
(1994) 02 GAU CK 0020
In the Gauhati High Court
Case No : C.R. No. 3 (K) /93

Chuba Temsu Ao and Others

APPELLANT

Vs

Nangponger and Others

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 13, Order 1 Rule 9

Citation : AIR 1994 Guw 110

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

Bench : Single Bench

Advocate : I. Jamir and B.N. Sarma, for the Appellant; Temjen, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This revision is directed against the Judgment and decree dated 28-1-1992 passed by the learned addl. Deputy Commissioner (J) Mokokchung in Civil Appeal No. 7/90.

2. I have heard Mr. B.N. Sarma, learned counsel for the revisionist as well as Mr. Temjen, counsel for the respondents.

3. One of the main grounds taken in this revision petition is ground "m" reads as under;

"(m) For that the suit is bad for nonjoinder of necessary party namely the State of Nagaland and therefore no executable order could be made in the present case."

4. It is contended by Mr. B.N. Sarma that the suit is not maintainable for non-joinder of necessary party namely; the State of Nagaland in as much as the land in dispute is under the perpetual occupation of the State of Nagaland. In this connection, Mr. Sarma referred to the plaint filed by the Respondent/ Plaintiff particularly paras 5 and 6 of the plaint. In para 5, it has been stated that in the

year 1890, the British Administrative troops came and occupied the paddy fields under the present disputed land, and the British administrative authorities had ever remained in occupation of the said field since then.

5. In para 6 of the plaint it is averred as under;

"6. That on the passage of time some buildings have thereafter been constructed by the British Administrative Authority over the land in dispute and the said buildings have been used as their officers. At present these buildings have, been used by District Agriculture Departmental Officer and his staffs as their offices and also as supply Offices. Some of these buildings have recently been removed and new R.C.C. buildings are constructing in their places. Later on and after emergence of the State of Nagaland, more buildings have been constructed by the Govt. of Nagaland on the disputed land. Some of these buildings have been used as Office for Executive Engineer and his staffs of PWD. Some buildings have been used as the office for Civil Surgeon and his staffs in Medical department and some buildings have been used as the Office of the Deputy Inspector of Schools and his staffs in Education Department."

6. From the above averments made in paras 5 and 6 of the plaint, it is disclosed that the public authority had been in continuous occupation by constructing structures of permanent nature since 1890. This would show that Government of Nagaland and its instrumentalities are necessary party over the land in dispute. From the plaint it appears that the Government of Nagaland and its instrumentalities have not been arrayed as parties.

7. It is however, contended by Mr. Temjen that objection is not maintainable as the same has been raised in the Appellate Court, no objection has raised by the revisionist before the learned Court below and therefore, the objection is deemed to have been waived and the revisionists are estopped from raising it. In this connection the learned counsel referred to the provision of Order 1, Rule 13 of the C.P.C. where it has been stated that objection must be taken at the earliest possible opportunity. He also referred to a decision of this Court rendered in *Machabir Ali v. Matabuddin* 1190 G.H.C. 45. It has been held by this Court that;

"Objection must be taken at the earliest possible opportunity, objection raised but not pressing the lower Court, the Appellate Court should not allow the parties to agitate before it."

Accordingly the counsel submits that the objection raised in the appellate Court regard to non-joinder of necessary party is not maintainable. I am unable to accept this contention of learned counsel for the respondents.

8. Order 1, Rule 13 of the C.P.C. deals with objections as to non-joinder or mis-joinder and says that, all objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest opportunity. Order 1, Rule 9 deals with mis-joinder and non-joinder of the parties. Order 1, Rule 9, C.P.C. reads;

"No suit shall be defeated by reason of the misjoinder or non-joinder of parties,

and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it;

Provided that nothing in this rule shall apply to non-joinder of a necessary party."

9. A fascicule reading of Order 1, Rule 13, and Order 1, Rule 9, it clearly posits that objection for non-joinder or misjoinder of the parties shall be taken at the earliest opportunity, and that for non-joinder or mis-joinder of parties is not fatal to the suit. But Proviso to Order 1, Rule 9 expressly excluded the non-joinder of necessary party from the purview of Order 1, Rule 9, C.P.C. In other words, if in a suit a necessary party is not added the suit shall be dismissed.

10. In Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, it has been held at page 788;

"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."

11. From the above settled position of law, it is clear that if in a suit a necessary party is not added the suit shall be dismissed not for the reasons of non-joinder or mis-joinder of the parties because no effective order can be passed and consequently no relief can be granted to the parties on records.

12. For aforesaid reasons, the Plaintiff suit was liable to be dismissed for non-joinder of necessary party, namely; the State of Nagaland.

13. In the result, this revision petition is allowed. The plaintiffs' suit stands dismissed for non-joinder of necessary parties. No costs.