

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-II
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional District Judge,
Aizawl Judicial District, Aizawl.

Regular First Appeal No. 15 of 2015
A/O Money Suit No. 34 of 2010

1. Smt. Lalrinngheti
W/o Lalrinkima,
R/o ITI Veng, Aizawl, Mizoram.
2. Shri Lalrinkima,
H/o Lalrinngheti,
R/o ITI Veng, Aizawl, Mizoram Appellants.

-versus-

1. Shri Ganesh chhetri
S/o M.S. Chhetri (L),
R/o Chhing Veng, Aizawl, Mizoram.....Respondent.

APPEARANCE

For the Appellants	:	Shri H.Laltanpuia, Advocate.
For the Respondent	:	Shri Lalhriatpuia, Advocate.
Hearing	:	12.4.2016
Order delivered on	:	25.4.2016

ORDER

1. An appeal made under Section 17 of the Mizoram Civil Courts Act, 2005 read with Section 96 of the Civil Procedure Code, 1908 has been filed against the Judgment & Order dated 15.10.2015 in Money Suit No. 34 of 2010 passed by Smt. Ngursangzuali Sailo, the learned Senior Civil Judge, Aizawl.

2. The Appellants are husband and wife. It appears from the appeal petition that a Money Suit No. 34 of 2010 was filed by the Respondent, as plaintiff in the learned Court of Senior Civil Judge, Aizawl on the allegation that they had hired the JCB belonging to the respondent at the rate of Rs. 1,800/- per hour for the purpose of construction of Chhingchhip to Hualtu Road way back in the month of May, 2008. Both the rival parties arrived at "INREMNA" on 12.5.2008. However, the appellants did not pay the hiring charge fully and have a due to the respondent as claimed by him to the tune of Rs. 2,93,700/- and the respondent claims for payment of the said amount with interest pendent lite at the rate of 18% per annum from the said sum.

3. The Appellants, as the defendants, contested the suit by filing written statements in the learned Court of Senior Civil Judge. In their written statements, the Appellant No. 1 submitted inter alia that the said construction works was done on the strength of the Power of Attorney executed on 14.2.2015 by Shri J.H. Lalthianghlina of Bungkawn, Aizawl, Mizoram. During pendency of the construction works, Shri J.H. Lalthianghlina revoked the Power of Attorney. In the result, the Appellant had a debt to different persons and she is unable to withdraw her remaining bills, etc.

4. On 5.12.2011, the learned Senior Civil Judge framed the following issues:-

- i) Whether the suit is maintainable in its present form and style?
- ii) Whether plaintiff is entitled to the relief claimed? If so, to what extent?
- iii) Whether the defendants are liable to pay the relief claimed by the plaintiff. If so, to what extent?

5. On 31.1.2012, the learned Senior Civil Judge after taking evidence of the rival parties, heard them and maintained the suit for further proceedings.

6. The Respondent, as plaintiff, examined himself and Shri Ajay Chhetri as plaintiff's witnesses. They were also cross-examined. He exhibited his plaint, his signature, copy of registration certificate in respect of his vehicle B/R No. MZ-01/D-3317, copy of Inremna dated 12.5.2008 in the presence of reliable witnesses and

registered before the Notary Public, Aizawl, Mizoram and copy of records maintained by him in respect of hiring of his JCB respectively. The Appellants, as defendants were also examined and cross-examined. The Appellant No. 1, as defendant No. 1, exhibited her written statement, her signature, Power of Attorney, Agreement dated 12.5.2008 and the Judgment & Order dated 10.11.2010 passed by the Senior Civil Judge-3, Aizawl as Exhibits D-2, D-2(A), D-3, D-4 and D-5 respectively. The Appellant No. 2, as defendant No. 2, exhibited his written statement and his signature as Exhibits D-1, D-1(A) respectively.

7. Thereafter, the learned Lower Court, after hearing both sides passed the Judgment and Decree on 15.10.2015.

8. I heard the learned Counsel Shri H.Laltanpuia appearing for the appellants. He challenged the Judgment that the learned Lower Court should have added Shri J.H.Lalthianghlina as a party to the suit. According to the learned Counsel, the learned Trial Court should have considered the facts that the appellants had involved in the construction of roads on the strength of Exhibit D-3 duly executed between the Appellant No. 1 and Shri J.H.Lalthianghlina, and anything done by the Appellant No. 1 should be construed as an act done on behalf of Shri J.H.Lalthianghlina in view of the contents of Power of Attorney at Ext. D-3. The learned Counsel reproduced the contents of Ext. D-3 as has been shown in the appeal petition:

'.....3. That my Attorney is also authorized to do all other necessary acts and things in regard to the aforesaid Works on my behalf which shall be binding upon me in full force or effect.'

9. On the other hand, the learned Counsel Shri Lalhriatpuia appearing for the respondent submitted that the Appellant had admitted 'Inremna' (the agreement) dated 12.5.2008 which was for hiring of JCB of the respondent for the purpose of construction of Chhingchhip to Hualtu Road and it was exclusively executed by the Appellant No. 1 and the Respondent not by Shri J.H. Lalthianghlina. According to the learned Counsel, the appellants handed over Rs. 6 lakhs to the respondent for hiring charge of JCB and the appellant No.1 has to repay the

outstanding amount of hiring cost to the tune of Rs. 2,80,200/- with interest @ 6% per annum to the respondent vide Order dated 15.10.2015. The Appellant No. 1 had also to pay Rs. 5,000/- to the respondent for the cost of the suit vide Judgment & Decree passed on 15.10.2015 by the Senior Civil Judge.

10. It was next contended by the appellants that the learned Trial Court failed to consider the fact that Shri C. Lalhmunsanga who had stood in the same position with the respondent in the series of works done by the appellant No.1. According to the learned Counsel Shri H.Laltanpuia, in Money Suit No. 16 of 2010, the learned Senior Civil Judge Dr. H.T.C. Lalrinchhana passed an order directing the defendant No. 2 Shri J.H.Lalthianghlina to pay the liability of payment to the plaintiff Shri C.Lalhmunsanga.

11. On the other hand, the learned Counsel Shri Lalhriatpuia submitted that the appellants cannot rely on the Judgment and Order passed by the learned Senior Civil Judge in Money Suit No. 16 of 2010 inasmuch as the facts and circumstances in Money Suit No. 16 of 2010 differed with the instant case. According to the learned Counsel, in Money Suit No. 16 of 2010, the Deed of Agreement was executed between the plaintiff and both defendants, namely, Smt. Lalrinngheti and J.H.Lalthianghlina, thus making Shri J.H.Lalthianghlina a necessary party for adjudication of the case. Unlike the present case, the appellant and Shri J.H.Lalthianghlina executed Compromise Deed 9.11.2010 bearing Notarial registration No. 9/11. Hence, the liability of payment cannot be upon Shri J.H.Lalthianghlina but solely and exclusively upon the appellant No. 1.

12. In the case at hand, the points for determination would be :-

- (i) Whether Shri J.H.Lalthianghlina was a necessary party for adjudication of the case in Money Suit no. 34 of 2010?
- (ii) Whether the Learned Trial has correctly appreciated the evidence that the appellant No. 1 is liable to pay Rs. 2,80,200/- to the respondent as the remaining hiring cost of JCB of the respondent?

13. Coming to the point No. 1, both the Appellant No. 1 and the Respondent proved 'INREMNA' (the agreement) at Ext. D-3 and Ext. P-3 respectively. Hence, the 'INREMNA' can be acted upon. It is clear that from Ext. D-4 and Ext. P-3,

Shri J.H. Lalthianghlma was not a party in the agreement. No doubt, the Power of Attorney at Ext. D-3 was executed by Shri J.H.Lalthianghlma in which the Appellant No. 1 was authorized to perform, execute and work on his behalf the Construction of Chhingchhip to Hualtu Road 15.00-20.250 Kmp, SH : FC, PW and C/D Works, NIT No. 2/SE(EC) 2007-2008, Memo No. B. 13058/1/07-SE(E)/PMGSY/Ph-VI/W/19 Dt. 17th December 2007 under Superintending Engineer, PWD, Eastern Circle, Aizawl, Mizoram. However, Shri J.H. Lalthianghlma was not a party in the agreement dated 12.5.2008 and there is also no evidence led by the Appellants that the Respondent knowingly the existence of Ext. D-3 made the agreement dated 12.5.2008. Hence, Shri J.H. Lalthianghlma is not a necessary party in the learned Trial Court for adjudication of the case.

14. On the second point, in the Exhibits P-4 to P-14, the hiring hours of JCB of the Respondent from 30.4.2008 to 11.5.2008 was 84 hours and from 12.5.2008 to 29.9.2008 was 411 ½ hours, the total hiring hours was 495.30 hours which is an hour less than the claim of the Respondent. However, the Appellant No. 1 admitted that they had hired JCB of the respondent for 489 hours and the hiring cost for the same as per their agreement dated 12.5.2008 was Rs. 8,80,200/- and out of which Rs. 6,00,000/- had been paid to Respondent, and the remaining due was Rs. 2,80,200/-. As the liability of hiring cost of the JCB is accepted by the Appellants, the entitlement of the Respondent to receive Rs. 2,80,200/- fixed by the learned Senior Civil Judge as the remaining hiring cost of JCB of the respondent is found acceptable.

15. In view of the aforesaid, I find no merit in the appeal. The same is hereby dismissed. The judgment and decree of the Learned trial Court dated passed by the learned Senior Civil Judge in Money Suit No. 34 of 2010 is upheld.

16. As per the order passed by the court of Id. Senior Civil Judge dated 9.7.2010 in connection with Civil Misc. Appln. No. 175 of 2010 arising out of Money Suit No. 34 of 2010 in favour of the plaintiff, the appellants is directed to make deficiency of requisite court fees by virtue of Section 149 of CPC within one month from the date of this order. Failing to make up such deficiency, the judgment and decree will remain in operative.

17. Subject to payment of requisite court fees in deficiency, the appeal petition is disposed off.
18. Send back the case record of the learned Trial Court of Smt. Ngursangzuali Sailo, Senior Civil Judge, Aizawl along with a copy of this Order.
19. With the above Order, the appeal stands disposed off.

Sd/- VANLALENMAWIA
Addl. District Judge,
Aizawl Judicial District.

Memo No. _____/ADJ(A)/2016 : Dated Aizawl, the 25th April, 2016

Copy to: -

1. Smt. Lalrinngheti & Anr. through Counsel Shri H. Laltanpuia, Advocate.
2. Shri Ganesh Chhetri through Counsel Shri Lalhriatpuia, Advocate.
3. District Judge, Aizawl Judicial District, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.
7. Calendar Judgment.

P E S H K A R