
(2000) 03 GAU CK 0023
In the Gauhati High Court
Case No : First Appeal No. 29 of 1995

Hilen Loyi

APPELLANT

Vs

Nyamo Kamduk

RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:

Citation : (2000) 2 GLT 89

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S. Kataki, for the Appellant; C. Baruah, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This appeal has been filed by the Defendants against the judgment and order dated 6.2.95 passed by the learned Deputy Commissioner, West Siang District, Arunachal Pradesh in Civil Suit No. 2 of 1983. By the impugned Judgment the learned Deputy Commissioner decreed the suit of the Plaintiff. Hence this appeal by the Defendant.

2. I have heard Shri S. Kataky, learned Advocate for the Appellant and Shri C. Barua, learned Advocate for the Respondent-Plaintiff. The Plaintiff brought a suit being Title Suit No. 2 of 1983 before the Deputy Commissioner, Siang District, Arunachal Pradesh. The Suit was for declaration of title and ejectment and for recovery of possession by ejecting the Defendant.

3. The case of the Plaintiff was that this land belonged to the Plaintiff and the Defendant in the year 1974 taking the advantage of the temporary absence of the Plaintiff and other members of the family kidnapped the caretaker of the premises and forcibly occupied the permises and that thereafter there was a demand by the Plaintiff for giving up the land. But nothing was done. Thereafter a Kebang was held, but the Kebang failed to do anything. The Defendant filed a written statement. His case is that he is the lawful owner of the land and he further claimed that the original land belonged to one Tumyam Kamduk and in

the year 1970 he sold the land to the Defendant for a sum of Rs. 700/- and delivered possession to the Defendant. His further case is that Tummy Kamduk had executed a deed in favour of the Defendant but that the said deed was destroyed in 1977 when a disastrous fire burnt down the Pakam village. His case was that this deed was written by one Hengo Lollen and Moken Ete was also present. It is the case of the Defendant that he also got grant from the Government of Arunachal Pradesh under the crash programme for the improvement of the land and the subsidy money was paid for opening the W.R.C. field. It was the further case of the Defendant that the Plaintiff is not only owner of the land. The land belonged to joint family. The following issues were framed:

I. Whether the land belongs to the Plaintiffs?

II. Whether the Defendant had purchased the suit premises from its lawful owner?

III. Whether Defendant had been retained possession of the suit premises at the time of filing of the suit.

IV. Whether the Defendant has forcefully occupied the suit premises?

Following are the witnesses examined on behalf of the parties P.W. 1 Nyamo Kamduk (Plaintiff). He deposed inter alia, as follows:

(a) The land belongs to our joint family.

(b) The joint family property can not be sold individually.

(c) Tummy Kamduk was born in 1960 and in the year 1970 his age was around 10 years.

(d) Tummy Kamduk can not sell the joint family property being the youngest member of the family aged about 10 years only in the year 1970.

(e) In the Kebang the Defendant stated that he has purchased the, land from Tummy Kamduk. But he did not produce any money receipt, documents or witness.

(f) In 1968 we gave a notice to the effect that nobody should purchase any property from Tummy, Tumjum and Dakar without obtaining consent from me or my father.

This witness exhibited the following documents:

(i) PEX-1, the Power of Attorney.

PEX-II the date of the birth certificate issued by the Head Teacher of Govt. Primary School, Pakam.

PEX-III, the circular given by the Plaintiff to the PIs and GBs.

In 1977 of the Kebang which as held the Defendant did not say that the

document of sale was burnt in fire. P.W.-2, Tapang Taki. He deposed, inter-alia, as follows:

In the Kebang Hillem Loyi stated that he purchased the disputed land from Tummyam Kamduk. The Defendant did not produce any money receipt as a token of proof. In the Kebang we felt that as per Adi custom joint family property cannot be sold by an individual and it would be better to restore the joint family. We told as per traditional law property cannot be purchased from old woman and children. There was no any decision in Kebang of 1975. On the complaint of Nyamo Kamduk a Kebang was held in 1977. In 1977 there was a fire accident in Pakam village. No documents were in the Kebang in 1977 as evidence of purchase of land. DW 1 is the Defendant. He deposed regarding the purchase and continuous possession.

DW-2 is Togum Lollen. He did not depose anything relevant for the purpose of the case.

DW-3 Joken Ete deposed regarding the age of the seller to be 19 to 20 years in 1970.

DW-4, Tonya Eshi deposed that in the year 1973 the age of Tummyam Kamduk was 13 to 14 years. He only deposed that he heard that Hillem Kamduk has purchased the land from Tummyam.

So his evidence is not relevant. The evidence of D.W.-6 is not also relevant. The evidences of DW-7 and 8 also are not relevant.

DW-9 deposed with regard to the age of the seller in 1970 to be about 18 to 19 years. DW-10 is a neighbour of the disputed land. DW-11 is also a man who deposed

regarding the purchase of the land by the Defendant from the Plaintiff.

The evidence of DW-12 is also actually irrelevant. The learned Deputy Commissioner in the impugned judgment has arrived the following finding:

On the basis of the foregoing I am of the opinion that it can not be said that the disputed property is not a joint family property. Since Nyamo Kamduk, the Plaintiff has issued a circular in 1968 asking people not to purchase property from Tummyam and since Kinya has exchanged the land which has been sold by Tummyam to Tomya Eshies son and since Tummyam's brother Tumjom has stated in the so called power of attorney that he is a member of the joint family of Nyamo Kamduk, I come to the conclusion that the lands in dispute are joint family properties. Hence Issue-1 goes in favour of the Plaintiff.

The Defendant has not produced any documentary evidences to show that he has purchased the land in dispute from its lawful owner said to be Tummyam, Tapang Taki, Retired Political interpreter PW-1 has stated that the Defendant has not produced any money receipt etc. as a token of having purchased the land in the Kebang of 1975 and that the seller was also not present. He stated that in

the Kebang of 1977 he did not hear Hilem, the Defendants, telling the Kebang that his documents were burned down in the fire accident which took place in Pakam village in 1977. He further stated that in the Kebang of 1975 there was not decision but that they told that as per traditional law property can not be purchased from old women and children. He further stated that they demarcated the boundary of the land called Hikar by putting stones. He also stated that in the Kebang of 1979 they decided that as per traditional law it is wrong to purchase land from a child and it would be better to return the land and that as Tamyam was not produced they had asked both the parties to look for him. He stated that as per traditional law before selling joint family property the brOrs. had to be asked and that only thieves and dacoits can sell lands without asking their brOrs. .

In view of the foregoing it is clear that the Defendant could not produce any documents as proof of having purchased the land from Tummyam. It also appears that he has not produced any money receipt etc. as a token of proof of his having purchased the land in disputed at the Kebang of 1975 and it appears that he has also not stated in the Kebang of 1975 that he was in possession of any such agreement regarding purchase of land. Not witness other than Horai Loyi DW-11 stated that they had seen the agreements. No witness who has seen the execution of the agreement was produced. The Kebang decision of 1975,1977 and 1979 did not deal with the matter in dispute or are conclusive. Hence they do not throw much light about the purchase of land by the Defendant from Tummyam. Besides this in accordance with the spirit of transfer of property Act Defendant. Hence I conclude that the Defendant has not lawfully purchased the lands in dispute.

I therefore conclude that the lands in dispute are joint family property of the joint family headed by the Plaintiff and comprising all the members as shown in the so called power of attorney and that the lands in dispute have not been purchased lawfully by the Defendant and even though the Defendant is in possession of the land called Jore such a possession does not confer upon him any title to the land. Accordingly the joint family members of the family headed by Nyamo Kamduk are declared as the title holders of the Defendants should hand over peaceful possession of the land in dispute to the joint family headed by the Defendant. No order as to costs.

4. The first submission made by the learned Counsel for the Appellant is that it is the claim made by the Plaintiff that this property belonged to him individually and as such the Court can not mould the relief holding it to be a joint family property. In this connection we should bear in mind that CPC does not apply in the area. It is the spirit that shall be applied in such an area. What is spirit that was decided by the decision of the Apex Court reported in State of Nagaland Vs. Ratan Singh, etc., wherein the Supreme Court in Paragraph-29 has laid down the law as follows:

(29) How the spirit of the code is to be applied and not its letter was considered

by this Court in Gurumayum Sakhigopal Sarma V.K, Onghi Anisija Devi, Civil Appeal No. 659 of 1967 decided on 9th of February, 1961 (S.C) in connection with the Code of Civil Procedure. With reference to a similar rule that the courts should be guided by the spirit and should not be bound by the letter of the CPC this Court explained that the reason appeared to be that the technicalities of the code, should not trammel Litigation embarked upon by people unused to them.

(30) Laws of this kind are made with an eye to simplicity. People in backward tracts can not be expected to make themselves aware of the technicalities of a complex code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws.

5. In this particular case what is the cause applied in the plaint, that is not very important. What case was found or established at the Trial that is the most material thing and that is what has been found by the learned Trial Court. The learned Counsel for the Appellant in this connection relied on Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, wherein the Supreme Court pointed out as follows:

Therefore, we are satisfied that the trial court was right in coming to the conclusion that even if the property belonged to the Appellant's mother, her failure to implead her brOrs. who would inherit the property along with her makes the suit incompetent.

That was in connection with a suit where the CPC applied squarely. That case does not help the Appellant. Further the power of attorney authorised the Plaintiff to sue on behalf of all owners.

6. The learned Counsel for the Appellant in this connection also urges that the exhibits, namely, the power of attorney, the Birth Certificate and the Circular Exhibits-XII and XIII have not been properly proved as required under the Evidence Act. This aspect of the matter can be looked at/examined from two angles:

(1) That even when the Evidence Act is applied in toto, in such a situation also the mode of proof of a document can not be agitated to in the Appellate Court if the party fails to object regarding the mode of proof of a document before the Trial Court. That was not done in the instant case and in that view of the matter at this stage that objection can not be taken up.

(ii) Rule 59 of the Rule of the Arunachal Pradesh Code, Volume-1, lays down as follows:

59. The Deputy Commissioner, Assistant Commissioner shall in all criminal cases and Civil suits be guided by the general principles of the Indian Evidence Act, 1872.

7. That rule itself provides that the Court shall be guided by the general Principle of the Evidence Act. The Evidence Act in toto does not apply. No doubt by

throwing to the winds the Evidence Act in its entirety an absurd procedure can not be adopted. But that was not been done in instant case. So this objection also falls through. No order points have been urged.

8. Regarding the age the Trial Court rightly relied on the certificate issued by the Head Master and did not place any reliance on the oral evidence and he came to the finding that the age of the seller was about 10 years and he had no right to sell. The Indian Majority Act no doubt does not apply to Arunachal Pradesh. But even the Arunachal Pradesh Government has fixed the minimum age of the entry to the Government Service is 18 years. So mat must be considered to be the age of majority. Be that as it may as has been deposed by various witnesses a child or young boy does not have the right to sale the joint family property. The joint family property can be sold only by the eldest member of the family. That being the position mere is no merit in this appeal and the same shall stand dismissed.

9. I leave the parties to bear their own costs.