

(1996) 09 GAU CK 0040

In the Gauhati High Court

Case No : Civil Reven. No's. 395 of 1995 and 3 (SH) of 1996

Ka. Mathilda Kharmalki

APPELLANT

Vs

Ka. Sabina Nengrum

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Assam Administration of Justice and Police in the Khanshi and Jaintia Hills Rules, 1937
— Rule 36A
Civil Procedure Code, 1908 (CPC) — Section 115
Transfer of Property Act, 1882 — Section 106

Citation : AIR 1997 Guw 74

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : D. Majumdar, P.K. Roy, P.K. Barman and H.R. Nath, for the Appellant; H. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—This revision petition under Rule 36A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 arises from the judgment and order dated 6-2-1995 passed by the District Judge-cum-Additional Deputy Commissioner at Shillong, in Title Civil Appeal No. 2(T)/92 affirming the judgment and order dated 8-10-1991 passed by the learned Assistant to Deputy Commissioner, East Khasi Hills, Shillong in Title Suit No.27(T)/1984 decreeing the suit of the plaintiff, namely, Ka Sabina Mongrum, the respondent-opposite party herein and entitling her for a decree for eviction of the defendants including the defendant No. 7 i.e. the present petitioner herein from the suit house and out houses and also for arrear of rent, costs of the suit with certain interest thereon till the execution of the decree.

2. The facts of the case in a very short compass are as follows :

The plaintiff-respondent (Opposite Party No. 1 herein) instituted a suit for ejectment of the defendants from the the suit premises and for realisation of the

arrear rents from the defendants, initially from the defendants, Nos. 1 to 6. According to the plaintiff, Ka Sabina Mongrum, she is the grand daughter of Ka Therisia Mongrum, who according to the Khasi Customary Law inherited a plot of land at Mongpoh in which the two storied house and out-houses are standing thereon which are morefully described in the schedule of the plaint. A dispute arose about the ownership over the suit land between the plaintiff-Opposite party No. 1, herein and the Late Ka Barbara Belibon Kharmalki, wife of late U. Linus Nongrum, maternal uncle of the plaintiff which was later on decided by the Judge, East Khashi Hills District Council, Shillong in Title Civil Appeal No. 5 of 1977 affirming the right, title, ownership of the present plaintiff-opposite party No. 1 in respect of the suit land. The plaintiff went on to state that a Revision Petition was preferred by the defendants as against the said judgment of the Judge, East Khashi Hills District Council, Shillong passed in Title Civil Appeal No. 5 of 1977 under Civil Revision No. 12(H) 1978 before this Court. Later on, this Court upheld the judgment of the learned Judge, East Khashi Hills District Council passed in Title Civil Appeal No. 3 of 1977. The plaintiff went on to state that after his title over the suit land has been affirmed by the Highest Court of this State, the plaintiff contacted the defendants and asked them to pay the rent. However, the defendants Nos. 1 to 6 refused to pay rent to the plaintiff in spite of the fact that the suit premises belonged to the plaintiff. Lastly, the defendant No. 6 alone paid the rent of Rs. 100/- per month instead of Rs. 200/- for the month of February, March and April, 1984 and, thereafter the defendant No. 6 stopped payment of rent to them. As the defendants Nos. 1 to 6 did not pay the house rent to the plaintiff on the instigation of the defendant No. 7 (the present petitioner herein), the plaintiff filed the present suit. Defendant Nos. 1 to 6 filed their joint written statement and whereas the defendant No. 7 filed her written statement separately and contested the suit of the plaintiff respondent No. 1 contending, inter alia, that there is no cause of action for a suit; the suit is not maintainable; the suit suffers from mis-joinder and non-joinder of parties; and that the present petitioner (defendant No. 7) is the only daughter of Late Ka Barbara Belibon Kharmalki. The defendant No. 7 went on to State that her husband U. Wilfred Mashli, and herself possessed the suit premises through their tenants i.e. the defendants Nos. 1 to 6 and recently another new tenant up till now. The defendant No. 7, the petitioner herein went on to contend that she is the owner of the suit premises and that she rented the suit house to the defendant Nos. 1 to 6 but presently defendant Nos. 5 and 6 are still there but the defendants Nos. 1 to 4 left the suit premises.

3. On the pleadings of both the parties, learned Assistant to Deputy Commissioner, East Khashi Hills, Shillong, framed as many as 12 issues which are quoted below:

"1. Whether there is any cause of action in the suit filed by the plaintiff?

2. Whether the suit is maintainable in law?

3. Whether the suit is barred by res judicata?

4. Whether the suit is liable to be dismissed in limine for insufficient compliance with Order VII, Rule 3 of the CPC?
5. Whether the suit has been properly valued according to law?
6. Whether the plaintiff is the youngest daughter of late Ka Therisia Nongrum, the founder of the house and out houses at Nongpoh, G.S. Road?
7. Whether the right, title and possession of the parties has been decided by the Hon"ble High Court?
8. Whether the plaintiff has contacted the defendants to pay rents to the plaintiff and whether the defendant No. 6 paid the rents for the month of February, March and April, 1994?
9. Whether the defendants claim as tenants of Ka Barbara Belibon Kharmalki is tenable in law?
10. Whether the defendants are liable to be evicted from the suit houses under occupation?
11. What relief of reliefs the plaintiff is entitled and to what extent.
12. Whether the judgment and decision of the Court against the mother binds the daughter, who is the defendant No. 7?"

4. After hearing the parties, the learned Assistant to Deputy Commissioner decreed the suit of the plaintiff respondent (Opposite Party No. 1 herein). The defendants Nos. 1 to 6 did not prefer any appeal as against the judgment and decree of the learned Assistant to the Deputy Commissioner passed in Title Suit No. 27(T)1984. But the 7th defendant, namely, Ka, Mathylda Kharmalki preferred an appeal under Title Civil Appeal No. 2(T) 91 in the Court of the District Judge cum Additional D.C. at Shillong. The learned District Judge-cum-Additional Deputy Commissioner at Shillong also affirmed the judgment and decree of the learned Assistant to Deputy Commissioner East Khasi Hills District, Shillong passed in Title Suit No. 27(T)1984.

5. Being aggrieved by the impugned judgment and order passed by the learned First Appellate Court, the present petitioner filed this revision petition under Rule 36A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937.

6. Learned counsel for the petitioner submitted that the impugned judgment and order passed by the learned District Judge-cum-Additional Deputy Commissioner, Shillong is incompetent and without jurisdiction and, as such, the same is liable to be set aside. It is also contended by the learned counsel for the petitioner that the plaintiff Opposite Party No. 1 has neither pleaded nor prove the relationship of tenant and landlord/landlady between her and the defendant No. 7 i.e. the present petitioner, which is a pre-condition for getting an ejectment decree. It is also contended by the learned counsel for petitioner that in absence

of a notice u/s 106 of T.P. Act, the original suit filed by the plaintiff is not maintainable at all and there is also no material on record for invoking the provisions of Section 5 of the Meghalaya Urban Areas Rent Control Act, 1972 in the instant case.

7. In reply, Shri H. Ahmed, learned counsel for the respondent-opposite party No. 1 contended that the Meghalaya Urban Areas Rent Control Act, 1972 is not applicable in the instant case inasmuch as there is no notification issued by the State Government for extension of the Meghalaya Urban Areas Rent Control Act, 1972 in the District of Nongpoh. It is also an admitted fact that the present petitioner has also admitted the fact that the Meghalaya Urban Areas Rent Control Act, 1972 is not applicable in the instant case. Such statement of the petitioner finds its place in ground No. X of the present revision petition.

8. Now, the question for just determination of the real points of controversies between the parties is as to whether the original suit of the plaintiff (Opposite party No. I) is not maintainable in the absence of a notice u/s 106 of the T.P. Act. From the records it has been revealed that notices for ejectment has been duly served upon the respondents No. I to 6 as it is seen in the document marked as Exhibits-6, 7, 8, 9, 10 and 11 respectively. But no notice u/s 106 of T.P. Act was served upon the defendant No, 7 i.e. the present petitioner. From the records it has been revealed that the original suit was initially initiated/filed as against the Defendants Nos. 1 to 6 but the name of the defendant No, 7 (the present petitioner herein) was impleaded as Defendant No. 7 by virtue of an order dated 8-10-91 passed by the learned Assistant to Deputy Commissioner, Shillong in the said Title Suit No. 27 (T) 84.

9. In the present case in hand the present petitioner claimed herself as land lady in respect of the suit premises and she does not claim herself as tenant of the plaintiff (respondent/opposite party No. I herein) and, as such, no notice as required u/s 106 of the T. P. Act is necessary and, as such no question of notice arises where no tenancy is established or claimed by the present petitioner in the instant case. Therefore, the present petitioner cannot take the advantage of the plea that in the absence of notice u/s 106 T. P. Act, the original suit of the plaintiff is not maintainable. From the records it has been revealed that there is a concurrent finding of facts of both the learned Courts below that the present petitioner as the Defendant No. 7 is liable to be evicted from the suit premises.

10. It is well settled that under Rule 36A of the Rules for the Administration of Justice and Police in the Khashi and Jaintia Hills, 1937, the High Court has very wide powers in the matter of revision and it can go into the facts like an Appellate Court. This principle of law has been laid down by the Full Bench of the Assam and Nagaland High Court in a case between Ka Idis Mary Khar Kongor v. Ka Theirit Lyngdoh, reported in AIR 1969 92.

11. I am of the view that both the learned Courts below appreciated the evidence on record and rightly come to the conclusion of the case, in other words, the

findings of the learned Courts below are based on proper appreciation of evidence on records and submission of the parties and, as such, such concurrent finding of facts of both the Courts below cannot be interfered with by this Court in exercise of its powers conferred upon this Court under Rule 36A of the Rules for the Administration of Justice and Police in the Khashi and Jaintia Hills, 1937. Thus, no case has been made out by the present petitioner to justify the interference with the impugned judgment and order passed by the learned District Judge-cum-Additional Deputy Commissioner, Shillong passed in Title Civil Appeal No. 2 (T) 1991 in exercise of Revisional jurisdiction.

12. I am, therefore, satisfied that the present petitioner has failed to make out a case that the learned Courts below acted illegally or with material irregularity/ illegality in exercise of their jurisdiction while passing the impugned judgments and decrees and in arriving the decisions of the case on merits. Therefore, there is no justifiable grounds to interfere with the impugned judgment and decree passed by the learned District Judge-cum-Additional Deputy Commissioner at Shillong in Title Civil Appeal No. 2(T)/92.

In the result, this revision petition has no merit and stands dismissed. No costs.