

GAHC030004712021



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

Case No. : RFA/39/2021

Zahmingthangi (Nu-i) And Anr.
W/o Lallianmawia (L)
R/o Chanmari,
Aizawl, Mizoram 2: Lalsanglian

VERSUS

S.R. Lalramenga And 3 Ors.
S/o R. Lalawia (L)
R/o Zonuam, Aizawl 2: State of Mizoram r/b Secretary to the Govt. of Mizoram Land
Revenue and Settlement

3: The Director
Land Revenue and Settlement Department

4: The Assistant Settlement Officer
Land Revenue and Settlement Department

Advocate for the Petitioner : Mr. C Lalfakzuala

Advocate for the Respondent : Mr L H Lianhrima, Sr. Adv.

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 26-05-2023

Heard Mr. Reuben Lalrinsanga, learned counsel for the appellants along with Mr. L.H. Lianhrima, learned Senior counsel for the respondents.

[2.] This is an appeal under Section 17(2)(b) of the Mizoram Civil Courts Act, 2005 r/w Section 96 CPC against the Judgment & Order dated 24.09.2021 passed by the learned Senior Civil Judge-IV, Aizawl in Civil Suit No. 31/2013.

[3.] Facts of the case in a nutshell is that the appellant was issued Heirship Certificate No.341/1993 in respect of the plot of land under LSC No. 383/1976 on the death of her husband Lallianmawia. Thereafter, during the first week of January, 2008, the appellant No. 1 approached the respondent, asking him to give her a loan of Rs. 10 lakhs for which she would mortgage the LSC No. 383/1976. Accordingly, an agreement deed dated 14.01.2008 was executed between the appellant and the respondent No. 1 in the presence of two reliable witnesses to the Agreement Deed. It was agreed that the respondent would loan a sum of Rs. 10 lakhs (*Rupees ten lakhs only*), with an interest of 10% per month to the appellant within three months counting from the date of agreement deed along with 10% interest per month without fail. That in case of failure of repayment of the said loan within a stipulated period, the respondent shall possess the mortgaged landed property under LSC No. 383/1976 along with the building constructed therein which belonged to the appellant. However, the appellant failed to repay the borrowed sum of Rs. 10 lakhs and the respondent made several request to the appellant for repayment of the money and had even

served her a legal notice for repayment of the money 10 lakhs with an interest of 10% per month. Since the appellant had failed to repay the said loan money, the respondent/plaintiff instituted a civil suit against the appellant No. 1 /defendant No. 1 which was initially registered as Civil Suit No. 50/2008. However, during the pendency of the suit, the respondent/plaintiff, came to know that the appellant No. 2/Lalsangliana, who was the son of the appellant no.1, got the LSC No. 383 of 2016 transferred to his name, which was done after the agreement deed dated 14.01.2008. The respondent /plaintiff then withdrew the Civil Suit No. 50/2010 due to the changed circumstances with a permission to file afresh. The respondent/plaintiff had expected his learned counsel to file a fresh suit immediately, however the fresh suit for the recovery of his Rs. 10,00,000/- in terms of the agreement deed dated 14.01.2008 was filed only in 2013 and registered as Civil Suit No. 31/2013.

[4.] The appellant/defendants in the Civil Suit N. 31/2013 had filed their written statement by stating that the material facts were concealed by the respondent, since Mr. Lalrochhara S/o Zatawna (L), Resident of Chaltlang had sworn an affidavit annexed as Annexure-I, to the effect that he was solely responsible and liable for the loan borrowed and that he had caused Pi Nu-I (appellant No. 1) to stand as borrower, that the real borrower was himself (Lalrochhara). The Deponent/Lalrochhara was identified by the Advocate, Mr. B. Lalramenga, who was initially the counsel for the plaintiff/respondent and had filed the Civil Suit No. 50/2008, which was duly withdrawn with a permission to file afresh. That the suit was therefore liable to be

rejected and dismissed due to the non-impleadment of Mr. Lalrochhara as a necessary party in the Civil Suit. The appellant no.1 was also uneducated and was not able to read and fully understand the deed agreement. That the 10% interest per month against the Rs. 10 lakhs borrowed was not according to the provisions of the Civil Procedure Code, where only of 6% interest was allowed. The learned Senior Civil Judge-IV from the pleadings of both the parties framed the following issues:-

(i) Whether the defendant No. 1 borrowed money from the plaintiff?

(ii) Whether the mutation of the LSC No. 383 of 1976 in the name of the defendant No. 2 is valid or not?

(iii) Whether the Land Revenue & Settlement Department re-issue LSC No. 383 of 1976 after observing all formalities required as per law.

(iv) Whether the plaintiff is entitled to the relief claimed or not? If so, to what extent and who is liable to pay?

[5.] Both the rival parties adduced their evidence before the trial court. Thereafter, after considering the evidence adduced by both the parties, the learned Trial Court passed the impugned Judgment & Order dated 24.09.2021, wherein, the mutation of LSC No. 383 of 1976 in the name of respondent No.2, Shri Lalsangliana was cancelled since the same was done after the agreement deed dated 14.01.2008 was executed. The learned Trial Court also directed the appellant No. 1 to pay the sum of Rs. 10 lakhs to the plaintiff with interest @ 6% per annum to be calculated from the date of

the execution of the agreement deed dated 14.01.2008. Aggrieved by this Judgment & Order dated 24.09.2021, the instant appellant who were the defendant Nos. 1 & 2 have filed the appeal petition.

[6.] Mr. Reuben Lalrinsanga, learned counsel for the appellant submits that the case before the Trial Court was barred by limitation, since the cause of action arose on 24.01.2008 when the agreement deed was signed. The period of limitation as prescribed under Section 3 of the Limitation Act would be 3 years however, the plaintiff had filed this instant Civil Suit No. 31/2013 only in the year 2013 and is clearly barred by limitation. In support of his submission, he has cited the case of ***Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors.***, reported in ***2023 SCC Online SC 521*** (paragraph Nos. 26, 28 & 30). The learned counsel has also mentions that the agreement deed dated 24.01.2008 is not a registered deed and the documents which is not registered cannot be relied upon by the plaintiff/instant respondents. This has been reiterated by the Apex Court in ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.***, reported in ***2012 (1) SCC 656*** (paragraph Nos. 14, 18, 19 & 24).

[7.] The learned counsel also submits that the impugned judgment and order is liable to be set aside since a necessary party was not impleaded in this civil suit. He submits that Mr. Lalrochhara should be a necessary party since he was the one who had approached the appellant to borrow the money from the respondent and he was the one who had used the money for his contract works. The appellant had also filed

an FIR against Mr. Lalrochhara since he was to return the Rs. 10 lakhs used by him. Mr. Lalrochhara himself had admitted in an affidavit which was exhibited as Exhibit D-3 before the Trial Court stating that the money granting to Rs. 10 lakhs (*Rupees ten lakhs*) only, was actually used by him for completing his contract works and thus, the impugned judgment and order is liable to be quashed and set aside for non-joinder of necessary party.

[8.] Mr. L.H. Lianhrima, learned Senior counsel for the respondents, on the other hand, submits that the reason for the delay in filing the Civil Suit No. 31/2013 has been explained by the respondent in her plaint submitted before the Civil Judge, mentioning that, initially the civil suit registered as 50/2008 was filed before the Civil Judge. However, during the pendency of the case, it was learned that the LSC was transferred in the name of her son and therefore, the Civil Suit No. 50/2008 was withdrawn in 2010 with a liberty to file afresh. The then learned counsel for the appellant had also testified to the effect that the original Civil Suit No. 50/2008 was filed which was later withdrawn. The learned Senior counsel also submits that with regard to whether the agreement deed is registered or not, this point cannot be raised at this belated stage when this point was never raised by the appellant/defendant before the learned Trial Court. He further stated that the appellant had admitted in their written statement that a loan of Rs. 10 lakhs was taken by the appellant and challenged only the interest of 10% per month in the written statement submitted by them before the Trial Court. That the question of non joinder of necessary party does

not arise since the said Mr. Lalrochhara was only a witness in the Agreement Deed and cannot be made a party in the suit. The learned Trial Court had accordingly decreed in its order dated 24.09.2021 that the Rs. 10 lakhs should be returned by the appellant with an interest of 6% per annum, which was the prevailing basic interest rate which was what was prayed by the appellant/defendant before the learned Trial Court in Civil Suit No. 31/2013. That the appellants have gone beyond their pleadings with regards to registration of the agreement deed. In support of his submissions, the learned counsel has cited the following cases:-

(i) ***Union of India Vs. E.I.D. Parry (India) Ltd.***, reported in **2000 (2) SCC 223** (para 4)

(ii) ***Bhuwan Singh Vs. Oriental Insurance Co. Ltd. & Anr.***, reported in **2009 (5) SCC 136** (para 22)

(iii) ***Jaspal Kaur Cheema & Anr. Vs. Industrial Trade Links & Ors.***, reported in **2017 (8) SCC 592** (para 7)

[9.] He further submits that as per Section 58 of the Indian Evidence Act, facts which were admitted need not be proved.

[10.] Having heard the submissions made by both the parties, this Court finds that the points to be considered are

(i) whether the Civil Suit No. 31/2013 should have been dismissed outright being barred by limitation

(ii) whether the agreement deed dated 14.01.2008 should not have been considered since it was not a registered document.

(iii) whether the impugned judgment is liable to be set aside due to the non –joinder of the necessary party i.e., Mr. Lalrochhara.

[11.] With regards to the suit being barred by limitation as prescribed under Section 3 of the Limitation Act, this Court finds that the reason for delay in filing the Civil Suit No. 31/2013 was explained by the plaintiff/respondent No. 1, in his plaint in the Civil Suit no.31/2013. The reason given by him was that, when the defendant No. 1 (plaintiff in the instant appeal) had failed to repay the sum of Rs. 10 lakhs with interest within the stipulated period, the plaintiff (respondent No. 1) had instituted a Civil Suit No. 50/2008 before the Competent Court. However, during the pendency of the suit, it was learnt that the defendant No. 1 had got the ownership of her LSC No. 383 of 1976 transferred to the name of her son, Lalsangliana/defendant No. 2 (appellant No. 2). Therefore, the plaintiff/ respondent had withdrawn the Civil Suit No. 50/2008 with a permission to file afresh on the same cause of action due to formal defect. Thereafter, due to the negligent on the part of his counsel, there was an inordinate delay which was beyond the control of the plaintiff. A certificate to that effect was issued by Mr. B. Lalramenga, Advocate and annexed as Annexure-12. This explanation for the delay was accepted by the Trial Court and also by the defendants, since there was no objection with regards to delay in filing the Civil Suit No. 31/2013 in their written statement. For the above reason, this Court finds that this point needs no further discussion since reasonable explanation for the delay has been given.

[12.] The fact that there was a deed of agreement dated 14.01.2008 executed between the appellant/defendants and the respondents/plaintiff is an admitted fact. The appellant/defendants have not denied the execution of the agreement deed in their written statement nor in their examination-in-chief and cross examination. No objection was raised by the defendant/appellant that the Agreement Deed dated 14.01.2008 was not a registered document or that the Agreement Deed dated 14.01.2008 cannot be acted upon due to non-registration of the document in the Trial Court. The Apex Court **in Jaspal Kaur Cheema v. Industrial Trade Links**, (supra) held that :-

“7. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short “the Code”), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission.”

[13] For the above reason, the appellants in their written statement and evidence have not denied that the Agreement Deed dated 14.01.2008 was duly executed between the appellant no.1 and the respondent no.1, thus, they cannot at this later stage take a plea that the deed of agreement dated 14.01.2008 is not a legal document due to non-registration.

[14.] Regarding the non-joinder of necessary party, this Court finds that the appellant no.1 has taken the stand that the borrowed Rs. 10 lakhs was utilized by Mr.

Lalrochhara. The appellant, in the trial court had produced a declaration made by the said Mr. Lalrochhara in a non judicial stamp paper, that he had utilised the Rs. 10 lakhs and that he was responsible to repay the loan money of Rs. 10 lakhs to the appellant (Pi Nu-I). However, this has not been reflected in the Agreement dated 14.01.2008, executed between the appellant no.1 and the respondent no.1, wherein the said Mr. Lalrochhara was made only a witness to the Agreement. The other witness to the Agreement Deed, Smt. Lalthlamuani, has stated that she was present when the respondent no.1 handed over the Rs. 10,00,000/- (*Rupees ten lakhs*) only, to the appellant no.1 and that the LSC was also mortgaged for the loan taken by the appellant. Thus from the evidence of the parties, I find that the said Mr. Lalrochhara cannot be a necessary party in the Agreement Deed dated 14.01.2008 executed between the appellant no.1 and the respondent no.1. However the appellant if she so desires has the liberty to make a claim against the said Mr. Lalrochhara which is her prerogative.

A similar view was taken by a co ordinate bench of this court where the facts of the case are quite similar, in **Rev. Thangluaia versus Bimal Gharti (supra)**.

[15.] In view of the above reasoning, I am of the considered view that no sufficient grounds have been made out to set aside and quash the Judgment & Order dated 24.09.2021 passed by the learned Senior Civil Judge-IV, Aizawl in Civil Suit No. 31/2013. However this court finds that due justice will be done by modifying the Judgment & Order and decree dated 24.09.2021 to the extent that the appellant will

have the authority to sell the land and building or apportion of the land within the LSC 383 of 1976 to enable her to repay the decretal amount to the respondent promptly.

[16] RFA No.39 of 2021 accordingly stands disposed of.

JUDGE

Comparing Assistant