

(2001) 08 GAU CK 0038
In the Gauhati High Court
Case No : Civil Revision No. 34 (SH) of 2000

Jokin Kurkalang Kseh

APPELLANT

Vs

Governing Body, Upper Shillong College

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2001) 08 GAU CK 0038

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : S.R. Sen and P.D.B. Baruah, for the Appellant; S. Sen and N.D. Chullai, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—I have heard Mr. S.R. Sen, learned senior counsel assisted by Mrs. P.D.B. Baruah, learned counsel for the petitioner, Mr. S. Sen, learned counsel for the respondent Nos. 1, 2 and 3 and Mr. H.D. Chullai learned Govt. Advocate, Meghalaya for the respondent No, 4.

2. This Revision is directed against the judgment and order dated 3.7.2000 passed by the learned Addl. Deputy Commissioner, Shillong allowing Misc. Civil Appeal No. 2(T) 2000. The learned Addl. Deputy Commissioner thereby set aside the order dated 11.5.2000 passed by the learned Assistant to the Deputy Commissioner in Misc. Case No. 43(T)2000 arising out of TS No. 18(T)2000 granting ex parte temporary injunction in favour of the plaintiff/petitioner (the petitioner in the instant revision petition).

3. In this revision petition, the petitioner Jokin Kurkalang Kseh states, inter alia, that his clan Kurkalang Kseh is owner of a large tract of land in and around Shillong. The suit land falls within the Mylliem Syiemship but outside the Shillong-Municipal area. The suit land was owned by the predecessor-in-interest of his clan, the last being his mother Ka Irmial Kurkalang Kseh. She gifted the suit land

to him by a Gift Deed dated 5.3.1986. Ever since he has been possessing the same. In 1991, the Forest Department refused him permission to cut down some trees standing thereon. He then filed a petition before the Deputy Commissioner to declare his right and title thereof. The Deputy Commissioner, however, asserted that the suit land belongs to the Government of Meghalaya by his order No. L. 14/9(13)91(11) dated 28.6.1991. He then instituted TS No. 38(T)/1991 in the court of Assistant to Deputy Commissioner Shillong, for declaration of his right, title and possession over the suit land against the State of Meghalaya Deputy Commissioner, East Khasi Hills, Shillong and Forest Department. TS No. 38(T)/1991 is still pending and in the meantime, on 3.5.2000 a news item appeared in the local daily, "Shilloog Times", that the foundation stone laying ceremony of the building to be constructed on the suit land for the Upper Shillong College would be held on 13.5.2000, This, according to the petitioner/plaintiff, had given rise to an entirely fresh cause of action, and since, in TS No. 38(T)/1991 the Upper Shillong College was not a party, he instituted TS No. 18(T)/2000 impleading the Governing Body of the Upper Shillong Law College as the main defendant and Chief Secretary, Government of Meghalaya and Deputy Commissioner. East Khasi Hills, Shillong, as pro forma defendants praying for declaration of his ownership over the suit land and also for permanent injunction,

4. Praying for temporary injunction to restrain opposite party/Governing body of the Upper Shillong College from entering into the suit and and also from holding any foundation stone laying ceremony there, the plaintiff/petitioner filed Misc. Case No.43(T)2000 arising out of TS No. 18(T)2000. The learned-Assistant to the Deputy Commissioner granted ex parte temporary injunction as prayed for and ordered issuance of notice to the opposite party to show cause why the ex parte injunction should not be made absolute by his order dated 11.5.2000.

5. Being aggrieved by this order dated 11.5.2000, the opposite party preferred Misc. Civil Appeal No. 2(T) 2000, the learned Addl. Deputy Commissioner, East Khasi Hills. Shillong, by an interim order dated 12.5.2000 stayed the operation of the impugned order dated 11.5.2000 pending disposal of the appeal.

6. The plaintiff/petitioner filed civil revision No. 18(BH)2000, and this Court by an order dated 18.5.2000 (Annexure III to the instant civil revision) directed the learned Addl. Deputy Commissioner to dispose of the Misc. Civil Appeal No. 2(T)2000 expeditiously and till such disposal, directed the parties to maintain status quo as on 17.5.2000.

7. Pursuant to the above order of this Court, the learned Addl. Deputy Commissioner disposed of the Misc. Civil Appeal No. 2(T)2000 by his judgment and order dated 3.7.2000 (Annexure IV to the instant revision). Learned Addl. Deputy Commissioner allowed the appeal and set aside the order dated 11.5.2000 passed by the learned Assistant to the Deputy Commissioner in Misc. Case No. 43(T) 2000 granting ex parte injunction restraining the opposite party/ the Governing Body of Upper Shillong College from entering into the suit land and also from holding any foundation stone laying ceremony there. It is now

submitted at the Bar that as the order dated 11.5.2000 was stayed by the learned Addl. Deputy Commissioner by his interim order dated 12.5.2000, the foundation stone laying ceremony was field on 13.5.2000 as scheduled.

8. Being aggrieved by the above mentioned judgment and order dated 3.7.2000, the plaintiff/petitioner has come up before this Court in the instant civil revision.

9. In the instant revision, plaintiff/petitioner states that during the pendency of TS No. 38(T)1991 the Government Illegally executed a lease agreement dated 3.11.1999 in favour of the respondent No. 3 Secretary, Governing Body of the Upper Shillong College, who taking advantage of such lease tried to grab the suit land. In order to show his possession over the suit land, the plaintiff/petitioner states that on 15.5.1993, SDO PWD (Roads), wrote (Annexure VII-A) to him whether he was agreeable to part with a portion of the suit land for emanation of the width of the a PWD road and on 17.5.1993, and he gifted a portion to the PWD vide Annexure VIII-A; and that in 1997 and 1998, the Khasi Students" Union applied to the plaintiff/petitioner for allotting a portion of the suit land to them.

10. An affidavit-in-opposition has been filed on behalf of the opposite party/ Governing Body of the Upper Shillong College. It is stated therein that the land comprising the suit land originally belonged to Heath Convalescent Home Association. Calcutta, known as "Pyrdia Estate". The Government of Assam then purchased the said estate vide sale deed dated 27.6.1950 (Annexure IV to the affidavit-in-opposition) and consequent on creation of the State of Meghalaya comprising the erstwhile Khasi Hills and Garo Hills District of Assam, the said estate comprising the suit land vested in the Government of Meghalaya. The Government of Meghalaya leased out the suit land to the Upper Shillong College vide lease agreement dated 3.11.1999 (Annexure III to the affidavit-in-opposition). The same day, Additional Deputy Commissioner, East Khasi Hills, Shillong, handed over and Secretary of the Governing Body of the College took over possession of the suit land vide certificate dated 3.11.1999 (Annexure II to the affidavit-in-opposition).

11. The learned trial court granted temporary injunction by the order dated 11.5.2000 passed ex parte. On appeal, the learned appellate court heard the parties at length, held that no injunction need granted and allowed the appeal by setting aside the ex parte order dated 11.5.2000 passed by the learned trial court by a reasoned order dated 3.7.2000 impugned in the instant civil revision. The learned appellate court held that, "since the appellant received lease from the Government on 3.11.1999 and since then they took possession, the balance of convenience and injury or loss is not in favour of the respondentseven though whether assuming that there is a prima facie case, since the possession of the said land is in the hands of the appellant, the balance of convenience and irreparable loss or injury is in favour of the appellant. In the absence of any of these three golden principles the interim injunction cannot be passed". The learned appellate court also observed, "as both sides prayed for calling the case

records of TS No. 38(T)1991 and Misc. Case No. 95(T) 1991 from the Assistant to the Deputy Commissioner, I have called the same. On perusal of the same I found that the said TS and Misc. cases are in respect of the same disputed land". The learned appellate court farther found, "that the lower court by its order dated 6.5.1998 have vacated the injunction order passed vide order dated 20.7.1992 in favour of the Government on many grounds. One of the grounds is the admission of the plaintiff-respondent in para 18 of the plaint about occupation of the suit land by the Government Department and the erection of boundary fencing as such by them". The above mentioned order dated 5.5.1998 was passed in Misc. Case No. 95 (T)91 and the plaintiff-respondent referred to above is the petitioner in the instant revision. Learned counsel for the appellant contends that the above mentioned admission demolishes the plaintiff/petitioner's case that he has been in uninterrupted possession of the suit land ever since the same was given to him by a Gift Deed dated 5.3.1986:

12. On perusal of the impugned judgment and order dated 3.7.2000, I find that the learned appellate court is not satisfied that the respondent/plaintiff has a prima facie case to go to trial. Even assuming, that a prima facie case has been made out, it does not follow that an injunction must issue. The learned appellate court has duly considered the question of irreparable injury and balance of convenience and also the question of public interest (the suit land having been leased out by the Government to the appellant for. an important public purpose of Imparting education by establishing the College), and rightly set aside the order dated 11.5.2000 passed by the learned Assistant to the Deputy Commissioner in Misc. Case No. 43(T)2000 granting ex parte temporary injunction restraining the opposite party/appellant from entering into the suit land and from holding any foundation stone laying ceremony there. Admittedly, the foundation stone laying ceremony was already held on 13.5.2000 as scheduled and thus, this part of the injunction has become infructuous.

13. In view of what has been stated above, I consider that there is no sufficient ground for interfering with the impugned order dated 3.7.2000 passed by the learned appellate court. This civil revision stands dismissed.

14. In the facts and circumstances, the parties are left to bear their own costs.