- (Rupees twenty lakhs) with interest rate @ 10% per annum from the plaintiff as she did not receive the said sum. The said LSC No. Azl. 2918 of 1990 is mortgaged in the Vijaya Bank as security since the year of 2006. Thus, prayed to dismiss of the suit.

ISSUES

Issues were framed on 3/4/2012 and amended towards correct findings as follows-

1. Whether the suit is maintainable in its present form and style or not
2. Whether the defendant validly mortgaged LSC No. Azl. 2918 of 1990 to the plaintiff for borrowing money or not
3. Whether the Deed of Agreement Dt. 12/12/2007 is legally valid or not
4. Whether the defendant had borrowed Rs. 20,00,000/- (Rupees twenty lakhs) from the plaintiff or not. If so, under what conditions
5. Whether the plaintiff is entitled to the relief claimed or not.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff herself alone acted as plaintiff witness mainly affirmed her plaint in her examination in chief. She further exhibited that-

Ext. P-1 is a copy of House Tax payee certificate of the plaintiff

Ext. P-2 is a copy of LSC No. Azl. 2918 of 1990

Ext. P-3 is a copy of Deed of Agreement Dt. 12/12/2007

In her cross examination, she further deposed that she handed over Rs. 20,00,000/- (Rupees twenty lakhs) to the defendant as a loan on 12/12/2007. She did not see the original copy of LSC No. Azl. 2918 of 1999 and landed property under LSC No. Azl. 2918 of 1990 and LSC No. Azl. 2918 of 1999 are not the same. She deposed that she made a separate mortgage Deed in respect of LSC No. Azl. 2918 of 1999 but she did not verify the said land whether freeing from encumbrance or not.

Since 28/6/2012, the defendant was directed to produce her witness if any for 11 (eleven) times but fails to produce the same without knowing reasons. Thus, by virtue of O. XVI, R. 20 of the CPC, judgment and order is passed without evidence of the defendant.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style or not

The plaint disclosed cause of action and is supported by verification with supporting affidavit sworn by the plaintiff and is properly drafted. Thus, decided this issue in favour of the plaintiff as found no irregularities which can vitiate the proceedings.

Issue No. 2

Whether the defendant validly mortgaged LSC No. Azl. 2918 of 1990 to the plaintiff for borrowing money or not

In the Deed of Agreement Dt. 12/12/2007 marked as Ext. P-3, LSC No. Azl. 2918 of 1999 was mortgaged by the defendant but the plaintiff prayed to declare her as the true owner of landed property under LSC No. Azl. 2918 of 1990 is baseless and cannot be granted.

Issue No. 3

Whether the Deed of Agreement Dt. 12/12/2007 is legally valid or not

In the Deed of Agreement Dt. 12/12/2007 marked as Ext. P-3, LSC No. Azl. 2918 of 1999 was mortgaged by the defendant but the plaintiff prayed to declare her as the true owner of landed property under LSC No. Azl. 2918 of 1990 is baseless and cannot be granted. Meanwhile, lending of Rs. 20,00,000/- (Rupees twenty lakhs) to the defendant by the plaintiff is proof by both oral and documentary evidence of the plaintiff as no other evidence which can annihilate and overwhelm evidence of the plaintiff is found.

Issue No. 4

Whether the defendant had borrowed Rs. 20,00,000/- (Rupees twenty lakhs) from the plaintiff or not. If so, under what conditions

Already decided under issue no. 3

Issue No. 5

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

As Deed of Agreement Dt. 12/12/2007 marked as Ext. P-3 and the plea in the plaint in respect of mortgaged property is contradictory, the plaintiff will only entitle to be decreed Rs. 20,00,000/- (Rupees twenty lakhs) with interest rate @ 10% per annum with effect from 12.12.2007 till realization from the defendant.

ORDER

Thus, it is hereby ORDERED and DECREED that the defendant is directed to repay the loan outstanding amounts @ Rs. 20,00,000/- (Rupees twenty lakhs) with interest rate @ 10% per annum with effect from 12.12.2007 till realization in full to the plaintiff. The defendant is further directed to realize the said amount within two months from the date of this order.

As mandatorily held by the Hon'ble Supreme 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 in **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], the defendant is further directed to pay costs of the suit at Rs. 20,000/- (Rupees twenty thousand) as lawyer's fee plus Rs. 5000/- of court fees with an interest rate at 10 % per annum of both with effect from today to the plaintiff.

With this order, the case shall stand disposed of

Give this copy with decree to both parties.

Given under my hand and seal of this court on this 12th Nov., 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/83/2011, Sr. CJ (A)/ Dated Aizawl, the 12th Nov., 2012

Copy to:

1. Smt. K. Lalhmingliani W/o Lalbiakkima, Zemabawk, Aizawl through Mr. M. Zothankhuma, Sr. Adv.
2. Smt. R. Lalthiamsangi D/o R. Vanlalrova, Zemabawk, Aizawl through Mr. M. Zothankhuma, Sr. Adv.
3. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR