

HIGH COURT FORM NO. (J) 2.

HEADING OF JUDGMENT IN ORIGINAL SUIT

DISTRICT : KAMRUP.

IN THE COURT OF CIVIL JUDGE NO 1 : KAMRUP : GUWAHATI

**PRESENT : Shri J.K. Pramanik, AJS,
Civil Judge No. 1,
Kamrup, Guwahati.**

Tuesday, the 31st day of May, 2011

TITLE SUIT 38 of 2007

Smti. Tanushree Paul Choudhury Plaintiff (s)

-Versus-

Sri Satya Sundar Malik Defendant (s)

This suit coming on for final hearing on 29/07/2010,
24/02/2011, 22/03/2011 and 05/05/2011 in the presence of :-

1. Mr. P.C. Goswami,
2. Mr. A. J. Das,
3. Ms. M. Sarma Baruah Advocates for the plaintiff (s).

-And-

Mr. D. Sarmah Advocate for the defendant (s).

And having stood for consideration to this day the Court
delivered the following judgment :-

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JUDGMENT

This is a suit for realization of Rs. 9,13,497.50 and other relief.

Plaintiff's case in brief is that the defendant took a loan of Rs. 6.20 lacs only from the plaintiff on 23/9/04 and executed a simple mortgage deed on the same day in favour of the plaintiff in respect of his immovable property. In spite of that he mortgaged his landed property by depositing title Deed. Besides the aforesaid loan on various pretext i.e. on 20/11/05, 28/11/05, 17/1/06 and 8/4/06 has taken an amount of Rs. 50,000/- and executed a demand promissory note and promised to repay the said amount on demand with interest @ 1.5% per month. But in spite of demand the defendant has not refunded the said amount till date. The plaintiff finding no alternative on 18/8/06 sent a notice to the defendant. But in spite of that the defendant has not take any steps to repay the loan amount. Further the plaintiff came to know that the defendant has already made an agreement for construction and selling out the commercial – cum – residential flats/ shops/ halls with M/s Pragjyotish Development and builders. The defendant is trying to dispose of mortgage property and in that case the plaintiff would be deprived of their legitimate dues unless legal action is taken against the defendant and hence this suit.

While, on the other hand, the answering defendants by filing written statement have contested the suit of the plaintiff and denying the truth of the allegations brought against him, save and

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accept what are admitted, interalia, stated that the suit is not maintainable in law as well as in the facts and circumstances, that there is no cause of action for the suit, that the suit is not maintainable in view of the specific provision of the Registration Act and also barred under the provisions. The answering defendant has stated that he neither took any loan nor mortgaged his property and stated that the plaintiff taking advantage of ignorance and simplicity of the defendant obtained his signatures in various papers and ultimately the plaintiff manufactured those documents with the sole intention to harass the defendant. It is contended that the plaintiff being a builder wanted to construct building over the plot of land belonging to the defendant and paid token of some money to the defendant towards construction of building upon his land. It is stated that as the plaintiff measurably failed/ neglected to start construction upon the land of the defendants, the defendant have no alternative but to make agreement with other builders. The plaintiff instead of starting construction all along harassed the defendant by demanding money on various pretext. The defendants thus sought for dismissal of the suit.

From the pleadings of the both sides, following issues have been framed by my predecessor in office vide order dated 4/8/09 afresh, after hearing both sides.

1. Whether there is cause of action for the suit ?
2. Whether the defendant took a loan a Rs. 6,20,000/- (rupees Six thousand twenty thousand) from the plaintiff and mortgage his landed property by handing over the title deed ?

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3. Whether the suit is barred under the provision of Money Lenders Act ?
4. Whether the plaintiff had manufactured his documents such as demand promissory note and mortgage deed?
5. Whether the plaintiff is entitled to get a decree as prayed for ?
6. What other relief/reliefs the parties are entitled to ?

In the instant suit during trial, defendant although filed written statement, but afterwards persistently remained absent during the hearing. Plaintiff submitted evidence on affidavit of one P.W. i.e. plaintiff herself and exhibited some documents to support her case. Accordingly the suit has been taken up for final disposal.

DECISION WITH REASONS THEREON :-

I have gone through the case record along with the evidence on record. Heard the argument of the learned lower for both sides. Now let me consider and decide the present suit in hand issue wise to reach the decision.

ISSUE NO. 1 :-

This issue relates to cause of action. The case of the plaintiff as revealed from the record is that the defendant took from him Rs. 6,20,000/- with interest @ 1.5% per month as loan against mortgage of the landed property in his favour by handing over the title

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deed by the defendant in connection with the said loan on execution of a mortgage deed and demand promissory note thereon to that effect by the defendant on 23/09/04 and 08/04/06. It is stated that subsequently on various dates the defendant also took further amount of Rs. 50,000/- as loan by executing demand promissory note thereon. Further claim of the plaintiff is that from the conduct of the defendant, the plaintiff came to know that the defendant is not willing to make any payment for the loan, as such, she issued legal notice on 18/08/08 to the defendant asking for payment, but in vain. P.W.1, the plaintiff herself also in her evidence on affidavit in chief deposed supporting her case, as above.

While on the other hand by filing written statement the answering defendant denied the truth of the plaintiff's case and inter alia, stated that the suit is not maintainable, there is no cause of action for the suit, the suit is barred under the provision of Money Lenders Act etc. The further claim of the answering defendant is that he never took any loan nor mortgaged the loan by executing any mortgage deed nor he executed any demand promissory note as alleged. It is stated that the plaintiff being builder wanted to construct building over his land in question and accordingly the plaintiff paid token of money to the defendant towards the construction of building upon his land. But the plaintiff taking advantage of his ignorance and simplicity manufactured various documents by procuring his signature and filed the instant suit basing on false story upon the said deceitfully procured documents. The further claim of the defendant is that as the plaintiff failed and neglected to start construction upon his

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land, having no alternative he had to make agreement with other builders.

In view of above it is apparent that there is a questionable dispute between the parties with respect to the subject matter of the suit is to be gone into trial and as such in my view the aforesaid dispute has given rise to the plaintiff to a cause of action to sue. It is also apparent that in the event of plaintiff succeeds, plaintiff is likely to get a relief as prayed for. Accordingly I opine that there is cause of action for the suit and hence this issue is answered and decided in affirmative accordingly.

ISSUE NO. 2 AND 4 :-

The former issue relates to the point as to whether the defendant took the loan of Rs. 6,20,000/- from the plaintiff by mortgaging his land and handing over the title deed, while the later issue relates to the point as to whether the plaintiff had manufactured the said demand promissory note and mortgage in question or not. In this respect it is worthy to mention here that it is the defendant's claim that the demand promissory note and the mortgage deed in question is manufactured upon procuring his signatures on some papers by deceitful means taking advantage of his innocence and simplicity. As such, onus of proof, is shifted upon the defendant to prove it, but in the instant case, the defendant led no evidence nor took part herein to cross- examine the plaintiff (P.W. 1) to prove his defence. Such being the situation the aforesaid allegation leveled by the defendant

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is found to be without any legal basis. As regards claim of the plaintiff, that the defendant took from him loan of Rs. 6,20,000/- in question by executing mortgage deed and mortgaging the landed property there under and by handing over title deed, the evidence of P.W. 1 (plaintiff) shows that in her evidence – in- chief categorically stated that on 23/9/2004 the defendant by mortgaging the land standing in his name took from her a loan of Rs. 6,20,000/- @ annual interest @ 14 % per annum and executed the mortgage deed (Ext. 1) wherein Ext. 1 (1) to Ext. 1 (4) is the signature of the defendant and also handed over the deed of title along with patta. P.W. 1 further stated that also on various dates on 28/11/2005, 17/01/2006 and 08/04/2006 took further amount of Rs. 50,000/- as loan and executed a demand promissory note to that effect, lastly on 8/4/2006, which is Ext. 4. From the scrutiny of the evidence and record, it is seen that the alleged deed of mortgage (Ext. 1) for Rs. 6.2 lakhs is a unregistered documents. But in the present case neither the deed of mortgage is registered nor the plaintiff has submitted or prove the alleged title deed of the defendant alleged to be handed over. As such, the alleged mortgage is not proved. Be that as it may, the defendant also did not deny the signing of documents by him, what he stated is that he neither took loan nor mortgaged the land as alleged. But he admitted receipt of token money but without mentioning the amount. Moreover, the defendant failed to rebut the promissory note.

Hence, these issues are answered and decided accordingly.

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ISSUE NO. 3 :-

This issue relates to the point as to whether the suit is barred under the provision of Money Lenders act or not and burden lies upon the defendant to prove it, but in the instant case the defendant led no evidence in support of his contention. Although it is apparent that the transaction is a loan. But there is no evidence to show that the plaintiff is a money lender by profession or that the activities of the plaintiff as such is hit by the aforesaid provision of law. Hence I answer and decide this issue accordingly.

ISSUE NO. 5 AND 6 :-

These issues relate to the entitlement of the plaintiff to get decree or relief.

In view of what discussed here in above, and in view of the evidence of P.W. 1, it is apparent that one M/S Pragjyotish Developer and Builders filed T. S. 128/2000, against the defendant with respect to the suit land of this case and in this respect, P.W. 1 Smti. Tanushri Paul Choudhury proved Ext. 7 copy of plaint of said T.S. 128/2000. It is apparent that the suit land in question is also the suit land in the aforesaid pending suit T.S. 128/2000 in much as the plaintiff failed to prove the equitable mortgage, as stated above. Hence, in my view, no decree for sale of the alleged mortgage property as prayed for can be granted in the case. But, as the plaintiff

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has been able to prove the aforesaid loan of Rs. 6,70 lacs (i.e. Rupees six lacs seventy thousand) only against the defendant, the plaintiff is entitled to get the decree for realization of the loan amount with interest.

These issues are answered and decided in favour of the plaintiff accordingly.

ORDER

In the result, considering all aspects, the suit of the plaintiff is decreed on contest with cost against the defendant for realization of the entire loan amount of Rs. 6,70 lacs (Rupeses six lacs seventy thousand) only with interest @ Rs. 14% p.a. from the date of the filing of the suit till realization.

Prepare decree accordingly.

Given under my hand and seal of this court, today the 31st day of May, 2011 at Guwahati.

Dictated & corrected
By me

Civil Judge No. 1,
Kamrup, Guwahati.

Civil Judge No. 1,
Kamrup, Guwahati.

