

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

CIVIL SUIT NO. 31 OF 2009

Plaintiff:

Smt. Lalmawii
D/o Chalchhunga
Khatla, Aizawl

By Advocates

: 1. Mr. B. Lalramenga
2. Mr. Reuben L. Tochhawng
3. Mr. J.C. Lalnunsanga
4. Smt. Lalthazuali Renthlei

Versus

Defendants:

1. Smt. Vanneihpuii
D/o Kapbuanga (L)
Dawrpui, Aizawl
2. Mr. Nunkhawngama
Chaltlang, Aizawl
3. Upa Vanpuilala
Canteen Kual, Dawrpui
Aizawl
4. Pi Thari
Bungkawn Vengthar, Aizawl
5. Mr. Vanlalsiama
Zarkawt, Aizawl
Pi Engi Building
Near LPS Building
6. Mr. Lalhnehliana
Bungkawn Vengthar, Aizawl
7. Smt. Madini
Nursery Veng, Khatla, Aizawl
8. The state of Mizoram
Represented by Chief Secretary to the
Govt. of Mizoram
9. The Director

Land Revenue and Settlement Department
Govt. of Mizoram

10. Assistant Settlement Officer
Land Revenue and Settlement Department
Aizawl District: Aizawl

By Advocates :

For the defendant no. 1 : 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra
3. Miss Penlui Vanlalchawii
4. Mr. T.J. Lalnuntluanga

For the defendants 8-10 : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 20-09-2012

Date of Judgment & Order : 21-09-2012

BEFORE

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

JUDGMENT & ORDER

GERMINATION OF THE CASE

The plaintiff in the plaint submitted that for the purpose of availing loan amounting to Rs. 30 lakhs by the defendants 4-7 from the defendant no. 1, she borrowed her LSC No. Azl. 445 of 1980 as mortgaged. The defendants 4-7 aimed to avail huge quantum of loan with low rate of interest from the defendants 2 and 3 and thereby obtained the said loan from the defendant no. 1. As the defendants 2 and 3 failed to realize their loan to the defendants 4-7 although the defendants 4-7 submitted/deposited process fee at Rs. 20 lakhs to them, the defendants 4-7 also fails to repay their outstanding loan to the defendant no. 1. Meanwhile, as she executed the impugned Bond Dt. 6/3/2008, Sale Deed Dt. 7/8/2008 and Receipt Dt. 7/8/2008 without her voluntary will, she prayed that (a) a decree in favour of the plaintiff and against the defendants (b) a decree cancelling the said Bond Dt. 6/3/2008, Receipt Dt. 7/8/2008 and Sale Deed Dt. 7/8/2008 by declaring the same null and void and unenforceable (c) a decree declaring that the plaintiff is liable to pay Rs. 6 lakhs with interest as per law to the defendant no. 1 and also to declare that the defendants 2 and 3 are liable to pay Rs. 20 lakhs to the defendant no. 1 with interest and also to declare that the defendants 4-7 are jointly liable to pay Rs. 4 lakhs to the defendant no. 1 with interest and to direct defendant no. 1 to immediately return/give back the original LSC No. Azl. 445 of 1980 to the plaintiff (d) a decree declaring that the transfer of

ownership of the plaintiff's LSC No. Azl. 445 of 1980 to the defendant no. 1 by the defendants 8-10 is illegal and unsustainable and for directing the defendants no. 8-10 to immediately give back/re-transfer the ownership of the said LSC No. Azl. 445 of 1980 to the plaintiff from the defendant no. 1 (e) a decree directing that the defendant no. 1 not to disturb the plaintiff's peaceful possession and enjoyment of her land and building covered by LSC No. Azl. 445 of 1980 by way of mandatory and permanent injunction and for restraining the defendant no. 1 from dispossessing the plaintiff from the said properties and doing any act detrimental to the interest of public (g) cost of the suit (h) any other relief which this court deems fit and proper.

The defendant no. 1 by contesting in the case submitted her written statement stating that the plaintiff sold the suit property under LSC No. Azl. 445 of 1980 to the defendant no. 1 on 7/8/2008 by executing a sale deed. The Bond Dt. 6/3/2008 was executed by the plaintiff of her own free will, the plaintiff came to the place of defendant no. 1 and executed the same in the presence of witnesses. Rs. 30 lakhs was handed over to the plaintiff by Mr. H. Lalthumhima on behalf of defendant no. 1 who is the cashier/accountant of the business firm belonging to the husband of the defendant no. 1. It is the plaintiff who took the loan amounting to Rs. 30 lakhs from the defendant no. 1. The plaintiff had signed in the Sale Deed Dt. 7/8/2008 and the receipt dt. 7/8/2008 in the presence of witnesses with full knowledge. Ad-valorem court fees also must be paid by the plaintiff. Thus, prayed to dismiss of the suit with costs.

ISSUES

The issues were framed on 30/07/2010 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 in its present form and style or not
2. Whether the Bond Dt. 6/3/2008 and Sale Deed Dt. 7/8/2008 with Receipt Dt. 7/8/2008 are liable to declare as null and void or not
3. Whether the plaintiff is entitled to the relief claim or not. If so to what and extend and what manner

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Smt. Lalmawii D/o Chalchhunga, Khatla, Aizawl (Hereinafter referred to as PW-1)
2. Mr. R. Rokhawliana H/o Lalmawii, Khatla, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Lalfalzuali D/o P.C. Saprema, Zotlang, Aizawl sangliani (Hereinafter referred to as PW-3)

The **PW-1** in her examination in chief mainly reiterated and affirmed her plaint being the plaintiff admitting that she received Rs. 6 lakhs as a fee for lending her LSC to the defendants 4-7. She claimed that in view of the location of her suit LSC, she will not allow to sell at Rs. 65 lakhs as it is more valuable. She exhibited the following documents-

Ext. P-1 is her plaint
 Ext. P-1 (a) and (b) are her signatures
 Ext. P-2 is her affidavit
 Ext. P- 2 (a) is her signature
 Ext. P-3 is a copy of her LSC No. Azl. 445 of 1980
 Ext. P-4 is Bond Dt. 6/3/2008
 Ext. P-5 is a copy of LSC No. Azl. 445 of 1980 after mutation in the name of the defendant no. 1
 Ext. P-6 is a copy of application for transfer of her LSC
 Ext. P-7 is a copy of Receipt dt. 7/8/2008
 Ext. P-8 is a copy of sale deed dt. 7/8/2008
 Ext. P-9 is a copy of letter dt. 27/5/2009 served to her
 Ext. P-10 is affidavit dt. 1/6/2009 (But objected by learned counsels for the defendant no. 1)

In her cross examination, she deposed that LSC No. Azl. 445 of 1980 is now in the name of the defendant no. 1. She admitted that Bond Dt. 6/3/2008 marked as Ext. P-4 was made under her own desire and willingness and was under her signature. She utilized Rs. 6 lakhs which she got from mortgaging her LSC No. Azl. 445 of 1980 to the defendant no. 1 for continuation of her building construction at ITI locality.

The **PW-2** in his examination in chief deposed that the plaintiff is her wife. He mainly affirmed the contents of the plaint and its averments.

In his cross examination, he deposed that LSC No. Azl. 445 of 1980 was inherited by the plaintiff from her parents. The signature appended in the Bond dt. 6/3/2008 is the signature of the plaintiff.

In his re-examination, he further deposed that he knew the transaction of the plaintiff for lending of LSC No. Azl. 445 of 1980 from his bedroom.

The **PW-3** in her examination in chief deposed that the plaintiff is her mother in law. She also mainly affirmed the contents of the plaint.

In her cross examination, she deposed that she was not present when execution of Agreement dt. 6/3/2008 for obtaining a loan from the defendant no. 1. She knew the matter as told to her by the plaintiff before and after execution of agreements. She have no knowledge on the sale deed dt. 7/8/2008.

In her re-examination, she deposed that the defendants 4-7 always asked her mother in law as they were on money lending by business

In her re-cross examination, she deposed that the defendant no. 5 divorced his wife and got married with another. She had no knowledge on the family conditions of defendants 4, 6 and 7.

For the defendant no. 1:

The defendant no. 1 had produced the following witnesses namely-

1. Smt. Vanneihpuii D/o Kapbuanga (L), Dawrpui Veng, Aizawl (Hereinafter referred to as DW-1)
2. Mr. H. Lalhumhima S/o Kapzauva, Ramhlun South, Aizawl (Hereinafter referred to as DW-2)
3. Miss Rosy Lalnuntluangi D/o Lalhuthanga, Dawrpui Vengthar, Aizawl (Hereinafter referred to as DW-3)
4. Mr. Vanlalnghaka S/o Thanpara, Ramhlun North, Aizawl (Hereinafter referred to as DW-4)

The **DW-1** in her examination in chief mainly affirmed her plaint as defendant no. 1 claiming that the plaintiff sold the suit property under LSC No. Azl. 445 of 1980 to her by way sale deed. The plaintiff belatedly filed the suit is also doubtful as a delay tactic.

In her cross examination, she also deposed that she was present at the time of execution of Bond Dt. 6/3/2008. She also admitted that on behalf of the plaintiff, the defendants 4-7 approached her for a loan of Rs. 30 lakhs and sale deed was also executed in their office by herself and the plaintiff. With the permission and knowledge of the plaintiff, LSC No. Azl. 445 of 1980 is mutated in her name. Although the plaintiff was asked to repay her loan, she fails to do so and rather offered to foreclose her suit mortgaged property.

The **DW-2** in his examination in chief deposed that he is working as Manager in the business firm of the husband of the defendant no. 1. He witnessed that on 6/3/2008, the plaintiff executed a bond for borrowing Rs. 30 lakhs from the defendant no. 1 and also covenanted the rate of interest as 10% per month by mortgaging LSC No. Azl. 445 of 1980 located at Khatla, Aizawl. He acted as a witness in the said Bond and he himself handed over the said Rs. 30 lakhs to the plaintiff on 6/3/2008. Ext. P-4 (a) is his signature.

In his cross examination, he deposed that he was present on the spot at the time of execution of Bond dt. 6/3/2008.

The **DW-3** in her examination in chief deposed that she is an Advocate practicing in the District Courts and Aizawl Bench of Gauhati High Court. On 7/8/2008, she was present when the defendant no. 1 had handed over Rs. 65,50,000/- to the plaintiff for purchasing LSC No. Azl. 445 of 1980. The plaintiff and herself also appended their respective signatures in the Receipt dt. 7/8/2008 on 7/8/2008. She was also present when the plaintiff and the defendant no. 1 had executed 'Sale Deed' in respect of LSC No. Azl. 445 of 1980. The plaintiff, the defendant no. 1 and herself also put

signatures on the said Sale Deed. Ext. P- 7 (b) is her signature. Ext. P- 7 is Receipt dt. 7/8/2005, Ext. P-8 is Sale Deed and Ext. P-8 (a) is her signature.

At the time of her cross examination, she denied all allegations against her examination in chief.

The **DW -4** in his examination in chief deposed that she is an Advocate practicing in the District Courts and Aizawl Bench of Gauhati High Court. On 7/8/2008, he was present when the defendant no. 1 had handed over Rs. 65,50,000/- to the plaintiff for purchasing LSC No. Azl. 445 of 1980. He also put his signature on the Receipt dt. 7/8/2005, Ext. P-7 is a Receipt dt. 7/8/2005 and Ext. P- 7 (a) is his signature.

At the time of her cross examination, she denied all allegations against her examination in chief.

Other defendants remain uncontested for the purpose of evidence.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

The suit is duly accompanied by affidavit and verification in a proper manner. Meanwhile, whilst the suit is valued at Rs. 30 lakhs, court fees at Rs. 200/- only is paid, no ad-valorem court fees as per the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is made up during the course of proceedings although the plaintiff was permitted to make up the same before judgment.

Issue No. 2

Whether the Bond Dt. 6/3/2008 and Sale Deed Dt. 7/8/2008 with Receipt Dt. 7/8/2008 are liable to declare as null and void or not

Bond (Intiamkamna) Dt. 6/3/2008 is marked as Ext. P-4 which is clearly written in Mizo language stating that the plaintiff borrowed Rs. 30 lakhs from the defendant no. 1 by mortgaging LSC No. Azl. 445 of 1980 to repaid in full on June 6, 2008 with an interest rate @ 10% per mensem. It was executed by the plaintiff and the defendant no. 1 witnessed by one Smt. Lalbiaknemi and the DW-2, the DW-2 also testified the same by way of examination in chief and cross examination. Meanwhile, as the rate of interest is exorbitant and excessive in nature, which requires to modify as permissible by the Reserve Bank of India if supposed to act on the basis of the said Bond Dt. 6/3/2008.

However, Sale Deed Dt. 7/8/2008 is marked as Ext. P-8, it was executed in the requisite stamp with proper conditions and provisions of the deed. On that facet, the defendant had purchased property under LSC No. Azl. 445 of 1980 in consideration of Rs. 65,50,000/- (Rupees sixty five lakhs and fifty thousand) executed by the plaintiff and the defendant no. 1

witnessed by Mr. R. Laltanpuia and the DW-3, besides the DW-1, the DW-3 also testified the same. It was also duly registered under the Registration Act, 1908 in the District Registrar, Aizawl District

Receipt Dt. 7/8/2008 is also marked as Ext. P-7 stating that the plaintiff had received in full of Rs. 65,50,000/- (Rupees sixty five lakhs and fifty thousand) from the defendant no. 1 for purchasing properties under LSC No. Azl. 445 of 1980 which is witnessed by Mr. R. Laltanpuia, DW-3 and DW-4. The said Receipt was written in Mizo language and testified by the DWs 3 and 4 by way of oral evidence.

As the above is the clear and un-vague transactions of the plaintiff and the defendant no. 1, I find no reasons to adjudicate this issue in favour of the plaintiff.

Issue No. 3

Whether the plaintiff is entitled to the relief claim or not. If so to what and extend and what manner

The story concocted in the plaint and examination in chief of the plaintiff is cumbersome where law is undermined for their transactions with defendants 4-7 along with defendants 2 and 3 which judicial remedy may not be appropriated as they travelled beyond legal caution and prudence. Moreover, the name of defendants 4 and 7 were also very vague like Pi Thari and Smt. Madini to realize any available remedy. To epitomize, mingling findings under issue no. 2 impelled this proceedings to dismiss the instant suit as no legal grounds is available in favour of the plaintiff.

In other words, the plaintiffs fails to proof her allegations in her plaint even like the value of the suit land whether commensurate with Rs. 65,50,000/- (Rupees sixty five lakhs and fifty thousand) or not whilst the defendant no. 1 proof her own stand by way of oral evidence rather supported by the documents produced by the plaintiff.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, as inevitably, the suit is dismissed as I find no grounds to decide in favour of the plaintiff. 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.

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 21st Sept., 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/31/2009, Sr. CJ (A)/

Dated Aizawl, the 21st Sept., 2012

Copy to:

1. Smt. Lalmawii D/o Chalchhunga, Khatla, Aizawl through Mr. B. Lalramenga, Adv.
2. Smt. Vanneihpuii D/o Kapbuanga (L), Dawrpui, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
3. Mr. Nunkhawngama, Chaltlang, Aizawl
4. Upa Vanpuilala, Canteen Kual, Dawrpui, Aizawl
5. Pi Thari, Bungkawn Vengthar, Aizawl
6. Mr. Vanlalsiama, Zarkawt, Aizawl, Pi Engi Building, Near LPS Building
7. Mr. Lalhnehliana, Bungkawn Vengthar, Aizawl
8. Smt. Madini, Nursery Veng, Khatla, Aizawl
9. The state of Mizoram Represented by Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
10. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
11. The Assistant Settlement Officer-I, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
12. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
13. Case record

PESKAR