

GAHC030000182018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/1/2018

Friendship Helping Hands Society and Anr
Khatla Kawn, Aizawl 2: H Somorjit Sing

VERSUS

Sh H.Lalthanzauva and Anr
Chhinga Veng, Aizawl 2:Dr. Vanlalhuma Sail

Advocate for the Petitioner : Mr C Lalramzauva Sr. Adv

Advocate for the Respondent : Mr. Johny L Tochhawng (Amicus Curiae) for R1

B E F O R E

THE HON' BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of hearing : 17.01.2023

Date of Judgment : 25.01.2023.

J U D G M E N T & O R D E R (CAV)

Heard Mr. A.R. Malhotra, learned counsel for the appellants. Also heard Mr. Johny L.Tochhawng, learned Amicus Curiae appearing for the respondent No.1 and Mr. Lalremtluanga, learned counsel for the respondent No. 2.

2. This regular first appeal has been filed against the Judgment & Order dated 01.12.2017 passed by the Court of the Senior Civil Judge-III, Aizawl in Civil Suit No. 41/2009, by which the suit filed by the appellants/plaintiffs has been dismissed on the ground of res judicata. The case of the appellants is that the respondent No. 1 had approached the appellants for a loan totaling Rs. 13.5 lakhs on different occasions. Accordingly, the appellants had given a loan of Rs. 13,50,000/-(Thirteen lakhs and fifty thousand) only on three different dates starting from 24.09.2007 to the respondent No. 1, which was to be repaid with interest @10% per annum. The respondent No. 1 had mortgaged LSC No. 321/1976 as security for the loan, with the permission of the owner of the LSC No. 321/1976 i.e. the respondent No. 2.

3. As the respondent No. 1 could not repay the loan amount, one Mr. H. Lalremthanga S/o Thanghlira, Khatla filed Eviction Suit No. 2/2008 in the Court of the Senior Civil Judge, Aizawl District against the respondent No. 2, praying for eviction of the respondent No. 2 from the land covered by LSC No. 321/1976. In Eviction Suit No. 2/2008, the respondent No. 2 was the sole defendant. The case of Sh. H. Lalremthanga was that as the respondent No. 1 had allowed the property to be mortgaged as security for the loan given to the respondent No. 1, the said property became the property of the plaintiff Sh. H. Lalremthanga, as the loan was not repaid by the respondent No. 1. In fact, LSC No. 321 of 1976 had been mutated in the name of the plaintiff Sh. H. Lalremthanga by the State Government. The plaintiff Sh. H. Lalremthanga was also the Secretary of Friendship Helping Hands Society (Appellant

No.1) which had given the loan amount of Rs. 13.5 lakhs to the respondent No. 1.

4. The Court of the Senior Civil Judge, Aizawl disposed of Eviction Suit No. 2/2008, vide Judgment and Order dated 14.11.2008, by holding that the respondent No. 2 had borrowed the money from the plaintiff and mortgaged his landed property. As such, the plaintiff Sh. H. Lalremthanga was found to be the rightful owner of the landed property. The respondent No. 2 was accordingly directed to vacate the land and building covered by LSC No. 321/1976.

5. Being aggrieved by the Judgment & Order dated 14.11.2008 passed in Eviction Suit No. 2/2008, the respondent No. 2 filed an appeal i.e. RFA No. 1/2009 before the Court of the Addl. District & Sessions Judge, Aizawl. The First Appellate Court thereafter allowed RFA No. 1/2009, vide Judgment dated 05.06.2009, by holding that mutation of the LSC from the respondent No. 2 to Sh. H. Lalremthanga was not justified. It also held that opportunity to contest the suit should have been given to the respondent No. 2 by the learned Trial Court. The impugned Judgment and Order dated 14.11.2008 passed by the learned Trial Court was thereafter set aside.

6. The Judgment dated 05.06.2009 passed by the Court of the Addl. District & Sessions Judge, Aizawl has attained finality as on date, as no appeal has been filed against the said Judgment passed in RFA No. 1/2009.

7. Subsequent to the above events, the appellants filed Civil Suit No. 41/2009 against the respondents praying for the following reliefs:

- i) For a decree in favour of the plaintiffs and against the defendants.
- ii) For a decree declaring that the plaintiffs are the legal and rightful owners of the land and building covered by LSC No.321 of 1976 located at Chaltlang, Aizawl.
- iii) For a decree declaring that the plaintiffs have the right to peaceful and vacant possession of the land and building covered by LSC No.321 of 1976 located at Chaltlang, Aizawl.

OR

For a decree declaring that the defendants are both jointly and severally liable to repay the plaintiffs the total amount of Rs. 13,50,000/-with interest@10% per month from 24/09/2007 till final payment.

- iv) For any other relief(s) as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- v) For costs of the suit.

8. The respondent No. 2 filed a counter claim in CS No. 41/2009.

9. The Court of the Senior Civil Judge, Aizawl District, Aizawl dismissed Civil Suit No. 41/2009, by holding that the same was hit by *res judicata*, as Eviction Suit No. 2/2008 had already been filed by one Mr. H. Lalremthanga, who was the Secretary of the appellant No. 1 and a decision taken in the ensuing appeal, i.e. RFA No. 1/2009, which

had attained finality. The counter claim filed by the respondent No. 2 was also dismissed on the ground that the counter claim had not been valued and requisite court fees had not been paid.

10. The learned counsel for the appellants submits that the bar of *res judicata* could not have been applied on CS No. 41/2009 by the learned Trial Court, inasmuch as, Eviction Suit No. 2/2008 was for the purpose of evicting the respondent No. 2, while Civil Suit No. 41/2009 was for a decree declaring the appellants as the rightful owners of the land and building covered by LSC No. 321/1976 and for a decree declaring that the appellants have the right to peaceful and vacant possession of the said land and building. Further, there was an alternative prayer in CS No. 41/2009, wherein a decree was prayed for declaring both the respondents jointly and severally liable to repay the loan amount of Rs. 13.5 lakhs with interest @10% per month from 24.09.2007 till final payment. He also submits that the respondent No. 1 was not a party in Eviction Suit No. 2/2009 and as such, Section 11 CPC was not attracted in CS No. 41/2009.

11. The learned counsel for the appellants submits that the appellants are not pressing their prayers for declaring the appellants as the rightful owners of the land and building covered by LSC No. 321/1976 or to have peaceful and vacant possession of the same. However, the issue of repayment of the loan amount of Rs. 13.5 lakhs with interest would have to be decided by the learned Trial Court.

12. The counsels for the respondent Nos. 1 and 2 submits that there is no infirmity

with the decision of the learned Trial Court and the same should be upheld. They also submit that as there was no registered agreement between the appellants and the respondents, with regard to the alleged loan or with regard to mortgage of the property. As such, no right accrues to the appellants for claiming any relief against the respondents, on the basis of an unregistered agreement document.

13. The counsel for the respondent No. 1 submits that no money was taken by the respondent No. 1 from the appellants. He also submits that the Friendship Helping Hands Society is no more in existence and as such, the present appeal should be dismissed, as it has abated, as there is no aggrieved jurisdic person to pursue the appeal.

14. The counsel for the respondent No. 2 also submits that no money was ever given by the appellants to the respondent No. 2 and as such, there is no question of repayment of any loan by the respondent No. 2. He also submits that the defunct Friendship Helping Hands Society being Non-Tribal jurisdic persons, they have got no right to own any land in Mizoram in the absence of any permission being granted by the Government of Mizoram in terms of the land laws applicable in the State of Mizoram. He also submits that no agreement was made or registered between the respondents and the appellants as per the Indian Registration Act.

15. I have heard the learned counsels for the parties.

16. In the case of *Bondar Singh & Ors Vs. Nihal Singh & Ors* reported in (2003) 4

SCC 161 and in the case of *Suraj Lamp and Industries Private Limited (2) Through Director Vs. State of Haryana & Another* reported in *(2012) 1 SCC 656*, the Apex Court has held that transfer of immovable property can only be made by way of a deed of conveyance, which is duly stamped and registered as required by law. In the absence of a duly stamped and registered deed of conveyance, no right, title or interest in an immovable property can be transferred. In the present case, as there is no registered agreement executed between the appellants and the respondents, there is no question of any action and transfer of property being affected on the basis of an unregistered document, which is in violation of the Registration Act, 1908.

17. Section 11 of the CPC states as follows:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

18. The prayer of the appellants in Civil Suit No. 41/2009 is for declaring them as the legal and rightful owner of the land and building and to have peaceful and vacant possession of the said land covered by LSC No. 321/1976. The above two issues have already been decided in RFA No. 1/2009, wherein the prayer for eviction in Eviction Suit No. 2/2008 has not been allowed. Further, the Appellate Court in RFA No. 1/2009 held that the mutation of the Land Certificate in the name of the plaintiff in Eviction

Suit No. 2/2008 was held to be not justified and the title to the land in favour of the plaintiff in Eviction Suit No. 2/2008 was held to be not acceptable in law. As the issues have already attained finality in RFA No. 1/2009, this Court is of the view that the appellants cannot re-agitate the same settled issues in an indirect manner and make the above two prayers in Civil Suit No. 41/2009. Though, the respondent No. 1 may not have been a party in Eviction Suit No. 2/2008, the above two prayers made by the appellants in Civil Suit No. 41/2009, is an attempt to open up decided issues in RFA No. 1/2009. Accordingly, in the view of this Court, the bar of *res judicata* would operate against the appellants in respect of their prayers for claiming ownership and possession of the land and building covered by LSC No. 321/1976.

19. The above being said, the only issue that remains to be decided is whether the prayer of the appellants for repayment of the loan amount of Rs. 13.5 lakhs with interest @ 10% per month from 24.09.2007 till final payment is hit by *res judicata*. As there is nothing to show that the said prayer for repayment of the loan, was an issue in Eviction Suit No. 2/2008, this Court is of the view that the bar of *res judicata* would not apply with respect to the prayer of the appellants in respect of their claim for repayment of the loan amount. Accordingly, the impugned Judgment dated 01.12.2017 passed by the Court of the Senior Civil Judge-III, Aizawl in Civil Suit No. 41/2009 is hereby set aside, only to the extent that the bar of *res judicata* would not apply to the prayer of the appellants claiming repayment of the loan amount from the respondents. However, the question whether the appellants who were members of a

defunct Society, can now make a claim for repayment of a loan amount allegedly given by the erstwhile Friendship Helping Hand Society (Society, in short), would have to be one of the issues to be considered by the learned Trial Court, as the appellants are not the members of an existing Society, though they may have been members of the erstwhile Society. Further, whether an unregistered agreement is invalid and whether it can be enforceable would also have to be considered by the learned Trial Court. The case is accordingly remanded back to the learned Trial Court, which might have to frame an issue with regard to whether any loan amount had been given to the respondents by the appellants and whether the respondents are liable to repay the same. The appeal is accordingly disposed of.

Send back the LCR.

20. In view of the assistance provided by the learned Amicus Curiae, Mr. Johnny L. Tochwawng, his fee is fixed at Rs. 7000/- (Rupees seven thousand) only payable by the Mizoram State Legal Services Authority.

JUDGE

Comparing Assistant