

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

CIVIL SUIT NO. 29 OF 2011

Plaintiff:

Smt. Lalawmpuii  
W/o Lalnghinglova (L)  
Venghlui, Aizawl

*By Advocates*

: 1. Mr. Lalfakawma  
2. Mr. R. Laltanpuia  
3. Miss Dorothy Lalrinchhani

*Versus*

Defendants:

1. Ex. Lalpianmawia  
S/o Liana (L)  
Thuampui Veng, Aizawl
2. The Secretary to the Govt. of Mizoram  
Revenue Department
3. The Director  
Land Revenue and Settlement Department  
Govt. of Mizoram
4. The Assistant Settlement Officer-I  
Aizawl District: Aizawl  
Land Revenue and Settlement Department  
Govt. of Mizoram

*By Advocates:*

For the defendant no. 1 : Smt. C. Lalremruati

For the defendants Nos. 2-4 : 1. Mr. R. Lalremruata, AGA  
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 21-08-2012

Date of Judgment & Order : 04-09-2012

**BEFORE**

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

## **JUDGMENT & ORDER**

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### **INTRODUCTORY**

Although final argument was conducted on 21/8/2012 due to insufficient court fees in the case, written order u/s 149 CPC was given to the plaintiff through counsel on 23/8/2012. Learned counsel for the plaintiff was called upon on 3/9/2012 to make up deficiency of court fees by informing the lacunae as allowed them to make up such deficiency at a later stage as per this court order dt. 23/3/2011 in CMA No. 38 of 2011. The plaintiff remain waited to make up the same till 4/9/2012. Learned counsel for the plaintiff was again contacted to make up such deficiency by verbally. The plaintiff remain contumacious to make up of the same till date without knowing reasons although strenuous effort was given through counsel for the plaintiff even through the colleagues of learned counsel for the plaintiff so many times. Thus, no choice except to reject the suit due to insufficient court fees.

### **NUCLEUS OF THE CASE**

The late husband of the plaintiff namely Mr. Lalnghinglova and the defendant no. 1 executed a bond on 27/1/2010 for purchasing properties located under LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl in consideration of Rs. 2 lakhs. If the defendant no. 1 likely to take back of ownership of the same, by repayment of Rs. 2,80,000/- (Rupees two lakhs and eighty thousand), the defendant no. 1 was at liberty to take it back on or before 27<sup>th</sup> May, 2010. After lapse of the said stipulated period, rights of the defendant no. 1 will be extinguished by leaving all properties under LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl to the plaintiff. On failure of the defendant no. 1 to comply with the said bond, the plaintiff prayed (i) an order declaring the plaintiff as the rightful owner of the portion of land covered by LSC No. Azl. 1693 of 1989 (ii) an order directing the defendant no. 1 to hand over the vacant physical possession of the suit land to the plaintiff (iii) an order directing the Revenue Department to prepare true and correct LSC in favour of the plaintiff so as to enable the plaintiff to enjoy the plot of land so purchased (iv) in the alternative, pass an order directing the defendant no. 1 to pay the amount of Rs. 2,80,000/- (Rupees two lakhs and eighty thousand) as first agreed by the defendant no. 1 as per agreement dt. 27.1.2010 (v) pass an order directing the defendant no. 1 to pay Rs. 2 lakhs as damages for committing breach of contract and for causing immense suffering and agony both financially and emotionally (vi) pass an order directing the defendant no. 1 to interest on the principal amount calculated at the rate of 9% per annum from May 27, 2010 till final payment (vii) pass an order directing the defendant no.1 to pay pendente lite interest to the plaintiff (viii) pass an order directing the defendant no. 1 to pay costs of the suit.

The defendant no. 1 in his written statement contended that without possessing heirship certificate, the plaintiff has no cause of action to act on behalf of her alleged husband. His LSC was rather borrowed by two other

persons namely- Smt. Hmingthansangi D/o Rohmingliana, Electric Veng, Aizawl and Smt. Lalthlamuani D/o Lalfaka, Electric Veng, Aizawl for the said loan purpose and he is not the person who borrowed the money from the husband of the plaintiff. The suit is therefore bad for non-joinder of necessary parties. He never sold his landed property to the plaintiff. The defendant no. 1 claimed that he have no any liabilities in the instant case. The suit is therefore liable to dismiss with costs and is prayed accordingly.

### **ISSUES**

Issues were framed on 08-08-2011 and amended towards correct findings as follows-

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiff has cause of action against the defendants
3. Whether the suit is bad for non-joinder of necessary parties or not
4. Whether there is a valid agreement between late husband of the plaintiff and the defendant no. 1
5. In case of valid agreement in between the late husband of the plaintiff and the defendant no. 1, whether there has been a breach of contract/ agreement. If so, whether the plaintiff is entitled to claim damages and to what extend
6. Whether the plaintiff is entitled to be declared as the rightful owner of the land under LSC No. 1693 of 1989 as per the Agreement Dt. 27-01-2010
7. In the alternative, whether the plaintiff is entitled to claim Rs. 2,80,000/- from the defendant no. 1 as per the Agreement Dt. 27-01-2010
8. Whether the plaintiff is entitled to the relief claimed in his plaint or not. If so, to what extend.

### **BRIEF ACCOUNT OF EVIDENCE**

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Smt. Lalawmpuii W/o Lalnghinglova (L), Aizawl Venghlui (Hereinafter referred to as PW-1)
2. Smt. H. Zaihlupuii D/o Thanghmurha, Venghlui, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Zonunmawii D/o Zokhuma, Chhinga Veng, Aizawl (Hereinafter referred to as PW-3)

The **PW-1** in her examination in chief mainly affirmed her averments and submission in the plaint being the plaintiff.

In her cross examination, she deposed that at the time of execution of agreement by her late husband and the defendant no. 1, she was absent. She is the wife of late Mr. Lalnghinglova. She admitted that she knew nothing about transaction of money by her late husband with the defendant

no. 1. Meanwhile, she admitted as a fact that her late husband had lend Rs. 2 lakhs to the defendant no. 1. She also admitted that she have no exhibited in the proceedings of the case.

The **PW- 2** in her examination in chief deposed that in her presence, the Agreement Dt. 27-01-2010 was executed by late husband of the plaintiff and the defendant no. 1.

In her cross examination, she deposed that at the time of execution of the Agreement Dt. 27-01-2010, the defendant no. 1 also handed over his LSC No. 1693 of 1989 to the deceased Mr. Lalnghinglova. She did not know that whether Smt. Lalthlamuani borrowed the said LSC or not.

The **PW- 3** in her examination in chief deposed that in her presence, the Agreement Dt. 27-01-2010 was executed by late husband of the plaintiff and the defendant no. 1.

In her cross examination, she deposed that the defendant no. 1 had borrowed Rs. 2 lakhs from the husband of the plaintiff. She did not know whether the interest rate amounting to Rs. 80,000/- was legal or not.

For the defendant no. 1:

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

1. Ex. Lalpianmawia S/o Liana (L), Thuampui, Aizawl (Hereinafter referred to as DW-1)
2. Smt. Lalthlamuani D/o Lalfaka, Electric Veng, Aizawl (Hereinafter referred to as DW-2)

The **DW-1** in his examination mainly affirmed the contents of his written statements. Ext. D-1 is "Intiamkamna" executed by Smt. Hmingthansangi and Smt. Lalthlamuani. Ext. D-1 (a) is his signature. Ext. D-2 is "Intiamna" Dt. 16/1/2011. Ext. D-2 (a) is his signature.

In his cross examination, he deposed that he stayed in the suit land with family. He admitted that Agreement Dt. 27-01-2010 was executed by him and late Mr. Lalnghinglova and he handed over his LSC to the said Mr. Lalnghinglova, Mr. Lalnghinglova thereby given Rs. 2 lakhs which was received by Miss Lalthlamuani. He also admitted that Agreement Dt. 27-01-2010 was executed by him under his free will and without coercion. He know that the borrowed amount at Rs. 2.8 lakhs was not given back to Mr. Lalnghinglova by Miss Lalthlamuani in order to take back of his LSC.

The **DW-2** in her examination in chief deposed that since 2010, she knew the defendant no. 1 and late Mr. Lalnghinglova and Mr. Lalnghinglova used to lend his money to others for interest rate @ 10% per month. With Smt. Zaihlupuii, they also approached the said Mr. Lalnghinglova for borrowing money. For that purpose, they borrowed the LSC of the defendant no. 1 for a period of 4 months only by executing bond to repay within four months. The defendant no. 1 also agreed to receive Rs. 30,000/- for lending

them his LSC for the said purpose. Out of loan amounting to Rs. 2 lakhs, Rs. 20,000/- as commission fee and Rs. 10,000/- as a loan was given to Smt. Zaihlupuii by the said Mr. Lalnghinglova. Her friend Smt. Hmingthansangi received the amount and she was given Rs. 1,40,000/- as a loan from Mr. Lalnghinglova and the defendant no. 1 was given Rs. 30,000/- as a price for borrowing his LSC. The actual loan taken by her and Smt. Hmingthansangi was Rs. 1,40,000/-. In the month of February and April, 2010, they repaid Rs. 40,000/- to the said Mr. Lalnghinglova but failed to repay the remaining due to problems in their business.

In her cross examination, she deposed that she and Smt. Hmingthansangi promised to the defendant no. 1 not to happen any bad things to him in his LSC. She also admitted that there was no any coercion and inducement to execute Agreement Dt. 27-01-2010.

The other defendants neither filed their written statements nor produce their evidence if any during the course of proceedings.

## **FINDINGS**

### **Issue No. 1**

#### **Whether the suit is maintainable in its present form and style**

Ad-valorem court fees in tune with the provision of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is not paid as discussed in the introductory part of this judgment body. Meanwhile, the plaintiff affirmed the contents of the plaint in terms of the provisions of sub-rule (4) of rule 15 under Order VI of the CPC. Due to insufficient court fees, the suit deserved to reject.

### **Issue No. 2**

#### **Whether the plaintiff has cause of action against the defendants**

Howsoever, as examined within the law settled in **S.P. Gupta Vs. President Of India And Ors.** decided on 30/12/1981 reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365 and in **Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, the plaintiff being the wife of the deceased Mr. Lalnghinglova who will certainly inherit the properties left by the said deceased must have cause of action against the defendants like in the instant suit for the sake of justice. Whatever the case, due to insufficient court fees, the suit deserved to reject.

### **Issue No. 3**

#### **Whether the suit is bad for non-joinder of necessary parties or not**

Very recently in **Vidur Impex & Traders Pvt. Ltd. & Ors. vs Tosh Apartments Pvt.Ltd.& Ors.** decided on 21 August, 2012 in connection with

Civil Appeal No. 5918 of 2012 (Arising out of SLP (C) No. 11501 of 2009), the Supreme Court has decided that-

“2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.”

Evidence of both parties clearly revealed that the Agreement Dt. 27-01-2010 was voluntarily executed by the husband of the plaintiff and the defendant no. 1 as the defendant no. 1 being DW-1 admitted which is further corroborated by evidence adduced by DW-2 during her cross examination. In the said Agreement Dt 27/1/2010 it was for purchasing properties located under LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl in consideration of Rs. 2 lakhs by the late husband of the plaintiff. If the defendant no. 1 likely to take back of ownership of the same, by repayment of Rs. 2,80,000/- (Rupees two lakhs and eighty thousand), the defendant no. 1 was at liberty to take it back on or before 27<sup>th</sup> May, 2010. After lapse of the said stipulated period, rights of the defendant no. 1 will be extinguished by leaving all properties under LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl to the late husband of the plaintiff. So is the case, impleadment of Smt. Hmingthansangi D/o Rohmingliana, Electric Veng, Aizawl and Smt. Lalthlamuani D/o Lalfaka, Electric Veng, Aizawl is immaterial as held in **Vidur Impex & Traders Pvt. Ltd. & Ors. vs Tosh Apartments Pvt.Ltd.& Ors.** (supra.) and whilst the defendant no. 1 have another cause of action against the said Smt. Hmingthansangi D/o Rohmingliana, Electric Veng, Aizawl and Smt. Lalthlamuani D/o Lalfaka, Electric Veng, Aizawl for remedying his loss if any on the said Agreement. Whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject.

#### **Issue No. 4**

#### **Whether there is a valid agreement between late husband of the plaintiff and the defendant no. 1**

Agreement Dt. 27/1/2010 is neither exhibited nor registered under the Registration Act, but enclosed in the plaint marked as Annexure- 1, it was executed by the deceased Mr. Lalnghinglova and the defendant no. 1 witnessed by Smt. H. Zaihlupuii and Smt. Zonunmawii, identified by Smt. Dorothy Lalrinchhani, Advocate and sworn before Notary Public, Aizawl under Notarial registration no. 11/1 Dt. 27/1/2010. Both DWs fairly deposed that the defendant no. 1 executed the said Agreement voluntarily and was without any inducement or coercion. Evidence of the defendant no. 1 also elicited that for the said purpose, the defendant no. 1 earned Rs. 30,000/- (thirty thousand rupees). Although unregistered Deed of

Agreement, the recent observations of Hon'ble Apex Court is relevant held in **Ahmedsaheb(D) By Lrs.& Ors. vs Sayed Ismail** decided on 19 July, 2012 in connection with Civil Appeal Nos. 5316-5318 of 2012 (@ SLP (C) Nos. 26049-51 of 2011), the Supreme Court has held that-

“10. Keeping the above undisputed facts in mind, when we examine the legal issue, at the very outset, it will have to be stated that even while holding that Exhibits 68-69 being unregistered documents cannot be accepted in evidence, the relationship of the appellants and the respondent as landlord and tenant was not in controversy. Even according to the respondent himself the rent payable was Rs.800/- per year which was admittedly not paid by him right from day one when the tenancy commenced. It was an admitted case of the respondent that the rent was due from him from October, 1971 till the third suit was filed. We are unable to appreciate as to how the appellants could have been non-suited solely on the ground that Exhibit-69 was not admissible in evidence. It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration.....

15. We are, therefore, of the view that the dismissal of the suit on the simple ground that Exhibit 69 was not a registered document cannot be accepted. Having regard to our above conclusion, the appeals deserve to be allowed.....”

By taking the ratio laid down in **Ahmedsaheb(D) By Lrs.& Ors. vs Sayed Ismail** (supra.), as Deed of Agreement Dt. 27/1/2010 was executed voluntarily by earning Rs. 30,000/- (thirty thousand rupees) by the defendant no. 1, the admitted portion of the defendant no. 1 will overwhelm the said Deed of Agreement by holding that the defendant no. 1 will be liable to repay Rs. 1,40,000/- (Rupees one lakh, forty thousand) to the plaintiff who is the legal wife of the deceased Mr. Lalnghinglova with an interest rate at 6% per annum with effect from 22/3/2011 so as to redeem his mortgage property covered by LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl. Before or after realization of the same, the defendant no. 1 remain having locus standi to approach the competent court to take it back the said amount from whom it was realized if any. Whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject.

#### **Issue No. 5**

**In case of valid agreement in between the late husband of the plaintiff and the defendant no. 1, whether there has been a breach of contract/ agreement. If so, whether the plaintiff is entitled to claim damages and to what extend**

As the plaintiff is adjudicated to receive relief on the admitted facts during proceeding of the case as per the ratio laid down in **Ahmedsaheb(D) By Lrs.& Ors. vs Sayed Ismail** (supra.) not solely based on the Deed of Agreement Dt. 27/1/2010, no compensation on breach of the said

agreement can be arose. Whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject.

#### **Issue No. 6**

**Whether the plaintiff is entitled to be declared as the rightful owner of the land under LSC No. 1693 of 1989 as per the Agreement Dt. 27-01-2010**

As per the findings under issue no. 4, the plaintiff will firstly entitle to receive back of Rs. 1,40,000/- (Rupees one lakh, forty thousand) with an interest rate at 6% per annum with effect from 22/3/2011 so as to redeem his mortgage property covered by LSC No. Azl. 1693 of 1989. In case of failure to realize of the said sum by the defendant no. 1, another execution petition case will determine the disposal and adjudication of the said LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl. Whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject.

#### **Issue No. 7**

**In the alternative, whether the plaintiff is entitled to claim Rs. 2,80,000/- from the defendant no. 1 as per the Agreement Dt. 27-01-2010**

This issue is also already adjudicated under issue no. 4 with reasons, besides the findings under issue no. 4, no other alternative can be decreed in favour of the plaintiff. Whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject.

#### **Issue No. 8**

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

As per the findings under issue no. 4, the plaintiff will firstly entitle to receive back of Rs. 1,40,000/- (Rupees one lakh, forty thousand) with an interest rate at 6% per annum with effect from 22/3/2011 within a period of sixty days from this day so as to redeem his mortgaged property covered by LSC No. Azl. 1693 of 1989. In case of failure to realize of the said sum by the defendant no. 1, another execution petition case will determine the disposal and adjudication of the said LSC No. Azl. 1693 of 1989 located at Thuampui, Aizawl. Likewise, as soon as realization of the said sum of Rs. 1,40,000/- (Rupees one lakh, forty thousand) with an interest rate at 6% per annum with effect from 22/3/2011 to the plaintiff by the defendant no. 1, the defendant no. 1 will entitle to take it back of his LSC No. Azl. 1693 of 1989 from the plaintiff for his own purpose and ownership. Whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject.

#### **ORDER**

In view of the afore findings and elaborations, whatever and howsoever the case, due to insufficient court fees, the suit deserved to reject and is hereby rejected.



No order as to costs of the suit.

With this order, the case shall stand disposed of.

Give this order copy to all concerned.

Given under my hand and seal of this court on this 4<sup>th</sup> September, 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/29/2011, Sr. CJ (A)/

Dated Aizawl, the 4<sup>th</sup> Sept., 2012

Copy to:

1. Smt. Lalawmpuii W/o Lalnghinglova (L), Venghlui, Aizawl through Mr. Lalfakawma, Adv.
2. Ex. Lalpianmawia S/o Liana (L), Thuampui Veng, Aizawl through Smt. C. Lalremruati, Adv.
3. The Secretary to the Govt. of Mizoram, Revenue Department through Mr. Mr. R. Lalremruata, AGA
4. The Director, Land Revenue & Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer- I, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
6. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
7. Case record

PESKAR