

(2004) 04 GAU CK 0039

In the Gauhati High Court

Case No : Civil Revision Petition No. 2 of 2003

Nongthombam Ibeton Devi

APPELLANT

Vs

Nongthombam Shyam Kishore Singh and Others

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, 54, 9

Manipur Land Revenue and Land Reforms Act, 1960 — Section 159, 2M, 51, 51A, 51B

Citation : (2005) GLT 609 Supp

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kar, J.—This revision petition was admitted on 27.1.2003 was pending for hearing. On the day when the case was called on for hearing none appeared.

2. I have perused the petition and connected materials. The original case record, being Title Suit No. 20/2000/ 30/2000, was called for. I have gone through the materials in the case records alongwith the Misc. cases.

3. Briefly stated the facts are as follows: Defendant No. 3 of the original suit, Smt. Nongthombam Ibeton Devi has presented this petition in order to assail the order dated 1.10.2002 passed in original suit No. 20/ 2000/30/ 2000 by the learned Civil Judge (Sr. Divn.) No. 1, Manipur East, deciding the preliminary issue of jurisdiction in favour of the Respondents/Plaintiffs of the suit. It appears that the present Petitioner approached this Court earlier also in Civil Revision No. 8/2000 challenging the order dated 24.6.2000 passed by the Civil Judge (Sr. Divn.) No. II, Manipur East, Imphal, in Judicial Misc. Case No. 60/2000 arising out of the same suit where the same question of objection with respect to the jurisdiction of the Court was challenged before presenting the written statement by the same revision Petitioner and Court ruled that such objections cannot be

taken without presenting the written statement. this Court upheld the order, dismissing the revision petition on 12.7.2000 and held as follows:

In this connection Mr. Tomeha also refers to Section 51-B in Chapter-V-A of the Act which deals with partition. Section 51-B deals with petition for partition and provides that the land owner may, at any stage by applying in writing to the Dy. Commissioner, claim of the partition of the holding. Land owner has been defined in Section 2-M as in relation to any land means a person who claims right of ownership in respect of such land under Sub-section (i) of Section 99 and includes the successor-in-interest of such person. This leads to consider the provision u/s 99 which deals with the holding of land from the Govt. for agricultural purposes. The land in question is not for agricultural purpose, but "Ingkhol". Therefore, the prohibition of the Civil Court imposed by Section 159 of the Act read with Sections 51-B and 99 of the Act is not applicable in the case at hand.

Thus, already deciding incidentally that Sections 51 and 159 of the Act is not applicable under the facts and circumstances of the case.

4. Respondents No. 1, 2, 3 and 4 herein as Plaintiffs instituted the suit against the present revision Petitioner arrayed him as Defendant No. 3 alongwith 4(four) others stating that late Nongthombam Ibohal Singh, a Hindu governed by Dayabhaga School of Hindu Law, died intestate on 31.3.96 leaving the Plaintiffs and the Defendants as the legal heirs. The said Ibohal Singh was the owner of the suit land, fully described in Schedule-A of the plaint, inheriting the same from his father late N. Laishang Singh and got his name mutated in the revenue records and was in possession of the same by constructing residential house situated at the middle of the suit land and described with full particulars in Schedule-B to the plaint to be referred to as the "suit house". After the death of the said Ibohal Singh, Defendants constructed a RCC house as described in Schedule-C to the plaint. That there was a "kutcha" CGI roof shed on the western most portion of the suit land which was dismantled by the Defendants without the knowledge of the Plaintiffs before starting to raise a RCC structures thereupon on 31.3.2000. That such activity of the Defendants has clouded the right and interest of the Plaintiffs and the request for partition was refused by the Defendants giving right to a cause of action for suit on and from 31.3.2000. The Plaintiffs prayed for the following reliefs in the suit-

(a) A decree for partition of the suit land described in Schedule-"A" of the plaint by metes and bounds and deliver possession of their respective shares in the suit land;

(b) A decree for partition of the suit land described in Schedule "B" of the plaint between the Plaintiffs and the Defendants No. 1, 4 and 5 subject to the rights of the Defendants No. 2 and 3;

(c) An order for appointment of a Commissioner for effecting partition of the suit land and suit house described in Schedule "A" and "B" to the plaint by metes

and bounds; and

(d) Cost of the suit.

5. The Defendant No. 3 of the suit, i.e. the present revision Petitioner, by now, had already presented her written statement denying the averments of the Plaintiffs in the plaint that they are the legal heirs of the deceased Ibohal Singh and that Late Ibohal Singh was in exclusive possession of the suit land during his life time. It is pleaded in the written statement that the house described in Schedule-C to the plaint was started by the answering Defendant on her own right and authority and there was no question of giving information to the Plaintiffs. That the Plaintiffs have no right and interest in the suit land described in the Schedule-A to the plaint and there is no question of their title being clouded. That the suit was a pure and simple partition suit and accordingly governed by Chapter-V-A of the Manipur Land Revenue and Land Reforms Act, 1960 ("the Act" in short) and the present suit was barred as per Section 159 of the said Act. That in view of the decision of the Hon"ble High Court given in revision petition No. 8/2000, the question of jurisdiction has to be taken up by the trial Court as preliminary issue. That during his life time, Late Ibohal Singh gifted the entire Scheduled-A land to the answering Defendant by executing a registered deed of gift and pursuant to the decision of the revenue Court in revenue revision case No. 43/97 which was decided on 17.12.99, the name of the answering Defendant has been mutated with respect to the said land and the Plaintiffs have not presented any revision or appeal against the same for which the suit land has been recorded in the name of the answering Defendant No. 3 in the relevant "jamabandi".

6. After disposal of the Misc. Case No. 60/2000, the suit was taken up by the trial Court framing 4 (four) issues. Issue No. 1, which relates to jurisdictional matter was again taken up as preliminary issue for discussions and decision and it reads as follows:

1. Whether the jurisdiction of this Court to take up the present case is barred by Section 159, M.L.R. and L.R. Act?

7. For the sake of ready reference and convenience, it will be appropriate to reproduce the sections of law agitated by the revision Petitioner in order to challenge the jurisdiction of the trial Court. These provisions in the Act are as quoted below:

CHAPTER V-A Partition

51-A. Definition

(d) "Partition" means the division of a holding into two or more such holdings each separately liable for the revenue assessed thereon.

51-B. Petition for partition.- (1) A landowner may at any time, by applying in writing to the Deputy Commissioner, claim partition of the holding.

51-C. Partition in accordance with finding of Civil Court.- The Deputy Commissioner shall be guided by the decision of the Civil Court of competent jurisdiction on the question of title and the proceedings stayed under Sub-section (3) and Sub-section (5) of Section 51-B shall be disposed of when the decision of the Civil Court is communicated to the Sub-Deputy Collector by an interested party and after notice has been given to the other parties.

159. Jurisdiction of Civil Courts excluded.- No suit or proceeding shall, unless otherwise expressly provided for in this Act or in any other law for the time being in force, lie or be instituted in any Civil Court with respect to any matter arising under and provided for by this Act:

Provided that if in a dispute between parties a question of title is involved, a civil suit may be brought for the adjudication of such question:

Provided further that the Civil Court shall have jurisdiction to decide any dispute to which the Government is not a party relating to any right or entry which is recorded in the record of rights.

(emphasis supplied)

8. A plain reading of the laws given in the aforesaid sections of laws will make it clear that the sections provide and give jurisdiction to Deputy Commissioner for effecting partition for the limited purpose of assessment of revenue as revealed from the provision of Sub-section (d) of Section 51-A which defines "partition". Section 51-B clearly states that the petition for partition can be submitted by the landowner. Naturally, it will mean that there is no disputed title when such application is made. Position is made more clear by the provision of Section 51-C which provides that the Deputy Commissioner will be guided by the decision of the competent Civil Court on the question of title. Thus, there cannot be any dispute that it is only the competent Civil Court which can adjudicate on the question of disputed title and revenue Court has nothing to do with it. The question will be more clear if one carefully goes through the two proviso (one and two) appended to Section 159 of the Act. The first proviso says that in case of disputed title, civil suit will lie for adjudication of the same and the second proviso further confirms by stating that civil suit will also lie relating to any right or entry recorded in the record of rights where the Government is not a party. So, there is absolutely no question of ousting the jurisdiction of the Civil Court in deciding the title. Rather Civil Court is the only competent Court to decide title and revenue Court will take up the follow-up action by affecting partition of revenue estate/holding in consonance with such findings of Civil Court on the extent of interest of the contesting parties. It appears that law has been misconceived by the Petitioner. It is unfortunate that the Petitioner is agitating the same matter again and again without due regard to the law, procedure and propriety.

9. It is entirely a different question whether the framing of the suit is defective or not for not praying initially for preliminary decree for partition in due compliance

of Rule 18 of Order 20 read with Section 54 of CPC and then for the final decree after the appointment of the Amin Commissioner and receiving report to complete partition by metes and bounds. Amendment of the plaint after presentation of written statement contesting title of the Plaintiffs by the Defendant claiming title on the strength of a gift deed is equally a separate option for the Plaintiffs. Be that as it may, a careful but serious reading of law given by Section 159 of the Act will assuredly make it clear that the bar of jurisdiction of Civil Court is with respect to any matter arising under and provided for by this Act and nothing more. While dealing with these sections of laws we cannot overlook the wide provisions of CPC as contained in Section 9 of the CPC to try all suits of civil nature by a competent Civil Court. Section 9 of CPC goes as hereunder-

9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implied barred.

Explanation I.- As suit in which the right to property or to an office is contested is a suit of civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II.- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation 1 or whether or not such office is attached to a particular place.

10. Therefore, I find that this petition is unnecessary wastage of public time in addition to spending money and energy for no valid reasons. Such attempts should be discouraged and we cannot be oblivious of the fact that recent amendment in the CPC was done keeping in mind the urgent need of quick disposal of cases and to ameliorate the situation of fruitless litigations by cantankerous litigants.

11. In the result, the revision petition is rejected. Send back the LCR's at once.