

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-III  
AIZAWL JUDICIAL DISTRICT : AIZAWL**

**P R E S E N T**

Mrs. Helen Dawngliani  
Addl.District & Sessions Judge-III

RFA No.39/2013  
In Civil Suit No.89/2012

Sh.Vanmawia  
S/o Kapdaia(L)  
R/o Ramhlun North, Aizawl ... Appellant

Versus

Smt.Lalchawimawii  
D/o Lamkunga(L)  
R/o Chanmari, Aizawl  
(Representing C.Piangvela(L) S/o Dailova  
R/o Electric Veng, Aizawl) ... Respondents

Date of Hearing ... 31.01.2014  
Date of Judgment ... 03.03.2014

**A P P E A R A N C E**

For the Appellant ..... Mr. LH Lianhrima, Advocate  
For the accused ..... Mr. Reuben L. Tochwawng, Advocate

**J U D G M E N T   &   O R D E R**

1. This appeal has been filed u/s 17(3) of the Mizoram Civil Courts Act, 2005 read with the spirit of Section 96 and order XL1 CPC against the Judgment & Order dt.9.7.2013 passed by the Ld. Ld. Senior Civil Judge-III, Aizawl District, Aizawl in Civil Suit No.89 of 2012.

2. Brief facts of the case:-

A. The respondent/plaintiff approached the Court of the Ld. Senior Civil Judge by filing a suit which was registered as Civil Suit No. 89/2012. The said suit was filed under Order XXXIV Rule 2 CPC for foreclosure of the mortgaged property covered under LSC No.146/1974. According to the plaintiff, sometime in the month of August, 2007, the appellant/defendant approached her and her deceased husband and asked them to lend him a sum of Rs. 4 lakhs. Accordingly, the respondent/plaintiff and her husband lend Rs.4 lakhs to the appellant/defendant after executing a deed titled "PAWISA PUKNA LEH INTIAMKAMNA DT.10.8.2007". According to the said Deed, the appellant/defendant will repay the loan amount in three months with an interest @10% per month. In the event of his failure to repay the loan, he shall forfeit his landed property

under LSC No.146 of 1974 and that necessary mutation can be done over the said land. The said Deed was registered by the Notary Public and it was executed in the presence of reliable witnesses. As the appellant/defendant failed to make any payment and failed to comply with the terms of Deed, the plaintiff filed the said suit.

B. Upon perusal of the record, it is seen that the suit was filed on 20.9.2012 and 19.10.2012 was fixed as the next date for submission of written statement. The record shows that the appellant/defendant was present on 19.10.2012 and the subsequent court date i.e 16.11.2012. Thereafter the appellant failed to appear and also failed to submit written statement and the matter was proceeded under Order VIII Rule 10 CPC and ex-parte proceeding was also drawn against the appellant/defendant vide Order dt.7/12/2012.

C. Issues framed before the Ld. Trial Court were:-

- i) Whether the suit is maintainable or not?
- ii) Whether the Deed Dt. 10/8/2007 executed by the plaintiff and defendant is legally valid or not?
- iii) Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend?

D. In order to substantiate her case, the plaintiff examined herself and one other witness. Thereafter, vide Judgment & Order dt.9/7/2013 the suit was disposed off with a direction to the appellant/defendant to hand over absolute legal ownership including peaceful and vacant possession of the properties covered under LSC No.146 of 1974 to the respondent/plaintiff within a period of one month from the date of Order.

3. Heard the Ld. Counsels. Both the Counsels have also submitted their arguments in writing apart from the oral submission.

4. Mr. L.H. Lianhrima, Ld. Counsel for the appellant/defendant submitted that the appellant did not receive any summons or notice from the court, as such, he did not contest the suit and an ex-parte decree was passed. The Ld. Counsel submitted that the Appellant had taken some loan from the Mizoram Rural Bank, Zemabawk by mortgaging his LSC No.146 of 1974. While his outstanding due was Rs. 50,000/-, one Mrs.Zoteii, who is a neighbour of the appellant requested the appellant to allow her relative Elli Lalngaihsaki to use his said LSC for a period of three months. So, the said Elli Lalngaihsaki redeemed the LSC of the appellant from the Bank sometime in the month of September, 2007 and kept the LSC in her custody. The appellant has no knowledge about his LSC being mortgaged by Elli Lalngaihsaki and that he has never signed any document involving mortgage of his said LSC. While challenging the impugned Judgment & Order, the Ld. Counsel argued that the respondent/plaintiff has no heirship certificate and has no locus standi to file a suit in place of C.Piangvela who apparently executed

‘PAWISA PUKNA LEH INTIAMKAMNA dated 10.8.2007. Secondly, the said money suit was barred by limitation since the same was filed beyond three years. Thirdly, the suit ought to have been dismissed for insufficient court fee. Fourthly, the Ld. Trial court ought not to have acted upon the ‘PAWISA PUKNA LEH INTIAMKAMNA dated 10.8.2007 since it was not registered and sufficiently stamped as per the provision of the Registration Act and Stamp Act. Fifthly, the Ld. Trial Court did not apply its judicious mind and passed a judgment with a preconceived mind, finding fault against the appellant/defendant and sixthly, the Ld. Trial court has failed to take into consideration the fact that the value of the landed property under LSC No.146/1974 is much higher than the amount of loan in dispute i.e 4 lakhs and that the two does not commensurate with each other. The Ld. Counsel therefore prays to set aside and quash the impugned Judgment & Order dt/9.7.2013 in Civil Suit No.89/2012. In support of his submission the Ld. Counsel has placed reliance in the **Judgment & Order dt.2.11.2012 passed by the honb’le Gauhati High Court(Aizawl Bench) in RFA No.25/2011 & RFA No.34/2011**(Sanglura Sailo(now dead) represented by his wife Lalthlamuani versus C.Lalrampari).

On the other hand, Mr. Reuben L. Toichhawng, the Ld. Counsel for the respondent/plaintiff submitted that the appellant/defendant appeared in person and admitted his liability and under the auspices of the court he was granted sufficient time to redeem the mortgaged property but he failed to do so and consequently even failed to continue to appear in the court. Secondly, the ld. Counsel argued that a copy of the impugned Judgment & Order dt.9/7/2013 was personally served upon the appellant/defendant on 14.7.2013 wherein the appellant himself has put his signature. Thirdly, the plaintiff/respondent have been declared the legal heiress of her deceased husband C.Piangvela vide Heirship Certificate no.521/2010. Fourthly, the Ld. Counsel submitted that the honb’le Gauhati High court vide its Judgment & Order dt.19.8.2005 in the case of *H.Sapliankunga versus State of Mizoram* has held that “*the law of limitation will not be applicable in the tribal areas specified in the VIth Schedule of the Constitution of India*”. Fifthly, the Ld. Counsel argued that ‘PAWISA PUKNA LEH INTIAMKAMNA dated 10.8.2007 was duly registered by the Notary Public and duly stamped and as such the said document is admissible as evidence and the same is also enforceable in the eye of law and that the appellant neither made any objection or questioned the legality or validity of the said Deed. The ld. Counsel placed reliance on the decision of the honb’le Apex Court in the case of **Mahanth Ram Das versus Ganga Das** reported in **1961 AIR 882**.

5. From the record, it is seen that though summon was duly served, the appellant/defendant did not contest the suit.

6. Dealing with the ground raised regarding insufficient court fees – it is seen from the Order dt.20/9/2012 passed in CMA No.325/2012 that the application u/s 149 CPC was allowed subject to making up the deficient court fees before judgment. Though the impugned Judgment and Order does not clearly state when the deficiency was made up, it is seen from the record that sufficient court fees have been deposited. Section 149 CPC empowers the court to enlarge time for payment of court fees when the same cannot be deposited with the plaint. Further Section 148 CPC empowers the court to enlarge from time to time the time fixed by the Court. However, by Amendment Act 46 of 1999(w.e.f 1/7/2000) such enlarged period should not extend thirty days in total. It therefore implies that after the amendment, the extended period cannot be for more than 30 days in all. Accordingly, the suit having been filed in the year 2012 the amended section 148CPC would apply. As such, the Order dt.20/9/2012 in CMA 325/2012 appears to be against the said provision of law. It may be pointed out at this stage that reliance placed by the Ld. Counsel for the Respondent/plaintiff in the case of **Mahanth Ram Das versus Ganga Das** was decided by the honb'le Apex court on 7/2/1961. The law it was then at the time of the said decision and the law applicable in the instant case are no longer the same since there has been a lot of amendments in the CPC one of which is the amendment of section 148 CPC in the year 2002. However, in the instant case, as insufficiency in the court fees have been made up by the respondent/plaintiff, the same needs no interference and the suit cannot be considered liable to be rejected for insufficient court fees.

7. Coming to the ground raised by the Ld. Counsel for the Appellant/Defendant that the document/deed in question cannot be acted upon or regarded as valid for want of registration under the Registration Act and non payment of stamp duty as per the Stamp Act – it is seen from the record that the document in question “PAWISA PUKNA LEH INTIAMKAMNA” was executed on 10.8.2007. A perusal of the said document shows that it was signed by C. Piangvela (Deceased husband of the respondent/plaintiff) and Vanmawia on 10.8.2012. C. Hualhlimpuui, Lalherliani and Lalchhandami subscribed their respective signatures as witnesses. The same was signed before the Notary Public under Notarial Registration No.175/8 dt.10/8/2007. The respondent has never pleaded that the said document was registered under the Registration Act nor have they pleaded that it was sufficiently stamped as per the Stamp Act. Further, the Ld. Trial Court settled the issue ‘*Whether the deed dt.10.8/07 executed by the plaintiff and defedand are legally valid or not?*’ as follows:-

*“The plaintiff Shri. C. Piangvela (L) and Shri.Vanmawia executed deed titled ‘PAWISA PUKNA LEH INTIAMKAMNA’ dt.10.8.2007 bearing Notarial Registration No.175/8 dt.10.08.07. It is duly signed by the parties in the presence of witnesses and is*

*accordingly registered which signifies that the agreement has been made by both parties on their own free will and consent. An original copy of the deed has also been produced in the court by the plaintiff. Further, the defendant did not make any objection regarding the validity and authenticity of the deed when he appeared in the court in person. Hence, the deed dt.10.8.07 is an agreement enforceable by law and the same is legally valid”.*

8. Accordingly, it is clear that the said issue was not settled in favour of the respondent/plaintiff on the ground that the same was duly registered under the Registration Act and sufficiently stamped under the Stamp Act.

9. Section 17 of the Registration Act deals which documents which are to be compulsorily registered. As per section 17(1)(b), other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upward, to or in immovable property shall be registered. According to Section 23 of the said Act, registration has to be done within 4 months from the date of its execution.

In the case at hand, the deed in question creates future interest in the immovable property belonging to the appellant if the appellant fail to repay the loan of Rs.4 lakhs in three months with interest. As such the value was more than Rs.100/-. Accordingly, the said deed/instrument necessarily requires registration. There is also no evidence or material to the effect the said deed was subsequently registered within 4 months from its execution.

10. Under the Indian Stamp (Mizoram Amendment) Amendment Act, 2007, in case of immovable property whose valuation exceeds 1 lac but does not exceed 5 lacs, stamp duty of Rs. 200 is required to be paid.

11. In the case of Mr. Sanglura (L) represented by his wife Lalthlamuani versus C. Lalrampari (Supra) which is relied on by the Ld. Counsel for the Appellant, the honb’le Gauhati High court was dealing with similar facts as the instant case. The facts of the said case may be briefly highlighted:-

The appellant sold his land and building covered by LSC No.110 of 1976 located at Ramhlun South, Aizawl to the respondent on 23/7/2007 for a consideration of Rs.15 lakhs. Mutation entries was made in the said LSC No.110/1976 by the Revenue authorities in the name of the respondent on 24.7.2007 on the basis of an application made by her. A deed of Undertaking and Sale was also executed by the appellant on 24.7.2007. It was however stated therein that the respondent would be allowed to re-transfer ownership of the land to the appellant on payment of Rs. 15,00,000/- alongwith

interest @ 10% per month by the appellant to the respondent within a period of 5 months. The Sale deed was registered on 1.7.2008. The appellant did not pay Rs.15 lakhs alongwith interest within the stipulated period of five months and also vacate the land and building. Thereafter, the respondent filed an Eviction Suit No.1/2009. The appellant/defendant did not contest the suit though summon was duly served. The suit was decreed vide Judgment & Decree dt.21.12.2010 wherein the appellant/defendant was directed to vacate the suit land and to hand over vacant possession of the suit property to the respondent/plaintiff within 60 days. Thereafter, the plaintiff filed an Execution Suit No.12/2011 which was contested by the defendant by contending that there was no sale and deposited Rs.15 lakhs to the Court. Objection was filed by the decree-holder declining to accept the said amount. The executing Court vide Order dt.7.7.2011 directed the Police to hand over clear and vacant possession of the suit land and property to the decree holder. Further Order was passed by the executing court on 29.7.2011 to remove moveable properties which were inside the building. Ultimately, the executing court passed an Order dt.30.8.2011 directing the execution of the decree and for submission of compliance report. The Judgment debtor was directed to take back Rs.15 lakhs earlier deposited in the court. Aggrieved, the appellant/defendant approached the honb'le Gauhati High Court.

The hon'ble Gauhati High court while allowing the appeal has held as follows:-

*“23. Having noticed the legal position as indicated above, let us again examine the 2(two) crucial documents in question, one dated 23.7.2007 and the other dated 24.7.2007, which have been discussed in the preceeding paragraph 19 in some detail. The document dated 23.7.2007 is admittedly not registered. No stamp duty has been paid thereon. As already stated, possession of the property was also not handed over to the plaintiff. In so far the document dated 24.7.2007 is concerned, though it is shown to have been registered, the registration is clearly beyond the period prescribed under Sections 23 and 25 of the Registration Act, 1908. The Deed was executed on 24.7.2007 and registration was done on 1.7.2008, that is, after almost 1(One) year. As per the aforesaid provisions, a document for registration can be accepted within 4(four) months from the date of execution and in exceptional cases, the aforesaid period of 4(four) months can be extended for a further period of 4 months, that is, for a total 8(eight) months. In the present case, it is clearly beyond even the extended period of 8 months. Therefore, the said document dated 24.7.2007 cannot be said to have been validly registered. No stamp duty was also paid alongwith the said document and as already noticed, possession was also not handed over to the plaintiff.*

33. *In view of the discussions made above, this court is of the unhesitant view that no sale of the land and building covered by LSC No.110 of 1976 as understood in*

*law had taken place. Therefore, the impugned judgment & decree 21.12.2010 passed by the learned Senior Civil judge, Aizawl in Eviction Suit No,1 of 2009 is wholly unsustainable in law. The same is accordingly set aside and quashed. Consequently, all the orders passed in Execution Case No.12 of 2011 by the learned Senior Civil judge-2, Aizawl would also stand quashed”.*

9. Keeping in mind the decision of the honb’le Gauhati High Court while dealing with similar facts, upon examination of the instant case, it is seen that the “PAWISA PUKNA LEH INTIAMKAMNA” dated 10/8/2007 was not registered in terms of the Registration Act and no Stamp duty was also paid. As per section 35 of the Indian Stamp Act, instruments which are not duly stamped are inadmissible in evidence.

10. According to section 54 of the Transfer of Property Act, 1882, Sale is transfer of ownership in exchange for a price paid or promised or part paid and part promised. Transfer of tangible immovable property of the value of more Rs.100 and upward can only be done by a registered instrument.

11. In the case of **Suraj Lamp and Industries Private Limited through Director versus State of Haryana and Another** reported in (2012) 1 SCC 656 the honble Apex Court has held as under:-

*“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of conveyance (duly stamped and registered as required by law), no right, title or interest in a immovable property can be transferred.*

*19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirement of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to a limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject”.*

12. In the case at hand, the suit was not contested by the appellant/defendant though the record shows that he made personal appearance twice before the court of the learned Senior Civil Judge. In this regard, the honb’le Apex Court in the case of **State of Orissa and others versus Brundaban Sharma and Another** reported in 1995 supp (3) SCC 249 has held that a non-est Order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage.

13. For the reasons indicated above and keeping in mind the decision of the honb'le Gauhati High court in the case of Sanglura (L) through his wife Lalthlamuani versus C.Lalrampari, the appeal stands allowed. Consequently, the impugned Judgment & Order dt.9.7.2013 passed by the ld. Senior Civil Judge-3, Aizawl in Civil suit No.89/2012 is hereby set aside and quashed.

14. No order as to cost.

15. With the above Order, the appeal stands disposed off.

16. Send back the Case Record of Civil Suit No. 89/2012 along with CMA No. 325/2012 and Execution Case 66/2013.

**Sd/- HELEN DAWNGLIANI**  
Additional District & Sessions Judge-III  
Aizawl Judicial District, Aizawl

**Memo No. \_\_\_\_\_/AD&SJ/2014 : Dated Aizawl, the 3<sup>rd</sup> February, 2014**  
**Copy to: -**

1. Vanmawia through Counsel Mr. L.H. Lianhrima, Advocate.
2. Lalchawimawii through Counsel Mr. Reuben L. Tochhawng, Advocate.
3. Senior Civil Judge-III, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.

**PESHKAR**