

GAHC030001292022



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

Case No. : RFA/12/2022

H. Lalhmunsiana
Tuikual North, Aizawl

VERSUS

Laldingliani and 9 Ors.
Tuikual North 'C' Mual, Aizawl

2:Lalthansangi

3:Lalruatfela

4:J.K. Dawngzuala

5:Thangkham

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : Mr Lalfakawma for R1-R9

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 21-06-2024

Heard Mr. C. Lalfakzuala, learned counsel for the appellant along with Mr.

Lalfakawma, learned counsel for respondent Nos. 1 to 9.

[2.] This Regular First Appeal is against the judgment and order passed by the learned Senior Civil Judge-IV, Aizawl Judicial District in Money Suit No. 95/2014 dated 13.12.2021, wherein the learned Trial Court had directed the present appellant and the present respondent No. 10 to pay a sum of Rs. 30,95,000/- with interest @ 9% p.a *with effect from* the institution of the suit till payment in full is made to the present respondent Nos. 1 to 9 within a period of 3 (three) months from 13.12.2021.

[3.] The brief facts of the plaintiff's cases in Money Suit No.95/2014, is that the present respondent Nos. 1 to 9 are the plaintiffs in the Money Suit No. 95/2014. The present respondent Nos. 1 to 9 had filed the Money Suit No. 95/2014 against the present appellant and present respondent No. 10 in Money Suit No. 95/2014 for payment of a sum of Rs. 30,95,000/-. The present appellant was the defendant No. 2 in the Money Suit No. 95/2014 and the present respondent No.10 was the defendant No.1 in the Money Suit No.95/2014. The present respondent No. 10 in the Money Suit is the wife of the present appellant, who is a close relative of the present respondent Nos. 1 to 9. The present respondent No. 10 had approached the present respondent Nos. 1 to 9 for loan on different dates between December, 2011 and November, 2013 and falsely represented separately to all the present respondent Nos. 1 to 9, that she had obtained a supply contract worth Rs. 100 lakhs from the Directorate of Health & Family Welfare Department and for that purpose, she requested the present respondent Nos. 1 to 9 for loans on different dates with a promise that she will repay each loan in full within a period of 3 (three) months. The present appellant is a close relative of the present respondent Nos. 1 to 9

and out of trust and goodwill, the present respondent Nos. 1 to 9 each deposited to the respondent No. 10 different amounts of money on different dates since the present respondent No. 10 was the wife of the present appellant. The present respondent Nos. 1 to 9 did not execute any type of agreement or deed with the respondent No. 10 since the money was given out of trust and goodwill. The present respondent No. 10 failed to repay the money which was advanced as loan to her by the instant respondent Nos. 1 to 9, despite her promise to repay their respective loans within a period of 3 (three) months from the date of advancement of the loans. The respondent No. 10 and the present appellant both assured the present respondent Nos. 1 to 9 that they will make every effort to clear the loans including an effort to sell their residential house at Tuikual 'C' and also the parental house of the respondent No. 10 at Chanmari West in order to liquidate the loans. However, since no payment was made by the present appellant and the present respondent No. 10, on 08.02.2014, the present appellant and the present respondent No. 10 sent a letter signed by them and 4 (four) other close relatives, requesting the instant respondent Nos. 1 to 9 for more time since it was not possible for them to clear all the loans at the moment. However, even then, no payment was made and the present respondent Nos. 1 to 9 approach the Civil Court as plaintiff Nos. 1 to 9.

[4.] The present appellant as defendant No. 2 in his written statement before the learned Civil Judge-IV had stated that the present respondent No. 10/defendant No. 1 being his wife had deceived the present respondent Nos. 1 to 9/plaintiff Nos. 1 to 9 by requesting them for loan money. That on 29.11.2013, the present respondent No. 10 had left the present appellant and

he does not know her whereabouts. On 08.10.2014, she had taken her properties and they were now divorced by way of 'Mak' as per the Mizo Customary law & practice.

[5.] The present respondent No. 10 as defendant No. 1 in the money suit had filed her written statement, wherein she submitted that the instant appellant and herself had dissolved their marriage by way of 'Mak' on 9th October, 2014. She further submitted that she never approached the present respondent Nos. 1 to 9 for loan of certain amount of money by representing herself to have obtained a supply contract worth of Rs. 100 lakhs or that she will repay the amount within 3 (three) months. The present respondent No. 10 stated that she was a housewife under the control of the present appellant and denied taking loan from the present respondent Nos. 1 to 9. The respondent No. 10 submitted that the allegations made by the present respondent Nos. 1 to 9 are false and fabricated and denied making any promise to sell her parental home at Chanmari West to any person. She denied that the letter dated 08.02.2014, and stated that the said signature purported to be her signature is forged. From the pleadings made by both the parties, the learned Trial Court framed the following issues:-

(i) Whether the suit is maintainable in its present form and style?

(ii) Whether or not there is cause of action for the suit?

(iii) Whether or not the defendants are liable to pay the claimed amount to the plaintiffs?

(iv) Whether or not the plaintiffs are entitled to the relief prayed for. If so, to what extend?

[6.] During the course of the trial, the present appellant produced 3 (three) witnesses whereas the present respondent No. 10 had produced 2 (two) witnesses and the present respondents Nos. 1 to 9 produced 5 (five) witnesses. Thereafter, after considering the evidence adduced by both the parties, the learned Trial Court by considering the written statement and examination-in-chief of the defendant Nos. 1 & 2 respectively held that they had admitted during the subsistence of the marriage that they had availed loan from the plaintiffs on different dates. The witness produced by them in the Court also admitted that they had availed loan from the plaintiffs during the subsistence of the marriage and bought two wheeler and four wheeler for the family. The defendant No. 2 also admitted, he was present at the time when the defendant No. 1 signed in the copy of the memorandum dated 08.02.2014. The learned Trial Court also held that after the dissolution of the marriage, both of the parties said that the other side is responsible for availing loan from the plaintiffs that happened during the subsistence of their marriage. Hence, the imputation could not be proved who is responsible for the loan. The learned Trial Court held that the availing loan needs to be repaid by both the defendant No. 1 and defendant No. 2 as they are jointly responsible. The learned Trial Court held that the evidence adduced proved that the present appellant and present respondent No. 10 had clearly represented separately to all the plaintiffs that the defendant No. 1/present respondent No. 10 had obtained a supply contract worth Rs. 100 lakhs from the Directorate of Health & Family Welfare

Department and for that purpose the defendants requested all the plaintiffs for loan on different dates with a promise that they will repay such loan in full within a period of 3 (three) months. The money was given on loan to the defendants by the plaintiffs in goodwill and trust and therefore, no written agreement was executed between the parties. The learned Trial Court held that both the defendants i.e., the present appellant and present respondent No. 10 were liable to repay the loan amounting to Rs. 30,95,000/-. The learned Tribunal directed that the payment of the amount of Rs. 30,95,000/- along with interest of 9% was to be paid *w.e.f.* the institution of the suit till payment in full to the plaintiffs within a period of 3 (three) months from the date of the order. Both the defendants were also directed to pay cost of the suit which is calculated at Rs. 10,000/-.

Being aggrieved, the instant Regular First Appeal has been filed.

[7.] Mr. C. Lalfakzuala, learned counsel for the appellant submits that the instant Judgment & Order dated 13.12.2021 is liable to be set aside since the learned Trial Court had failed to see that no agreement deed was executed between the present appellant and the present respondent Nos. 1 to 9. However, the Trial Court erroneously cast liability on the present appellant to pay the loan money along with the present respondent No. 10. There was no evidence to the effect that the appellant had acted in connivance with the respondent No. 10. The examination-in-chief and cross examination of the present respondent Nos. 1 to 9 shows that there is no evidence to prove that the appellant had availed loan from the present respondent Nos. 1 to 9. From the cross examination of the appellant, it was seen that it was the respondent No. 10 who had taken loan on different dates and the appellant was not

involved in her loan.

[8.] The learned counsel for the appellant further submitted that on perusal of the evidence given, out of the 9 (nine) plaintiffs/present respondents, only 5 (five) of the plaintiffs/ present respondents had given their evidence. The instant respondent No. 10 had also denied knowledge of the signature in the letter dated 08.02.2014 produced by the present respondent Nos. 1 to 9/plaintiffs. The learned counsel for the appellant further submitted that on examination of the plaintiff witnesses, it is seen that the plaintiff witness No. 1 had mentioned for the first time, that the present appellant along with the present respondent No. 10 had approached her, stating that they had supply contract worth of Rs. 100 lakhs. The loan amount is said to be given to defendant No. 1/ present respondent No. 10, as per the cross of PW-1. PW-3 on his cross examination stated that the defendant No. 2/present appellant was present, which is in conflict with the plaint wherein nothing of the involvement of the present appellant was mentioned at the time of alleged handing over of the money to the plaintiffs/ present respondents No.1 -9.

[9.] The learned counsel for the appellant further submitted that it is an admitted fact that there is no written document between the appellant and the respondents No.1–9 with regards to the alleged borrowing of money. PW-4 in his cross examination by defendant No. 1 admitted that there is no eye witness. The letter exhibited by the instant respondents was denied by present the appellant and present respondent No. 10. None of the witnesses in the letter dated 08.02.2014 exhibited as Exbt.4 were present in the trial court. The learned counsel submitted that as per Section 101 and Section 102 of the Indian

Evidence Act, the burden of prove is on the plaintiffs/respondent Nos. 1 to 9 to prove the existence of any agreement or the existence of the allegation that loan was given to the appellant and the respondent No. 10. He submits that involvement of the instant appellant/defendant no.2 was not made in the pleadings and cannot be held liable in the case. In support of his submissions, the learned counsel for the appellant has relied on the judgments of (i) **Anil Rishi Vs. Gurbaksh Singh**, reported in **(2006) 5 SCC 558** (para 10) and 10.2,(ii) **Kashi Nath Vs. Jaganath**, reported in **(2003) 8 SCC 740** (para 17) (evidence not line with the pleadings) and (iii) **Biraji @ Brijraji & Anr. Vs. Surya Pratap & Ors.** in CIVIL APPEAL Nos. 4883-4884 of 2017 (para 7).

[10.] Mr. Lalfakawma, learned counsel for the respondents No. 1 to 9, on the other hand, submits that Annexure-1 is the tabulation of money handed over by the present respondents No.1 to 9 which was not denied or challenged by the appellant. It was not refuted that the money was taken from the plaintiffs/respondent Nos. 1 to 9. The learned counsel for the respondents submits that there is no denial by the present appellant or the instant respondent No. 10 before the Trial Court that the money was not borrowed by them but they are just shifting the burden as to who should repay the amount. The learned counsel led the court to the evidence adduced by the parties. The evidence of PW-2 and PW-7, states that both the present appellant and the present respondent No. 10 had approached them. DW-2/Defendant witness No. 2 is the close neighbor and sister of the appellant. On cross examination of the defendant witnesses, it is seen that a two wheeler vehicle and four wheeler car were brought for the family. The evidence of the appellant himself shows that he had taken money from the present respondents. The learned counsel submitted that a salaried person cannot afford such purchases. The learned

counsel also submits that the appellant knew that money was being borrowed while he was the husband of respondent No. 10 and he cannot just leave the burden on the present respondent No. 10. Though there is no document to prove the borrowing of money, there is also no specific denial and therefore the learned trial court had rightly held that the present appellant and the present respondent no.10 were liable to repay amount of Rs. 30,95,000/- to the present respondent Nos. 1 to 9.

[11.] I have considered the submission of both the parties and I have also perused the documents on record. This Court find it fit to briefly highlighted and discuss the evidence adduced by both the parties before the Trial Court.

[12.] PW-1/Laldingliani had deposed that the defendant No.1/present respondent No.10 is the wife of defendant No.2/ present appellant. On 19.04.2013, the present appellant and present respondent No. 10 approached her and told her that they had obtained a supply contract worth Rs. 100 lakhs from the Directorate of Health & Family Welfare, Government of Mizoram and they requested for loan with a promise that they will repay loan in full within a period of 3 (three) months. She acceded to their request for a loan on the condition that they will return the principal amount with interest within three months. She handed over Rs. 2,85,000/- to the defendant No.1/present respondent No.10, on 16.05.2013 on the condition that the present appellant and present respondent No. 10 would repay the loan amount within August, 2013. She thus loaned the money to the defendants in goodwill and trust as they were close relatives and no written agreement or deed was executed. However, the present appellant and present respondent No. 10, failed to repay the money in spite of repeated reminders. She then learnt that the defendants

had approached the other plaintiffs on different dates between December 2011 to November 2013 and also falsely represented to all the other plaintiffs that they had obtained a supply contract worth Rs.100 lakhs from the Directorate of Health & Family Dept. and that they had requested all the other plaintiffs for loan on different dates with a promise that they would return the money within three months. On 04.12.2013, she along with the other plaintiffs/present respondent Nos. 1 to 9 approached the present appellant and present respondent No. 10 through Palai (emissary), where they were assured that every effort would be made to clear the loan and that they would also make an effort to sell their residential house at Tuikual 'C' and the landed property of the present respondent No. 10 located at Chanmari to repay the loan. Thereafter on 01.02.2014, the present respondents No. 1 to 9 sent an ultimatum to the present appellant and present respondent no.10, that the loan money should be paid on or before 08.02.2014, if not they would take every possible legal remedy available to them for the recovery of the loan money. In response to the letter dated 01.02.2014, the present appellant and present respondent No. 10, in a letter dated 08.02.2014 signed by both of them and 4 (four) other close relatives, requested the plaintiffs/present respondent Nos. 1 to 9 to give them more time to clear their loan money. However, since the loan money was not returned till date, the instant PW-1 had approached the Court for the recovery of the outstanding amount of the said loan of Rs. 30,95,000/- with interest @9% from the present respondent No10 and the present appellant, *w.e.f* the date the suit was filed.

[13.] On cross examination by the present respondent No. 10, PW-1 admitted that they have no documents to prove that the present appellant and present respondent No. 10 had availed loan from them except what is annexed

as Annexure-1 in their plaint.

In the cross examination by the present appellant, PW-1 admitted that she handed over the money of Rs. 2,85,000/- to Marina Lalthazuali/present respondent No. 10 on 16.05.2013. She further stated that from the Rs. 2,85,000/-, the present respondent No. 10 returned Rs. 60,000/- and therefore, the outstanding due is Rs. 2,25,000/-. She further admitted that they did not have any conversation with the present appellant before she handed over the money.

[14.] PW-2, Lalthansangi in her examination-in-chief has stated that she had handed over a sum of Rs. 8,80,000/- to the defendant/present appellant No. 1 and present respondent No. 10 on 18.05.2013. The rest of her statement is similar to those of PW-1. In her cross examination, she also stated that she gave the money to the present respondent No. 10. She had also admitted that they did not execute any kind of agreement to prove that the defendant/present appellant and present respondent No. 10 had borrowed the said amount of money from her. She further stated that they claimed Rs. 30,95,000/- from the defendant/present respondent Nos. 1 to 9 with interest @ 9% *w.e.f.* the date the suit was filed despite not having any agreement.

[15.] The examination-in-chief of PW-3, Lalruatfela is similar to those of the other plaintiff witnesses except for the fact that he had handed over Rs. 3,50,000/- to defendant No. 1/present respondent No. 10, Marina Lalthazuali on 2nd April, 2013 on the condition that the defendants would repay the loan amount within July, 2013. The rest of the contents of his examination -in-chief is similar to those of the examination-in-chief of PW-1 & 2.

[16.] In the cross examination by defendant No. 1/present respondent

No. 10, he admitted that the schedule annexed as Annexure-1 in the plaint was prepared by all the plaintiffs/present respondent Nos. 1 to 9 which was not in collaboration with the defendants. However, the present appellant/present respondent No. 10 came to know that they had prepared the schedule/annexure-1 through Palai (emissary) sent by them. He admitted that he was not present when the defendant/present appellant and present respondent No. 10 had signed the promissory note on 08.02.2014. On cross examination by defendant No. 2/present appellant, he admitted that he handed over the said money amounting to Rs. 2.5 lakhs to Marina Lalthazuali/defendant No. 2 on 02.04.2013.

The contents of the examination-in-chief of PW-4 J.K. Dawngzuala is also similar to those of the other plaintiff witnesses, wherein he stated that he handed over Rs. 2,50,000/- to defendant No. 1/present respondent No. 10, Marina Lalthazuali on 19th April, 2013 on the condition that the defendant would repay the loan amount within July, 2013.

[17.] In the cross examination by the present respondent No. 10, he admitted that there was no eye witness during the transaction of the said loan money to defendant No. 2/present appellant nor was there any form of agreement or promissory note executed between him and defendant No. 2/present appellant. He stated that the money was borrowed by defendant No. 2/present appellant from him. He admitted that he did not see the defendant/present appellant and present respondent No. 10 prescribing their signatures in the letter dated 08.02.2014.

[18.] The contents of the examination-in-chief of plaintiff witness No. 7, Lalfamkimi is also similar to those of the other plaintiff witnesses, however,

she has stated that she handed over a sum of Rs. 4,30,000/- to the defendants on July, 2013 on the condition that the defendants would repay a loan amount within 3 (three) months. The rest of the examination-in-chief are similar with the other plaintiff witnesses. In her the cross examination by defendant No. 1/present respondent No. 10, she admitted that they did not execute any kind of agreement to prove that the defendant had borrowed the said money from her.

[19.] The Annexure-1 mentioned by the plaintiff witnesses is exhibited as Exhibit P-1. The letter said to be written by the present plaintiffs dated 01.02.2014 is exhibited as Exhibit P-2. The letter dated 08.02.2014 is exhibited as Exhibit P-3 which was said to be duly witnessed by 4 (four) witnesses.

[20.] Thereafter, the defendants in the money suit adduced their evidence and the defendant No. 1/present respondent No. 10 in her examination-in-chief denied receiving any loan money from the plaintiffs/present respondent Nos. 1 to 9. She denied having any knowledge of the letter dated 01.02.2014 and further stated that she did not prescribed her signature on the letter dated 08.02.2014 which was exhibited as Exhibit P-3, stating that the signature in the said letter was forged and must have been prepared in her absence. She denied having to pay any money to the plaintiffs/respondent Nos. 1 to 9. In her cross examination by the plaintiffs/present respondent Nos. 1 to 9, she stated that the written statement submitted by her ex-husband/present appellant is false and incorrect. She stated that her marriage with the present appellant/defendant No. 2 in money suit was absolved on 09.10.2014 as per the Mizo Customary Law & Practice. She denied having any knowledge whether or

not her ex-husband had borrowed was taken loan from the plaintiffs/present respondent Nos. 1 to 9 as her ex-husband/present appellant did not tell her everything about what he was doing.

[21.] In her cross examination by the learned Counsel for the Plaintiffs, she stated that she did not put/signed her signature in their marriage certificate nor on the copy of memorandum dated 08.02.2014 submitted by the plaintiffs which is exhibited by the plaintiffs in the court. She admitted that the written statement submitted by her ex-husband is false and incorrect and that she has not concealed any material facts in her examination-in-chief and that she has not borrowed any money from the plaintiffs. She again stated that her marriage to defendant no. 2 was dissolved on 9.10.2014 as per Mizo Customary Law and Practice and that she has no knowledge whether or not her ex-husband had borrowed or take loans from the plaintiffs as he had never told her anything and further stated that the statements submitted by the plaintiffs about defendant no. 2 is true and correct. She admitted that it is a fact that she admitted her ex-husband/present appellant had fraudulently deceiving his close relatives by using fake supply order without her knowledge.

[22.] Defendant witness No. 2, Lalthanpari is the mother of Marina Lalthazuali/defendant No. 1/present respondent No. 10. She stated that defendant No. 1 was married to defendant no. 2 and that the marriage was dissolved by way of "MAK" on 9th Oct, 2014. She further stated that defendant no. 1 had not received any hand loan from the plaintiffs and therefore any questions of repayment of loan does not arise at all and that defendant no.1 has no liability towards the plaintiffs as she had not taken any loan. She also stated that defendant no. 1 did not execute any form of agreement, deed, promissory note or any of such kind with the plaintiffs and claims that all the allegations in

the instant case are false and fabricated and that she has no knowledge of any Emissary (Palai) approaching the defendant no. 1 and that no promises were made to sell their home located at Chanmari West to any person. She further stated that defendant no. 1 had never took any hand loan from the plaintiffs and that the defendant no.1 is not bound to pay any amount whatsoever to the plaintiffs. In her cross examination, she admitted that the entire stated events happened while her daughter was the wife of defendant No. 2/present respondent No. 10.

[23.] The defendant No. 2/present appellant, H. Lalhmunsiamma, in his examination-in-chief stated that he was married to Marina Lalthazuali/present respondent No. 10 on 31st July, 2009 and they divorced each other by way of 'Mak' on 2013. He has no knowledge about this case pending before this court. On 04.12.2013 'Palai' send by the Plaintiffs went to his house about the loan taken by Marina Lalthazuali from his relatives *i.e.* the plaintiffs and he have no knowledge about the said loan and they told him that Marina Lalthazuali had taken loans on different dates from the plaintiffs and she promised to repay her loan money within three months but she failed to repay the loan money to the plaintiff. He was shocked and angry to hear his wife taken such a huge amount of money from the plaintiffs. Since he have no knowledge about the said loan, he told Marina Lalthazuali to make an effort to repay the loan money to the plaintiffs and to sell her paternal home at Chanmari West to liquidate the loan money. Marina Lalthazuali confessed before the Police and the plaintiffs that he/H.Lalhmunsiamma had no involvement in her loan and she further confessed that she even created fake supply work order under Vanapa Hall. He denied signing any document to repay any money to the plaintiffs and

denied the signature at Annexure III which he stated is fake and the signature on the document is forged. He stated that because Marina Lalthazuali had cheated these people and had even cheated him, he had divorced her on 09.10.2014. In his cross examination he had however admitted that Marina Lalthazuali put her signature on the document dated 08.02.2014 in his presence. He admitted that during the year 2009 to 2014, at the time when the said incident was happening, he and the present respondent no. 10 lived together as husband and wife under the same roof.

[24.] H. Hauhmingmawii is the defense witness who appeared as a witness for the defendant No.2/present appellant. She stated that she was a close neighbor of the defendants and that Marina Lalthazuali had left the defendant no.2 without informing him. That she also received many phone calls about the money taken by Marina Lalthazuali.

[25.] In her cross examination by counsel for the plaintiffs she stated that at the time of happening of the event/incident the defendant no.1 & 2 were living under the same roof. At the time of happening of the event/incident she was not staying with the defendants. At the time of happening of the event/incident Marina Lalthazuali bought two wheeler and four wheeler for the family. The defendant no.2 and the plaintiff are close relatives. All the plaintiffs are the prominent citizen and who has no any criminal cases pending against them.

[26.] The defendant witness H.Lalzawmpuii deposed that she lived near H.Lalhmunsiam's residence, she narrated some incident of stolen chimney by defendant No.1/Marina Lalthazuali which she did not want to repay the

money. She further stated that Marina Lalthazuali had fraudulently taken money from the plaintiffs and had even told her that she has supply order and that if she gave her Rs.3,50,000/- she will repay her Rs.4,00,000/- in her cross examination she admitted that she does not know the exact amount of money borrowed by defendant no.1/Marina Lalthazuali.

[27.] Having considered the evidence adduced by both the parties, this court finds that the issue to be decided in this appeal is whether or not the plaintiffs in Money Suit No. 95/2014 had proved and substantiated their claim that the defendants No. 1 and defendant No. 2 are liable to repay a sum of Rs. 30,95,000/-, to the plaintiffs.

[28.] This court finds it appropriate to refer to section 101 of the Indian Evidence Act which provides that "*Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*"

Section 102 CPC provides that "*The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side*".

The Apex Court in **Anil Rishi v. Gurbaksh Singh, (supra)** held that :

"10. Pleading is not evidence, far less proof. Issues are raised on the basis of the pleadings. The defendant-appellant having not admitted or acknowledged the fiduciary relationship between the parties, indisputably, the relationship between the parties itself would be an issue. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus,

ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side.

19. There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

[29.] In view of the above this court finds that it was for the plaintiffs i.e., the present respondent Nos. 1 to 9 to prove their case before the learned Trial court. A perusal of the evidence adduced by the plaintiffs/present respondent Nos. 1 to 9 shows that there is no written agreement or documents executed between the parties that they had lent money to the defendants in the civil suit. The document exhibited by them as Exhibit P-1, attached as Annexure-1 in the plaint is a tabulation of the list of names and amount supposed to be used by H. Lalhmunsiam and Marina Lalthazuali which totaled to Rs.30,95,5000/-. However, on perusal of the said Annexure-1, there is no

signature in the said annexure and it is just a table showing the amount of money which is said to be paid to the present appellant and present respondent No. 10. Neither respondent No. 10 nor the present appellant have admitted the correctness of the said annexure. It is not known who had prepared the said tabulation. It is for the plaintiffs to prove the correctness of the said tabulation by adducing evidence in the court. It is also noted that the learned Trial Court had decreed that the amount of Rs. 30,95,000/- is to be repaid by the appellant. However, this Court on consideration of the evidence adduced by the plaintiff witnesses no.1 to 5, finds that in the evidence adduced, that PW-1, Laldingliani stated that she had given Rs. 2,25,000/- to the present respondent No. 10, PW-2, Lalthansangi stated that she had given Rs. 8,80,000/-, while PW-3, Lalruatfela stated that he had given Rs. 2,50,000/- and PW-4, J.K Dawngzuala stated that she had given Rs. 2,50,000/- to present respondent No. 10. PW Lalfamkimi stated that she gave Rs. 4,30,000/- Thus it is seen that the plaintiff have failed to adduce any evidence to prove that the defendant no.1/present respondent no.10 and defendant no.2/present appellant are liable repay the loan amounting to Rs. 30,95,000/-. The other document exhibited is dated 01.02.2014 wherein 13 persons were said to have a meeting at Dr.Lalsanglura Ralte's residence, Tuikual North dt.1/2/2014 @ 11:00 am, where they discussed how to get back their money from H. Lalhmunsiam and Marina Lalthazuali. However, this document is mentioned by only the five plaintiff witnesses who have also not identified their signatures nor has any independent witness *e.g* Dr. Lalsanglura Ralte, adduced any evident before the trial court. Both the defendants have denied their involvement in the matter. The other document exhibited is Exhibit P-3. It is seen that though the name of the present appellant is shown at Serial No. 6, the said exhibit is not admitted by

the present appellant and he has denied the signature made against his name to be his signature. The present respondent No. 10/defendant No. 1 has also denied the signature which is said to have been signed by her. Both claim that the signatures are forged. It is seen that none of the other four persons who are said to have also signed on the said Exhibit P-3, have been produced in the Court as witnesses to prove the letter dated 08.02.2014.

[30.] Thus, this Court having considered the evidence adduced in its entirety before the learned Trial Court finds that the plaintiffs have failed to substantiate their claim that the present appellant (defendant No. 2) and present respondent No. 10 (defendant No. 1) are jointly liable to repay the respondent Nos. 1 to 9 a sum of Rs. 30,95,000/-. This Court finds that the learned Trial Court had erred in finding that the defendant No. 1 and defendant No. 2 had admitted that they availed loans from different plaintiffs on different dates, when both the defendants have denied their knowledge and liability. Thus, since the present respondents no.1 to 9 have failed to established their case against the present appellant in the Trial Court as discussed above, therefore, the judgment and order passed by the learned Senior Civil Judge-IV, Aizawl Judicial District in Money Suit No. 95/2014 dated 13.12.2021, is set aside and quashed.

[31.] Parties to bear their own costs.

[32.] In view of the above, the instant RFA No. 12/2022 stands allowed and disposed of.

JUDGE

Comparing Assistant