

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

AIZAWL BENCH

CRP No. 3 of 2013

PETITIONER:

Smt. Chhingpuii,
W/o Engkunga,
House No: T/A-19(H),
Bawngkawn, Lunglei Road,
Aizawl.

By Advocate:

Mr. Zochhuana.

RESPONDENT:

Smt. Tlansangi,
D/o Rinawma,
House No: K/B-7(6)
Bawngkawn, Aizawl.

By Advocate:

Mr. R. Lalawmpuia.

BEFORE
HON'BLE MR. JUSTICE N. CHAUDHURY

Date of hearing : 12.08.2013

Date of judgment and order : 12.08.2013.

JUDGMENT AND ORDER (ORAL)

Heard Mr. Zochhuana, learned counsel for the petitioner and Mr. R. Lalawmpuia, learned counsel for the opposite party.

2. By this application under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of order dated 15.02.2013 passed by the learned Addl. District & Sessions Judge-I, Aizawl in RSA No. 1/2012, thereby allowing the appeal and setting aside the judgment and order dated 3.10.2012 passed by the learned Senior Civil Judge-I, Aizawl in Civil Appeal No. 2/2008.

3. The said appeal arose out of judgment and order dated 18.02.2008 passed by Magistrate 1st Class and Subordinate District Council Court, Aizawl in connection with Money Suit No. 16/2006 decreeing the said suit for a sum of Rs. 20,000/- along with the interest at the rate of 9% per annum w.e.f. 23.02.2004 till realisation. The case of the plaintiff was that the defendant borrowed a sum of Rs. 20,000/- from him on 23.12.2004 on condition to repay the same along with the interest at the rate of 10% per month. The plaintiff further claimed that the amount was paid by the plaintiff and received by the defendant in presence of 4 (four) persons namely, Lalfakawma, Lalremmawii, Kapmawia and R.L. Dinpuia.

4. The defendant by filing a written statement stated that the suit is not maintainable in its present form and style and that there is no cause of action and that the suit is barred by limitation. It was the case of the defendant that there was no proof of such payment of money in writing. Be that as it may, the learned trial Court after hearing the parties and on perusal of the material on record, decreed the suit as aforesaid.

5. Aggrieved, the defendant preferred an appeal before the learned Senior Civil Judge Division, Aizawl. During pendency

of the said appeal, Mizoram Civil Court Act, 2005 came into existence and accordingly, the said appeal stood transferred to the Court of learned Civil Senior Judge Division, Aizawl. The learned Appellate Court by his judgment and decree dated 3.1.2012 allowed the appeal and set aside the judgment and order/decree passed by learned trial Court.

6. Being aggrieved, by the said appellate judgment and decree, plaintiff this time preferred appeal before the Additional District & Sessions Judge-I, Aizawl leading to registration of a second appeal being RSA No.1/2012. The learned Addl. District Judge-I admitted the appeal, called for records and after hearing the parties allowed the second appeal and restored the judgment and order passed by the learned trial Court for a sum of Rs. 20,000/- as referred to above. It is this second appellate judgment and order which has been brought under challenge before this Court under Article 227 of the Constitution of India.

7. Mr. Zochhuana, learned counsel for the petitioner argues that under Section 17 of the Mizoram Civil Courts Act, 2005 an appeal lies against the original judgment and decree and not against any appellate judgment. Moreover, as the said judgment and order dated 3.10.2012 is understood to be a second appeal within the meaning of Sec.100 of the Code of Civil Procedure even then such an appeal would have been barred in view of Section 102 of the Code of Civil Procedure which provides that no second appeal shall lie from any decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-. According to Mr. Zochhuana, neither an appeal under section 17 of the Mizoram Civil Courts Act, 2005 nor any appeal under the Code of Civil Procedure is maintainable against an appellate judgment and decree passed by the learned Civil Judge Senior Division. The learned Addl. District Judge, Aizawl did not have inherent

jurisdiction to entertain any appeal, far less a second appeal. The appeal thus being not maintainable and the Court having lacked inherent jurisdiction the impugned judgment and order/decreed dated 15.02.2013 is nullity and accordingly, the same is required to be adjudged *non est*.

8. I have heard Mr. R. Lalawmpuia, learned counsel for the respondent. According to the learned counsel for the respondent, despite due diligence, the said appeal was preferred before the learned District Judge on the impression that an appeal is maintainable against the appellate judgment and decree passed by learned Civil Judge Senior Division under section 17 of the Mizoram Civil Courts Act, 2005. The learned counsel further submits that once the impugned second appellate judgment and the decree passed by the learned Addl. District Judge is set aside and the same passed by the learned Civil Judge Senior Division is upheld, the respondent shall be put to irreparable loss.

9. Upon hearing the learned counsel of the parties and after perusal of the documents annexed along with the revision petition as well as the documents submitted at the time of hearing, it appears that there was really a money decree by Subordinate District Council Court. An appeal was preferred thereagainst before the appellate District Council Court. During pendency of the appeal, Mizoram Civil Court Acts, 2005 was passed defining classification and jurisdiction of Civil Courts along with appellate forum. On the basis of the said Act, the hierarchy of the Court has been changed. Now as against the appellate judgment and decree passed by the Court of Senior Civil Judge either an appeal in appropriate case will be maintainable under the Code of Civil Procedure or the legality and validity of the said judgment and decree/order can be brought under challenge before the High Court under any other appropriate procedure. In the case in hand, a second

appeal is not maintainable in view of the specific bar under Section 102 of the Code of Civil Procedure. The defendant, however, would have been entitled to approach this Court under Article 227 of the Constitution of India if the condition precedent for filing such an application otherwise exist in the present case. Be that as it may, no second appeal is maintainable before the learned District Judge/Addl. District Judge. Having said so, it is merely consequential to hold that the impugned judgment and decree dated 15.2.2013 passed by the learned Addl. District & Sessions Judge, Aizawl is without jurisdiction and accordingly, the said judgment and order dated 15.2.2013 passed in RSA No. 1/2012 is liable to be set aside.

10. It is accordingly set aside.

11. The revision stands allowed.

12. Before parting, it is necessary to mention hear that allowing of this revision petition will not disentitle the plaintiff (the respondent herein) to seek for appropriate remedy by taking a recourse to appropriate provision of law, if so advised.

JUDGE

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