
(2006) 08 GAU CK 0069
In the Gauhati High Court

Ningombam Kala Singh

APPELLANT

Vs

Ningombam Jugindro Singh and Ors.

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Citation : (2006) 08 GAU CK 0069

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Kh.Chonjohn Singh, Advocates appearing for Parties

Judgement

1. Heard Mr.Kh. Chonjohn, learned Sr.Counsel appearing on behalf of the petitioner. None appears on the side of the respondents, despite due services of notices, without showing any cause and as such the case is proceeded in the absence of the respondents.

2. This is an application filed under section 115 and 151 of the Code of Civil Procedure read with Art. 227 of the Constitution of India challenging the order dated 20.3.2006 passed by the Civil Judge (Jr.Division) Imphal West in Original Suit No.9 of 2004.

3. On the basis of the materials before the Court, the following facts are ascertained: The learned Civil Judge (Jr.Division) Imphal West framed five issues in the said O.S. No.9 of 2004 by passing the impugned order dated 20.3.2006. Issue No.1 framed by the learned Civil Judge is "whether the plaintiff, N.Kala Singh and late Chaoba Singh, the father of the defendant Nos. 1 to 6 were brothers of the same parents?" In respect this issue No.1, the learned Civil Judge held that it was to be determined by the Family Court, Manipur. It was further held to the effect that the trial court was having jurisdiction to determine the remaining issues and as such the case was to be proceeded to determine the remaining issues.

4. According to the learned counsel of the applicant, the said issue No.1 is the most important issue in the suit and unless the said issue is also decided by the

trial court, it will not be possible to decide the question if the plaintiff is entitled to the relief claimed in the suit. Further, the learned counsel of the applicant expresses his inability to understand as to how the learned Civil Judge (Jr. Division), Imphal West is going to dispose of the suit without deciding the said issue No.1.

5. In this connection, I have perused the pleadings of the parties. Having regards to the pleadings of the parties, the said issue No.1 is the most important issue and in the suit and it will not be possible to dispose of the suit property without deciding the said issue. The said suit before the learned Civil Judge (Jr.Division), Imphal West is a declaratory suit with consequential relief. The plaintiff is claiming for a decree declaring that the suit land is the joint and undivided ancestral property of the plaintiff and the principal defendants or for a decree declaring that the plaintiff has acquired his right of ownership in the northern half of the suit land by adverse possession and for a decree for partition of the whole of the suit land by leaps and bounds. The plaintiff further claims for a decree of permanent injunction restraining the principal defendant from disturbing or interfering with the possession of the northern half of the suit land by him (plaintiff). Such a type of suit or proceeding mentioned in the explanation of Section 7 of the Family Court Act in respect of which a Family Court has exclusive jurisdiction. The said issue No.1 in the suit before the learned Civil Judge cannot be considered as a suit or proceeding which is within the exclusive jurisdiction of the Family Court. Accordingly, the view of the learned Civil Judge that the said issue is to be decided by the Family Court is not correct in law. Unless the view of the learned Civil Judge (Jr.Division) Imphal West is corrected and if the case is to be disposed of without deciding the said most important issue, miscarriage of justice will be caused.

6. In the above facts and circumstances, even though, under the provision of Section 115 of the CPC, this Court is not to exercise powers of varying or revising any order which is a subject matter of revision, except where the order, if it is made in favour of the parties applying for the revisional jurisdiction, would have finally disposed of the suit or other proceedings and as such, the impugned order is not warranted to be interfered with by exercising powers of revision of this Court under section 115 of the CPC, I consider that the ends of justice will be made if the powers of this Court under Art. 227 of the Constitution of India is invoked so as to prevent miscarriage of justice or abuse of the process of the Court.

7. In the result, the impugned view of the learned Civil Judge (Jr.Division) Imphal West is not sustainable in the eye of law and it is hereby set aside. Learned Civil Judge (Jr.Division) Imphal West is hereby directed to proceed with all the issues including the said issue No.1. A copy of this order be sent to the court of Civil Judge (Jr.Division) Imphal West for information and necessary action.

8. With this direction and order, this Petition stands disposed of.