
(1992) 08 GAU CK 0001
In the Gauhati High Court
Case No : MA (S) No. 2 (SH) of 1983

K.A. Mariaming Mawri and Another	Vs	APPELLANT
K.A. Siem Mawri and Leitkor Myllem Syiemship		RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1993) 2 GLR 265

Hon'ble Judges : S.N. Phukan, J;S.K. Hom Choudhury, J

Bench : Division Bench

Advocate : B.M. Mahanta, for the Appellant; M.Y. Ciddiki, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—This appeal is directed against the judgment and decree of the learned Judge, District Council Court, Jowai, in T.C. Appeal No. 9/79. By the said judgment the learned lower appellate Court reversed the judgment and decree passed by the learned Additional Subordinate District Council Court, Myllem Syiemship in T.S. No. 6/62. It may be stated that this appeal was transferred from the learned Judge, District Council Court, Shillong, to the Court of the learned Judge, Jaintia Hills District Council Court, Jowai, due to inability of the learned Judge, District Council Court, Shillong to hear the appeal, vide order passed by this Court on 26.11.79 in Civil Reference No. 2 (SH)/79. The learned trial Court decreed the suit. But the learned lower appellate Court reversed the said decree. The present appeal has been filed under Clause 3 of the Assam High Court (Jurisdiction over District Council Courts) Order, 1954.

2. The present dispute relates to two plots of land known as Ka Langkyrding and Ka Bhuin situated within Myllem Syiemship. According to the Plaintiffs these two plots of land are clan land duly registered with Myllem Syiemship in the name of the representatives of the clan. It has also been stated by the Plaintiffs that from time immemorial the members of the clans have been in peaceful possession. But recently the Defendant has sold some portions of the land and has also

issued patta (lease) to different persons without the knowledge and agreement of the Plaintiffs. The Defendant has claimed herself as Ka Khadduh i.e. the youngest daughter. According to the Plaintiffs the Defendant knowing fully well that the above two plots of land being ancestral property cannot be sold, transferred or leased out without the knowledge and consent of the clan members has acted as stated above. It has also been pleaded that the Defendant alone has no right to be the sole owner of the ancestral property and she is only custodian of all ancestral property. A proceeding was initiated u/s 145 Code of Criminal Procedure. The Plaintiff's have prayed for decree that the Defendant shall not sell, issue patta or transfer in any way and exercise the right of ownership alone over the two plots of land without the knowledge and consent of the Plaintiffs.

3. The suit is contested by the Defendant by filing written statement and it has been pleaded that both the plots of land are under the possession and ownership of the Defendant being iing Khadduh Mawri (Laitkor clan) i.e. youngest daughter of the house since the time of her great grand mother. It has also been stated that the land known as Langkyrding is from the womb (kpoh) of the Defendant and the land known as Bhuin is the ancestral property which is under possession, care and management of Ka iing Khadduh (youngest daughter of the house) over since from the great grand mother till the present Defendant. It has also been stated that the Defendant and her mother used to manage both the plots of land, issued pattas to both khasis and non khasis without any objection from any quarter and to persons to whom the land has been given are possessing the same by constructing house and cultivating without any objection. It has been further alleged that under the influence of one rich man who got married in the family of the Plaintiffs, some members of the clan created trouble in respect of the various plots of land sold to professor Rawat and others and therefore the above proceedings u/s 145 Code of Criminal Procedure was drawn up. It has also been urged that the object of the Plaintiffs in filing the suit is to take illegal possession of both the plots of land. In view of the fact that the action of the Defendant and her late mother in alienating the land was never objected to and as such the suit is barred by the principles of estoppel, waiver and acquiescence.

4. On the pleadings the following issues were framed.

- (1) Whether the suit can be entertained without making the patta holders as party?
- (2) Whether the disputed suit lands of Langkyrding and Bhuin are the clan's land of both the Plaintiffs and the Defendant or only of the womb of the Defendant?
- (3) Whether the Defendants can sell or issue patta of the above lands without the consent of the clans?
- (4) Whether the suit can proceed without claiming possession?
- (5) What other reliefs the parties are entitled to?

5. Before the learned trial court the Plaintiffs examined as many as 9 witnesses and the Defendant examined 7 witnesses. Registration of the two plots of land was duly proved and marked as Exhibits 1 and 2.

6. The learned trial court after considering Exhibits 1 and 2 held that the plot of land known as Langkyrding was first acquired and thereafter the other plots of land known as Bhuin 4 or 6 generations before and 3 or 4 generations before respectively. Regarding issue No. 2, the learned trial court noted that no document was produced by the Defendant to show that the plots of land belonged to her womb and used to possess. On the basis of the evidence adduced by the Plaintiffs the learned trial court held that the Plaintiffs proved that both the plots of land were in possession of Mawri clan and they used to collect subscription from all clan members for clearing fire line, boundary pillar etc. on both plots of land. The learned trial court also noted that there was an admission on the part of some witnesses of the Defendant that at the time of burning the forest of both the disputed plots, subscriptions were collected from all clan members as alleged by the Plaintiffs. Regarding issue Nos. 1 and 3 the learned Court held that the suit can proceed inasmuch as the prayer is against the Defendant alone restraining her from selling or issuing pattas. In respect of issue Nos. 4 and 5 on the basis of the earlier finding that both the plots of land are clan land and are in possession of the Defendant and other members of the clan, the Court decided these two issues in favour of the Plaintiff. Finally the Court held that the disputed plots of land belonged to the clan of Mawri Mawshai and though the Defendant was the youngest daughter she cannot sell or issue patta in respect of both the plots of land without the consent of the clan as a whole. The Court refused to disturb or take away the land settled with other persons before filing of the suit.

7. The learned lower appellate court on the basis of the evidence held that the Defendant is an ostensible owner of the suit land. The Court also noted that there was no objection while settling some of the lands by the Defendant from other members of the clan. Finally the learned lower appellate Court held that the Defendant has been able to prove that the land known as Langkyrding is a private land of the Defendant which the Mawri clan gave to her ancestor Ka Jatiew. The land known as Bhuin is the ancestral property of all members of the clan of Mawri Mawshai under the management of the Defendant as she is the youngest daughter of the family. On the above findings the appeal was allowed by setting aside the judgment and decree of the trial Court.

8. In this appeal we have to consider and decide the following points:

- (i) Whether both the plots of land were ancestral property?
- (ii) The customary law of inheritance as the parties belong to Khusi community and they are governed by the customary law;
- (iii) The rights, duties and powers of Ka Khadduh; and

(iv) In case if it is decided that both the plots of land were ancestral property and Defendant was the Ka Khadduh of the clan whether she has got power to sell, lease or alienate the property by herself alone without the authority and consent of oilier clan members.

9. Notes on Khasi Law by Sri Keith Cantlie is an authority regarding customary law of the Khasis and this authority has also been referred to by the Apex Court. Part I of the reprinted addition contains inheritance among the members of the Scheduled Tribes known as Khasis and Syntengs. In the present appeal we are only concerned with the law of inheritance among the Khasis. Chapter II deals with inheritance of ancestral property amongst Khasis. According to this Chapter the order of succession of ancestral property among Khasis is same as inheritance among Khasis contained in Chapter I. The Khasi Society is matirechal and descent is reckoned from the mother alone and the children belong to the clan of mother and not to that of the father. The succession is in the following order:

1. Mother's youngest daughter.
2. Youngest daughter's youngest daughter however low soever.
3. On failure of the youngest daughter's stock, the next youngest daughter of the mother.
4. Her youngest daughter however low soever.
5. Failing all daughters and their female stocks, the iing-khadduh would be absorbed in the iing-khadduh of the mother's family.

10. In the case in hand it is not disputed that the Defendant is the iing-khadduh of the clan and the only grievance of the Plaintiffs, is that she is treating the ancestral property as if she is the absolute owner.

11. In Chapter IV of the said book, the learned author has described the nature of ownership of Ka Khadduh is the custodian of the family property, and not the full heir in the sense known to other systems of law, but a limited heir. She is also responsible for performance of religious ceremonies of the clan. But the actual management is in the hands of her brothers and uncles, and her father is to be consulted. She cannot sell family property without the knowledge and consent of the uncles and brothers. The learned author has referred to the position of Karta under the Hindu Law and has stated that reference to Karta has been made only to drive home the point that to call Ka Khadduh an owner would be an even greater mistake than to apply the term to the karta. At page 29 of the book the learned author has observed that because of the spread of Christianity a tendency has been observed among Christian to regard Ka Khadduh as having the unrestricted rights of an heir under the other systems of law and there would be great injustice to other members of the family if the Courts in any way favour this new idea. At the same page the learned author has observed that the main difficulty arises when there is a family land, unoccupied

but suitable for sale or lease as building sites, or valuable for its forest produce. The learned author has stated at the same page that among the Khasis the Council of the family ought to settle matters regarding the claim of other members in the clan property.

12. Situated thus we hold that the right and nature of ownership of Ka Khudduh is limited and she is only the custodian of the family property and not the full owner. We further hold that the actual management of the family property is done by the brothers and uncles of Ka Khadduh and her father is also consulted and she cannot sell family property without the knowledge and consent of the uncles and brothers of the clan.

13. Now the next question is whether both the plots of land known as Ka Langkyrding and Ka Bhuin are ancestral properties or not. We find that these properties were registered as ancestral property by Myllem Syiemship as far back as in 1876, vide Exhibits 1 and 2 wherein it was specifically stated that the above two plots of land were land of Mawri clan. We do not find any reason to reject these pieces of important evidence, more particularly as registration was done in the year 1876. On the basis of Exhibits 1 and 2 we can safely hold that both the plots of land were ancestral property of Mawri clan.

14. The witnesses for the Plaintiffs have also proved the above fact. Even the witnesses for the Defendant have also supported the case of the Plaintiffs. D.W. 1 has stated that at the time of burning of forest in the suit land people from Mawri clan used to take part. D.W. 2 who is a member of the Mawri clan has stated that the Plaintiffs and others cultivate the land. D.W. 3 has also stated that the land known as Ka langkyrding was burnt and at the time of burning, the members of the Mawri clan went together and also the case in respect of the land known as Ka Bhuin. Therefore, from the oral evidence it has also been proved that both the plots of land which are in dispute in the present proceeding are ancestral land not self acquired property of the Defendant. Therefore, the finding of the learned lower appellate court that the land known as Ka Langkyrding is a private land of the Defendant is based on no evidence and this finding is perverse and liable to be set aside which we hereby do. The learned lower appellate court has held that the plot of land known as Ka Bhuin is ancestral property and under the management of the Defendant as she is the youngest of the family i.e. Ka Khadduh. We agree with this finding as it is based on evidence on record.

15. Situated thus we hold that both the plots of land, namely, Ka Langkyrding and Ka Bhuin are ancestral land of Mawri Mawshai clan. We have already stated that it is not disputed that the Defendant is the Ka Khadduh. In view of the law regarding inheritance and the type of ownership of Ka Khadduh as held by us before, we hold that the Defendant Ka Khaddu is only custodian of the clan property including the two plots of land in question and not the full heir or owner. Her ownership is limited and she has to manage the plots of land on the basis of the knowledge and consent of her brothers and uncles. Therefore, she cannot sell, lease or alienate any part of both the plots of land without the consent of

her brothers and uncles. In other words she cannot treat the property of the clan including the above two plots of land as her own property.

16. The learned lower appellate court has held that the Defendant is an ostensible owner of the suit land. Such ostensible ownership is unknown in the Khasi Customary, Law in view of what has been stated above.

17. In the result, the appeal is allowed by setting aside the judgment and decree of the learned lower appellate court Judge District Council Court, Jaintia Hills District Council Court, Jowai, passed in T.C. Appeal No. 9/79 and judgment and decree passed by the Presiding Officer, Additional Subordinate District Council Court, Myllem Syiemship in T.S. No. 6/62 is restored. In other words, the suit of the Plaintiffs is deemed as prayed for. This judgment shall not disturb the persons who are already in possession of the suit land on the strength of the lease or patta etc. issued by the Defendant.