

(1950) 05 GAU CK 0009
In the Gauhati High Court
Case No : Civil Revision No. 16 (h) of 1950

Ka Shanamai Jaid Siem and Another	Vs	APPELLANT
Ka Presimai Jaid Siem and Another		RESPONDENT

Date of Decision : 19-05-1950

Acts Referred:

Citation : AIR 1951 Guw 92

Hon'ble Judges : T.V. Thadani, C.J

Bench : Single Bench

Advocate : R. Goswami, for the Appellant; K.R. Barooah, (Amicus Curiae), for the Respondent

Judgement

Thadani, C.J.—In this case, Mr. Baruah very kindly volunteered to act as "amicus curiae" to argue the question of limitation. The point arose in this way. The Ct of Federation decided this matter on 19-11-49; ordinarily an appeal lies from the appellate decision of the D.C. under Rule 26 of the Rules framed for the administration of justice in the Khasi & Jaintia Hills within 60 days exclusive of the time taken for obtaining copies.

2. Mr. Goswami for the petnrs argued that in this case, no appeal lay as the matter involved questions of customary laws. Mr. Barooah conceded this position, but he stated that the period prescribed, namely 60 days, for preferring an appeal from the decision of the Ct of Federation should be taken as the period for preferring a revn appln.

3. The difficulty in giving effect to this contention is that under Rule 27 which provides for a revn appln, no period of limitation is prescribed. The present revn appln was filed a few days only after the expiry of the period of 60 days. As there is no period prescribed for a revn appln by Rule 27 or any other law I do not propose to treat the revn appln as time-barred. The question whether a revn appln would be entertained when it is preferred after such delay as would disentitle a petnr to be heard, will be decided when the question of such delay

arises.

4. The simple question then arises whether I can interfere in revn against the decision of the Ct of Federation in a matter which involves questions of customary law. In order to appreciate the position, it is necessary to set out a few facts. The pltf's brought a suit in the Ct of the Bakhraws for a declaration of their title to and possession of certain property which has been found to be ancestral property. The Ct of Bakhraws gave a decree to the pltf's, Ka Klerimai & Ka Presimai Jaid Siem, awarding them a part of the ancestral property. Against the decision of the Bakhraws made on 27-6-46, Ka Shanamai Jaid Siem & Ka Risimai Jai Siem preferred an appeal to the Siem of Khyrim on 7-9-46. During the pendency of the appeal in the Ct of the Siem of Khyrim, the defts made an appln to the Ct of Bakhraws asking that Ct to review its judgment dated 27-6-46. The Ct of Bakhraws allowed this review appln by their judgment, dated 4-12-1946. But when the Siem of Khyrim heard the appeal against the decision of the Bakhraws made on 27-6-46, not only did he affirm the judgment & decree of the Ct of the Bakhraws, dated 27-6-1946, by his judgment, dated 18-10-1948, but also commented adversely on the order of the Ct ,of the Bakhraws, dated 4-12-1946, by which it had reviewed its own judgment passed on 27-6-1946.

5. Against the decision of the Ct of Siem, dated 18-10-1948, the defts preferred an appeal to the Ct of Federation which affirmed the decision of the Siem of Khyrim, dated 18-10-48

6. I propose to dispose of this revn appln in the light of Rule 26. Under Rule 26 of the Rules framed for the administration of justice in the Khasi & Jaintia Hills, no appeal lies in matters involving questions of customary laws. In this case, the Cts below have held that the pltf's were entitled to a part of the land in the possession of the defts on the ground that the property was ancestral property. Their decision is based upon the fact that there is a custom amongst the Khasis that where the property is ancestral, the near relations of the deceased are entitled to a part of it. Mr. Goswami has, however, contended that in revn, the H.C. can, as a matter of law, examine the question--firstly, of the existence of the custom, & secondly, of its validity. In my opinion, the contention is against the spirit of Rule 26, which debars an appeal in matters involving questions of customary law. The decision of the original Ct in matters involving questions of customary laws, while it may be open to revn, will not be open to revn on the ground that no such custom prevails or that if it prevails, it is not a valid custom. The existence & velidity of a custom are mixed questions of fact & law, & if no appeal is permitted under Rule 26 from a question of fact as to the existence of a custom, it is scarcely feasible that a H.C. will interfere in revn on the question of the existence of a custom or its validity.

7. The result is that the revn petn is dismissed with no order as to costs. The Rule is discharged accordingly.