

(1994) 03 GAU CK 0025

In the Gauhati High Court

Case No : Civil Revision No. 5 (SH) /87/No. 253 of 1987

K.A. Maria Kyndait

APPELLANT

Vs

K.A. Mon Kyndait

RESPONDENT

Date of Decision : 11-03-1994

Acts Referred:

Assam High Court (Jurisdiction Over District Courts) Order, 1954 — Order 6
Caste Disabilities Removal Act, 1850 — Section 1

Citation : (1995) 1 GLR 4

Hon'ble Judges : S.B. Roy, J;M. Sharma, J

Bench : Division Bench

Advocate : K.S. Kynging and ODV Ladia, for the Appellant; B. Lamare and W. Diengdoh, for the Respondent

Final Decision : Dismissed

Judgement

M. Sharma, J.—This civil revision under Order 6 of the Assam High Court (Jurisdiction over District Council Courts) Order, 1954 has been preferred by the Plaintiff Petitioner against the judgment and order dated 6.5.87 passed by the learned Judge of the District Council Court, Jowai in TC Appeal No. 8 of 1986 by which appeal was dismissed confirming the judgment in TS No. 6/79 instituted before the Subordinate District Council Court, Jowai.

2. Revision Petitioner filed the Title Suit being Title Suit No. 6/79 as Plaintiff claiming her right, title and interest over the suit land as the Ka Khadduh, inheritor of the ancestral property according to custom. The subject matter of the case involves a strategic question of customary law regarding inheritance in context to the large scale conversion to Christianity by the traditional, custom based society of the Khasis and Jaintias.

3. The claim of the Plaintiff Petitioner is that she is the Ka Khadduh, (youngest daughter) heir and successor to al" the properties left by her mother, deceased daughter and deceased brothers, that the properties had been all along under her possession by cultivation on 21 (twenty one) plots of land including the

house, pine grove and garden at Suber Kmal Shnong. The genealogical line of the Petitioner Plaintiff and the opposite party Defendant is like this - Late Ka Dhon Kyndait was the grand mother of the family and had two daughters late Ka Phan Kyndait and Late Ka Mi Kyndait. Late Ka Phan Kyndait had sons and daughters, namely, late U. Manik, Ka mon Kyndait(Defendant), late U. Lian, Ka Maria Kyndait (Plaintiff), late U. Rin Kyndait and late U. Orin Kyndait.

Late Ka Mi Kyndait, the younger sister of late Ka Phan Kyndait had two sons, namely, U. Bidon and U. Niel. The house of Ka Mi Kyndait became extinct.

4. The genealogical tree of this case is like this:

5. Ka Mi Kyndait, during her lifetime and after her death, had five (5) plots of raj land at Wah Pammynkhnang in Elaka Jowai. After her death her sister Ka Phan Kyndait handed over the same to Late Ka Phrin Kyndait daughter of Plaintiff alongwith six (6) plots of land and the same had been mutated in the name of Late Ka Phrin Kyndait who had also another land called Ryingker. Late U. Rin Kyndait had seven (7) plots of raj land (Govt. land); 3 plots at Mynsder, I at Ladka Muphland and 3 at Wah Pammynkhang, and Late U. Orin had one plot of land called Wahlam

6. Late Ka Phrin Kyndait (daughter of the Plaintiff Petitioner) who died in June, 1976 had the suit land in her possession during her lifetime and she was living with her grand mother Late Ka Phan Kyndait. After Ka Phrin's death (predeceased Ka Phan) all her hali (low land which are terraced and permanently cultivated with the help of rain water or by irrigation) lands had been in possession and cultivation of Late Ka Phan till her death in 1976. After the death of Ka Phan Kyndait Plaintiff reported to the Dolloi, Jowai (Headman of the Elaka) about missing of the pattas on 18.10.76 and to the Revenue Officer, Jaintia Hills Autonomous District Council on 25.10.76 and raised objection for transfer of those pattas and mutation in favour of the Defendant-Respondent. The Revenue Officer directed the Petitioner Plaintiff to approach the competent court and accordingly suit was filed before the subordinate District Council Court Jowai.

7. The Petitioner Plaintiff instituted the said declaratory suit in respect of the said 21 (twenty one) plots of land, including house, pine groves and garden at Suber Kmai Shnong, left by her mother, sisters and brothers as the Khadduh (youngest daughter in the family) and on her heir succession to the suit property.

8. Defence version of the opposite party Defendant is that some properties in the suit belong to their mother Ka Phan Kyndait, but the paddy fields covered by patta No. 983, 984 and 985 standing in the name of the Ka Mi Kyndait was sold to the opposite party Defendant outright by her son U. Niel Kyndait after his mother's death. Defence's resistance of the suit was on the ground that Petitioner Plaintiff after her second marriage converted to Christianity and left the house of her mother and the village and lived separately with her husband and never looked after her mother or her maternal uncles and her own daughter K Phrin Kyndait whom she got from first marriage. But the opposite party looked

after them under the non Christian rites and ceremonies and that under the custom the Ka Khadduh who changed the religion can not claim the "Iungblai" (house of God), i.e. the house where all religious ceremonies of the male and female members of the family were performed. Further stand of the opposite party is that, when Petitioner left the house then her daughter Ka Phrin Kyndait was a minor of 8/9 years who stayed with her grandmother and the opposite party, and her daughter did not convert to Christianity and preferred to live with her grand mother and predeceased her grand mother and cremation ceremonies were performed at the "Iungblai" by the opposite party and she also performed all the religious rites from this house. It is alleged that after her 2nd marriage and conversion to Christianity Petitioner never visited her mother's place and only after 40 years she claimed the family property and filed the suit. Petitioner being ousted from the family on her relinquishment of the family responsibility and the family faith other members of the family had given the Khadduahship to the Defendant, the elder sister of the Petitioner, who performed all the rituals and has been managing the property under the custom. As under the custom right to inherit the ancestral property is also connected with the right to keep the "Iungblai" In Chapter-V of Sir Keith Cantlie's Notes on Khasi Law, loss of right of inheritance has been discussed and the grounds for loss of the right to inheritance has been quoted below:

Misconduct. A mother may consider a child to be disobedient and undutiful or of defective moral character, if she divides her property during her lifetime, she may give no share to this child. Even among the Wars, where equal division is the rule, a child can be so deprived.

On death of a parent, the uncles and aunts may consider that a child has behaved so badly that it is unfit to inherit.

The child is not allowed to take part in the cremation ceremony and is deprived of its inheritance.

If Ka Khadduh is considered unfit for management of the family property, an elder daughter may be made the keeper of the iing-khadduh and heir of the property.

If a Ka Khadduh goes to live in a distant place from where she cannot or does not come to perform ceremonies, the family can choose another.

If Ka Khadduh of a seng leaves the village in which the family seng tend is situated and goes to live in a neighbouring village the kurs can choose another as Ka Khadduh.

There is a ceremony of expulsion and deprivation of rights. This is ai-khawduh (to give the last share of rice). Another form is khi-lai-nuid (to shave). The grave step of a ceremony is rare and is not essential for depriving of the property.

In cases of disputes, the courts would have to decide whether the deprivation was bona fide. In a case of deprivation by kurs after death of a parent the most

important point for enquiry by a court is whether the family as a whole desired it, there is no case known to serve as a guide how a court should decide on the facts and merits. "(underline supplemented).

It is relevant to note that Ka Phan, daughter of the Plaintiff predeceased her grand mother who was the head and owner of the family property and that the Respondent No. 1 remained as the only heir in the matrilineal succession.

9. The decision of the courts below, after proper appreciation of materials on record, are found to be very much elaborate both on facts and customary law. Facts as emerged from the evidence on record show that the Petitioner left mother's place after her marriage and conversion to Christianity. Apparently she did not perform any ceremonial religious rites of the family being a Christian. Being a tribe of conservative traditional belief who even after a long test of time occasioned due to large scale conversion to Christianity, hold in honour the old custom of inheritance as good old custom and refuse to deviate from the very essence of the customary law inspite of undergoing tremendous evolution and modern views and general mentality of the younger generation. Even a Christian Khasi or Jaintia, following the customary law, leaves his "kur"s house and lives in the house of the wife. The old custom under this matrilineal system still prevails upon, that the youngest daughter, who inherits the property, inherits it under an obligation, and this obligation is that she must look after the family, deal and bear all religious expenses of the family, out of her own pocket, for which reason ancestral and family property is kept aside for the expenses under the custody of the Ka Khadduh.

10. The customs were reviewed in the Nongtalang case Ka Perimai and Ors. v. Ka Kat U. Jhon and Ors. decided on appeal by the Deputy Commissioner on 24.7.1914 wherein the views was taken that it is fair that if the youngest daughter cannot fulfil those obligations, by reason of her (youngest daughter's) embracing the Christian faith, some one else who takes up those duties should come in for the ancestral property as a remuneration. In Sir Keith Cantlie's Notes on Khasi Law (p.60) it is quoted from Colonel Gurdon's Monograph at page 83 : "in the event of the youngest daughter changing her religion she loses her position in the family and is succeeded by her next youngest sister as in the case of a death".

11. Evidence on record shows that except the Petitioner all other members of her matrilineal family are non Christian conservative Jaintia tribe. She was out-casted due to her conversion and for her non performance of her duty as Khadduh of the family. Therefore her family conferred Khadduhship to the opposite party, her elder sister. However, customary matrilineal inheritance has been passing through a changing time and has stood the test of time. Mow the admitted position is that conversion to Christianity have been permitted to inherit ancestral property due to amicable understanding among the family members. But the reverse aspect of the situation is that when non Christian members of the family form a majority, such arrangement may be non workable. In that case

choice of non Christian Khadduh is the normal way. In Civil (political) Appeal 7/1926 the youngest daughter on her mother's death inherited the property and thereafter embraced Christianity. Court deprived her from her "iing-khadduh" with ancestral property but gave share of the other property. The settled position of law is that Act XXI of 1850 (Freedom of Religion Act, 1850) has not been extended by the British Ruler to change the trauma and philosophy of the long honoured customary law of succession of a non Christian female to the iing-khadduh and to the special rights and obligations of that position which raised difficulties for its nature of succession.

12. The Petitioner converted to Christianity during the life time of her mother and left the mother's place, and there was no distribution of the property by the mother in her lifetime, In that case the entire non Christian family members who were in majority, ousted the Petitioner as Khudduh. But this oustation cannot deprive the converttee from her share in other properties other than iing-khadduh, particularly when the property is agricultural land belong to the clan, Ancestral property relating to iing-khadduh is absolutely a property meant for religious purposes to which a converttee Ka Khadduh has no right. The Ri Sand (land) is given to the youngest female (Ka Khadduh) because she maintains the religion and keep the bones of the dead family members.

13. In the instant case, as discussed above, the Petitioner cannot claim her share in the iing-khadduh as she has lost her khadduhship after her, conversion. Other properties, claimed by her, as the courts below concurrently found after appreciation of evidence on record, that the properties under Patta No. 983, 984 and 985 are personal properties of the opposite party who became the owner of the same by purchase. It is on evidence on record that Late Ka Phan Kyndait handed over 5 plots of land in Ka Phrin, daughter of the Petitioner (grand daughter of Ka Phan) and those plots were mutated to Late Ka Phrin. Courts below found that only 5 plots of land were given to Petitioner who predeceased her mother which was mutated in her name. Over those 5 plots of land standing in the name of Late Ka Phrin, the Defendant did not stake any claim. It is on record that the daughter of the Petitioner had a daughter who is staying with Petitioner and in that case the property of Ka Phrin shall go to the child. The property over which the Petitioner as Plaintiff staked her claim includes iing-khadduh and the land in Patta No, 983, 984 and 985 belong to Defendant opposite party by right of purchase and remaining the plots in the name of Late Ka Phria will devolve with her daughter. But if any agricultural land of the clan has been left under the possession of the Defendant opposite party Petitioner has right to share the agricultural property alongwith other family members of her mother side as conversion to Christianity cannot deprive a member of the matrilineal successor to cultivate the agricultural land of the clan.

14. In an unreported case Misc appeal (second) No. 1 (H)/1956 disposed of on 3.5.56 Ka Ngiep Myrboh v. Ka Ingie Myrboh and Ors. this Court while deciding a case of change of religion held - conversion to other faith cannot forfeit a

converttee to cultivate the agricultural land of the clan to which he belongs, u/s 1 of the Caste Removal Disability Act, 1850 (Act 21 of 1850). But as discussed above this is applicable to agricultural property of the clan but cannot be applicable to iing-khadduh property, the essence of which relates to customary religious rituals, which is still followed after much controversy and disputes since inception of the Acts and in which the British Rulers preferred the policy of "quieta non movera" and to leave the question of ancestral property alone.

15. In view of my above discussion we find no points to interfere with the findings of the courts below.

16. In the result the petition is dismissed. No costs.