
(1994) 03 GAU CK 0008
In the Gauhati High Court
Case No : F.A. No. 2 (K) of 1993

Bendangmeren Longchar and Another APPELLANT
Vs
Merazulu and Another RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3
Specific Relief Act, 1963 — Section 34

Citation : AIR 1994 Guw 109

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : C. Jajo, for the Appellant; B.N. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—This appeal is directed against the judgment and order dated 8-6-1993 passed by the learned Addl. Deputy Commissioner (Judicial), Mokokchung in Civil Appeal No. 11 of 1988 dismissing the plaintiff suit.

2. Both the appellants and respondents belong to Longchar Clan of Sungratsu village in the District of Mokokchung. The appellants belong to sub-clans of Karib Samchar and the respondents belong to sub-clans of Lipong Samchar of Longchar Clan. The dispute between the parties relates to as to who is the founder member clan of Longmi Asang village (now called Mopongchukit village).

3. Both the appellants and the respondents belong to Sungratsu village. Appellants as plaintiff before the lower court filed a declaratory suit. The main relief prayed for is this;

"A decree be passed declaring that the appellants's clan are the original founder of the village and they/their ancestors came across the stream OKERTSUYUNG while founding Longmiasang/ Mepongchukit village.

4. I have heard Ms. C. Jajo, learned counsel for the appellants as well as Mr. B.N.

Sarma, learned counsel for the respondents.

5. At the outset Mr. B.N. Sarma, counsel for the respondents raised a preliminary question of law. Counsel referred to provision of Section 34 of Specific Relief Act and submits that a declaratory suit can be filed only by a person entitled to any legal character or to any right as to any property when his interest to such character or right has been denied by another person. According to learned counsel, in order to obtain a relief u/s 34 of Specific Relief Act, plaintiff must establish that at the time of the filing of the suit he is entitled to any legal character or to any right to any property.

6. Admittedly, there is no pleading that the plaintiff/ appellant is entitled to any legal character or to any right as to any property. No cause of action has also been shown. In order to obtain relief u/s 34 of the Specific Relief Act, plaintiffs entitlement to any legal character or to any right as to any property is a condition precedent. Therefore, a suit u/s 34 does not lie unless declaration as to any legal character or right to property is sought. As said earlier, there is no declaration of a legal character or right to property, has been established by the plaintiff/appellant in the present case. The submission of counsel for the respondents, therefore must prevail.

7. The second contention of Mr. B.N. Sarma, learned counsel for the respondents is non-joinder of necessary parties. Both the appellants and respondents are from Sun-gratsu village. The decree prayed for by the plaintiff was for a declaration that the plaintiff's clan are the original founder member of the village Longmiasang (Mepongchukit). Admittedly, members of Mepong-chukit village have not been arrayed as party respondents. It is well settled principle of law that a decree cannot bind parties who were not before the court. Therefore no effective decree can be passed against the members of Mepongchukit village unless they are made parties to the proceeding. In such a situation even if decree is passed against the Mepong-chukit village, the decree would become infructuous for want of effective decree. In the instant case a situation would arise if a decree is passed that the plaintiff clan is one of the founder members clan of Mepongchukit village, the members of Mepongchukit village may not accept the decree because they are not made parties to the proceeding and in such event the decree would become infructuous. Therefore, Mepongchukit village was definitely a necessary party in the instant proceeding but they are not made parties.

8. It is well settled principle of law that a necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. See, Udit Narain Singh Malpaharia, Appellant v. Additional Member Board of Revenue, Bihar, Respondents AIR 1963 SC 768.

9. In view of the above settled position of law, there is no merit in this appeal

and is accordingly dismissed.

10. Despite the dismissal of the plaintiff's appeal, I shall be constrained to note that there is ample evidence on record and not disputed by Mr. B. N. Sarma, learned counsel for the respondents that the plaintiffs clan is enjoying the meat share of Head portion by virtue of being "Unger" for the last 30 to 35 Putus (1 putu being approximately equivalent to 30 years). This being the undisputed fact, the practice of enjoyment of meat share of Head portion by the plaintiff's clan for the last so many Putus shall not be disturbed.

11. With the aforesaid observation, this appeal is dismissed. No costs.