

(1998) 02 GAU CK 0046
In the Gauhati High Court
Case No : Civil Revision No. 4 (SH) of 1997

O. Mar Kharmudai and Others	Vs	APPELLANT
O. Pholstin Kharbuli and Others		RESPONDENT

Date of Decision : 09-02-1998

Acts Referred:

Assam High Court (Jurisdiction Over District Courts) Order, 1954 — Order 6
Constitution of India, 1950 — Article 227
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 2

Citation : (1998) 1 GLT 548

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : T.T. Diengdoh, for the Appellant; D.E. Challam, for the Respondent

Judgement

N.S. Singh, J.—This Revision petition under Order 6 of the Assam High Court (Jurisdiction over District Council Courts) under 1954 read with Article 227 of the Constitution of India arises from the judgment dated 5.2.97 passed by the learned Addl. Judge, Additional Subordinate District Council Court, Shilling in Title Civil Appeal No. 1 of 1996 affirming the judgment and order dated 10.11.95 passed by the Subordinate District Council Court, Shilling in Title Suit No. 12 of 1992. The facts of the case in a very short compass are as hereunder:

The present Respondents as Plaintiffs filed a suit being Title Suit No. 12 of 1992 in the Court of the Subordinate District Council Court, Shillong as against the present Petitioners as Defendants for a declaration that the suit forest namely "Lumkseh Kynjeng" is the village forest of Umsareng people and also for permanent injunction. According to the Plaintiffs, the Respondents herein, they have been authorised to file the said suit against the Defendants for their illegal acts namely trespassing into the suit land, felling off trees and carrying of jhum cultivation since the month of December, 1991 without authority. It is also the case of the Plaintiffs that the suit land was registered and confirmed by the Syiem of Myllem and thereafter by the Chief Forest Officer, and that, the Khasi

Hills District Council gave recognition and registration of the suit land in accordance with law.

2. According to the Petitioners-Defendants, suit land forest is one of the units (Kyntoit) of Nongtraw village which comprises of - (1) Bangla, (2) Wah Uriah, (3) Wah Nan, (4) Ka Pynthorsohma, (5) Umsarang, (6) Lumkseh Kynjeng, (7) Pdengshnong Nongtraw, and that, the Defendants-the Petitioners herein are all from Nongtraw village and the suit land-forest was the subject of dispute in a case being Civil Case 1 of 1971 and the Addl. Subordinate District Council Court, Khyrim Syiemship decided the case in favour of Nongtraw village.

It is also the case of the Defendants that some of those people who authorised the Plaintiffs to institute the suit are not the residents of Umsarang village and the registration and confirmation of the suit land by the Syiem of Myllem and the Chief Forest Officer are null and void and, that the suit-forest belongs to the village Nongtraw, which is possessed and utilised by the Syiem since time immemorial. The Defendants also urged that the suit-forest is also the subject matter relating to territorial dispute between two Syiemships namely Myllem and Khyrem.

3. On the basis of the pleadings of the parties, the learned Trial Court framed as many as 8 (eight) issues for just determination of the real points in controversy between the parties. These issues are quoted below:

1. Whether the suit is maintainable in its present form ?
2. Whether the Plaintiffs have any locus standi to file the instant suit ?
3. Whether the Plaintiffs have cause of action ?
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ?
5. Whether the village Umsarang has got its village forest called "Lumkseh Kynjeng" within Nongtraw area ? If that is so, which Syiemship has jurisdiction over Nongtraw village ?
6. Whether recognition and confirmation by the Syiem of Myllem and the District Council is valid and legal ?
7. Who are the owners in possession of the suit land ?
8. Reliefs.

The Plaintiffs-Respondents herein examined 6 (six) witnesses and the Defendants-Petitioners herein examined 3 (three) witnesses.

After hearing the parties, the learned Trial Court decreed the suit by declaring that the suit land is the village forest of Umsarang village within Myllem Syiemship and restraining the Defendants or any persons under them from entering into the suit land and also from doing anything in the suit land.

4. Being dissatisfied with the judgment and decree passed by the learned Trial Court in T.S. No. 12 of 1992, the present Petitioners preferred an appeal being T.C.A. No. 1 of 1996 before the Appellate Court namely the learned Addl. Judge, Addl. District Council Court, Khasi Hills, Shillong. The first Appellate Court also dismissed the appeal by affirming the judgment and decree of the learned Trial Court under the impugned judgment dated 5.2.97 passed in T.C.A. No. I of 1996. Being aggrieved by the impugned judgment and order dated 5.2.97, the present Petitioners filed this Revision petition.

5. At the very outset, Shri T.T. Diengdoh, learned Counsel for the Petitioners submitted, that both the Courts below passed the impugned judgment by exercising jurisdiction not vested in them by law inasmuch as a Civil Court has no competence to entertain and adjudicate upon a dispute regarding a right to property based on the extent of the territorial boundary of a Syiemship. According to Shri Diengdoh, a Civil Court has no jurisdiction to decide the boundaries of the two Syiemships namely Khyrim Syiemship and Myllem Syiemship. Supporting the case of the Petitioners, Shri Diengdoh had relied upon a decision of the then Assam and Nagaland High Court rendered in *U. Lokendra (Plaintiff) Appellant v. Kendro Ranick* represented by his heirs *U. Driwell Myntry and Ors. (Respondents)* reported in AIR 1970 Gau 242 and contended, that any dispute regarding the territorial boundary of the two contiguous Syiemships is within the exclusive competence of the Executive Committee of the District Council and as such, Civil Court has no jurisdiction to entertain the same. The learned Counsel further argued that both the Courts below had mis-appreciated the available evidence on record while passing the impugned judgments inasmuch as P.W. No. 5 who is the Plaintiff No. 1 in the suit has categorically stated that:

I know there is a boundary dispute between Khyrim Syiemship and Myllem Syiemship but so far no settlement has been made,

and so also, PW No. 6 who is the Plaintiff No. 2 has stated that:

I know there is a dispute between the Syiem of Myllem and the Syiem of Khyrim over the suit-forest.

According to Shri Diengdoh, the recognition and confirmation of the suit land by the Syiem of Myllem and the District Council was done behind the back of the Defendants, Petitioners herein and admittedly, when there is a settlement pending with regards to the boundaries of the two Syiemships concerning the suit-forest, both the learned Courts below have come to an erroneous conclusion, thus decreeing the suit of the Plaintiffs-Respondents.

6. At the hearing, Shri D.E. Challam, the learned Counsel appearing for the Respondents contended, that the Plaintiffs filed a suit against the Defendants for their illegal trespass and for damages caused by them in the suit-forest and it is a suit for declaration of title and permanent injunction and not a territorial dispute of the two contiguous Syiemships.

According to Shri D.E. Challam, in paragraphs 6 and 7 of the written statement of the present Petitioners and also in paragraph No. 3(b) and 3(d) of the instant Revision petition, claim that Umsarang village is one of the constituent of Nongtraw village of Khyrim Syiemship. DW No. 2 - P. Lyngdoh who is considered the most outstanding person of Khyrim Syiemship stated, that Umsarang village falls within the boundaries of Khyrim Syiemship and Myllem Syiemship and those statements of DW No. 2 falsify the claims of the Defendants-Petitioners and, that the subject matter of Civil Suit No. 1 of 1971 relates to a dispute over a paddy field between U. Hembor of Nongtraw village and one U. Klick Dympep and another of Mawlai, Shillong and the present Respondents are not parties in the said suit, Shri Challam Contended.

7. It is also submitted by the learned Counsel for the Respondents, that confirmation of "Kumkseh Kynjeng" of Umsarang village-forest was done in accordance with law long back and the present Petitioners did not oppose to such confirmation at the relevant time. P.W. No. 4 Phlostin Kharbuli, the Plaintiff No. 1 is the headman of Umsarang village for the last 15 years and the related sanad (exhibit 4) was granted by the Syiem of Myllem. Shri Challam also argued that there are sufficient materials and evidence on record for granting reliefs sought for by the Plaintiffs and, accordingly, the learned Trial Court decreed the suit which also affirmed by the first Appellate Court under the impugned judgment.

8. Now, this Court is to examine as to whether both the learned Court below had acted illegally or with material irregularity or mis-appreciated the evidence on record or not, while passing the impugned judgment.

9. The claim of the Defendants - the Petitioners herein, is that Umsarang village is under the management and administrative control of Nongtraw village under Khyrim Syiemship. From the available materials on record, it has been revealed that the Defendants did not produce any documentary evidence to support their claim in the matter except the statement that suit-forest is one of the units of Nongtraw village. The Defendants also did not file the important documents like the plaint, written statement and decision made in the said Civil Case No. 1 of 1971 either before the Trial Court or before the first Appellate Court. These documents are very important and material for deciding an issue or subject relating to territorial boundary of two contiguous Syiemships.

Section 2(i) of the Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, hereinafter referred to as "Act" defined the word "Elaka". According to the said provisions of law, "Elaka" means, "any administrative unit in the District specified in Appendix I, II and III or any other administrative unit to be constituted and declared as such by the Executive Committee". Since fixation or alteration of boundary or Syiemship will inevitably affect the "Elaka" and an "Elaka" is nothing but an administrative unit, it may be constituted and decided by the Executive Committee of the District Council when it is necessary and, as such, dispute regarding the territorial boundary of two contiguous Syiemships is within the exclusive competence of the Executive

Committee of the District Council. This conclusion follows from the related provisions of the Sixth Schedule read with the provisions laid down u/s 2 of the Act.

10. PW No. 5 - Shri Phlostin Kharbuli is the present headman of Umsarang village appointed and confirmed by the Syiem of Myllem by a sanad (Ext.4) long back. This sanad is still valid in the eye of law and, rather Ext. 4 was issued by the competent authority many years back and the said Phlostin Kharbuli has been acting as headman of Umsarang village for the last 14 or 15 years as per evidence on record, from the exhibited documents, it appears that District council had registered and confirmed the suit-forests on the application of its headman and the elders of Umsarang village to that effect. Ext. 5, related electoral roll further established the fact that Umsarang village is a separate entity within Myllem Syiemship inasmuch as the said electoral roll for the Meghalaya Legislative Assembly, Umroi constituency clearly shows that Umsarang village is attached to the Polling Station at Lumshyiap, Myllem Syiemship in which the people from Umsarang voted and exercised their franchise at Lumshyiap and Umsarang is shown as being under Myllem Syiemship.

11. For the reasons and discussions made above, I am of the view that the Defendants, Petitioners herein could not establish the fact that the present disputes relates to territorial boundary of the two contiguous Syiemships as mentioned above and, as such, the submissions of Shri T.T. Diengdoh that the Civil Court has no jurisdiction to entertain the instant suit, holds a little water.

12. So far the contention of Shri Diengdoh, learned Counsel for the Petitioners with regard to the other points, I have examined and considered all the points raised by him and also the grounds taken by the present Petitioners in their Revision petition. At this stage, it may be pertinent to examine the observation and findings of the learned first Appellate Court on the related issues. In my considered view, the learned first Appellate Court had dealt with the matter exhaustively and gave a reasoned finding. Those related findings are quoted below:

A careful scrutinisation of the evidence on records shows that Umsarang village has been in existence for a long time. The evidence of P.W.1, P.W.2, P.W.5 and P.W.6 in this effect is corroborated by the Lyngdoh of Nongkrem (DW 2) when in evidence he deposed that Umsarang village has been in existence for the last thirty or forty years. That apart, Ext. 5 which is the electoral roll for the Meghalaya Legislative Assembly, Umroi Constituency clearly shows that the village Umsarang is attached to the Polling Station at Lumshyiap, Myllem Syiemship in which the voters from Umsarang voted at Lumshyiap and Umsarang is shown as being under Myllem Syiemship. This Ext. 5 - electoral roll therefore further proved that Umsarang village is a separate entity within Myllem Syiemship. This is further corroborated when Umsarang village has got its own headman. P.W. 5 is the present headman of Umsarang village appointed and

confirmed by the Syiem of Myllem by a Sanad (Ext. 4). There is nothing on record nor in evidence that Nongtraw village or Khyrim Syiemship had made any protest or complaint against the appointment of headman of Umsarang and the issuance of Sanad by the Syiem of Myllem and there is nothing also on record that Nongtraw village had challenged the inclusion of Umsarang village in Lumshyiap Polling Station as being one of the villages under Myllem Syiemship. According to the DW 3 the present headman of Nongtraw there are documents to show that Umsarang is under the management and administrative control of Nongtraw village but the documents are with the Syiem of Khyrim. If there are such documents the Defendants/Appellants should have filed them in Court to substantiate their claim but it is not understood why the Defendants had not done so. According to the DW there is a boundary dispute over the suit forest between Myllem Syiemship and Khyrim Syiemship but there is nothing on record that the boundary dispute really existed nor any case is pending over the matter in any forum. DW 2 the Longdoh of Nongkram testified that there was a civil case No. 1 of 1991 arising out of the plaint of one U. Hembar Rwiang for the felling of trees from the village forest of Nongtraw called "Lumkseh Kynjeng" but the plaint and written statement had not been filed in Court (Lower Court). DW 2 further testified that Umsarang village falls within the boundaries of Khyrim Syiemship and Myllem Syiemship. From the record and the evidence I find that there is nothing that Khyrim Syiemship had exercise control over the village Umsarang nor had attempted to do so while it is in the evidence on record that Myllem Syiemship had exercise control over the village by appointment of the village headman and registration of the suit forest but since this is not a boundary case I will not dwell on the boundaries between the two Syiemship Considering the evidence discussed I am convinced that their weight are in favour of Umsarang being a separate village.

On further perusal of the evidence on record, the Plaintiffs could establish and prove the fact that Umsarang village has got its own forest called "Lumkseh Kynjeng" which has been registered by the Syiem of Myllem and confirmed by the District council in accordance with law and such confirmation and recognition and rather, registration are not yet set aside by any competent authority and as such, these are valid) in the eye of law.

13. In my considered view, both the learned Courts below appreciated the evidence on record and rightly came to the conclusion of the case. In other words, the findings of the learned Courts below are based on proper appreciation of evidence on record 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 as there is no procedural error or irregularity on the part of the learned Courts below while passing the related judgments on the related issues. Thus, no case has been made out by the present Petitioners to justify the interference with the impugned judgment and order passed by the learned Addl. Judge, Addl. District Council Court, Shillong, in T.C.A. No. 1 of 1996.

14. In the result, the Revision petition is devoid of merit and accordingly, it stands dismissed thus, affirming the judgment and order of learned appellate Court. No cost.