

**(2011) 02 GAU CK 0058**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C)No. 20 (K) of 2009**

Pfulhoutsu Angami

APPELLANT

Vs

State of Nagaland & Ors.

RESPONDENT

**Date of Decision :** 23-02-2011

**Acts Referred:**

Assam Land and Revenue Regulation, 1886 — Section 50, 50, 58, 58

**Citation :** (2011) 5 GLT 208

**Hon'ble Judges :** B.K.Sharma, J

**Bench :** Single Bench

**Advocate :** Advocate appeared for the Petitioner: Mr. C.T. Jamir, Sr., Advocate  
Advocates appeared for the Respondents: Mr. I. Longjem & Mr. N. M. Jamir,  
Advocates appearing for Parties

## Judgement

B. K. Sharma, J.—The petitioner is aggrieved by AnnexureXX order dated 27.01.09 passed by the Deputy Commissioner, Dimapur allowing mutation and/or registration of the name of the respondent No.6 in respect of the plot of land mentioned in the order. Such mutation/registration has been allowed by way of substitution in place of the deceased father of the respondent No.6.For a ready reference, the order is quoted below:

"GOVERNMENT OF NAGALAND

OFFICE OF THE DEPUTY COMMISSIONER

DIMAPUR: NAGALAND

ORDER

No. Rev 16/2002D/Pt/Dt.Dimapur

27thJan.2009 In the matter of application for substitution filed of name by Shri Visakhoto Angami, S/o. Lt. Yoso Angami vide case No. M453/08/287679 dated 16 July, 2008 by right of succession certificate issued to him vide Regd. No.71 dated 07.08.78, and objection thereof raised by Shri Pfulhoutso Angami dated

14.08.2008, matter has been examined in consultation with Government pleader with reference to the Revenue records of land under patta No. 171, Dag No. 30 located at Block No. 6.

It is found on records that Lt. Yoso Angami was substituted by Shri Visakhoto Angami and Smti. Vichu Angami either as plaintiffs/petitioner of defendants/respondents in all the Court proceeding in respect of the said plot of land till the case was finally decided by the Hon'ble High Court in favour of the pattadars.

In view of the above stated reasons it is considered view that it may not be in the interest of justice to refuse to enter the name of Shri Visakhoto Angami in the revenue record as one of the joint pattadars in place of his late father, it is also viewed that Sections 50 and 116 of the Assam Land and Revenue Regulations may not be applicable in the present case in as much as Shri Visakhoto Angami is presumed to be one of the joint pattadars from the date when he substituted his late father in the case.

Therefore the undersigned is satisfied to register the name of Shri Visakhoto Angami to substitute his late father Lt. Yoso Angami as one of the joint pattadar on the aforesaid plot of land.

The surveyor I/c of revenue record is directed to rectify the revenue record as stated above.

Sd/

Deputy Commissioner Dimapur, Nagaland"

2. As per the own admission of the petitioner, the land in question was jointly purchased by the petitioner, the father of the respondent No. 6 and the father of the respondent Nos. 7 to 10. The father of the respondent No.6 died on 1978 and so also the father of the respondent Nos. 7 to 10 in the year 1984. It appears that there was a number of litigations between the owners of the land and the tenants therein which eventually came to an end in the year 2006 when this Court passed the final order on 07.11.06 in FA No. 6(K)/2000. On perusal of the said order, it appears that the said order dated 07.11.06 is a consent order upon arriving at an agreement between the parties.

3. From the materials on record, it appears that a title suit being TS No. 3/72 was filed by one Dandiram Barman as plaintiff. In the said title suit the father of the respondent No. 6 was defendant No. 3, while the petitioner was not a party defendant. Thereafter, another suit was filed in the year 1978 by the mother of the petitioner alongwith others as the plaintiffs. The said suit was registered and numbered as TS No. 5/1978. The said suit was decided on 08.12.2000. Making a grievance against the said judgment and decree, the defendants had preferred the aforesaid FA No. 6(K)/2000. On perusal of the cause title of the suit which is also reflected in FA No. 6(K)/2000, what is seen is that the present respondent No.6 was the plaintiff No.1(b) alongwith his mother who was plaintiff No. 1(a). In the appeal also the said two plaintiffs were party respondents.

4. As noted above, the appeal was disposed of by order dated 07.11.06 on the basis of the agreement arrived at by and between the parties. Same is reflected in paragraph 2 of the order dated 07.11.06 which is reproduced below:

"The learned counsel for the parties have submitted that they have been successful in persuading their respective clients to come to an amicable settlement of the dispute involved in this appeal."

5. By the said order, the appeal was disposed of in terms of the following directions:

1) The appellants/defendants accept the title of the plaintiff/respondents over the suit land and the respondents/plaintiffs accept the defendants as tenants over the suit land.

2) The appellants/defendants shall pay the decretal amount of Rs. 1,99,500/ (Rupees one lakh ninety nine thousand five hundred) only to the respondents/plaintiff in 6(six) quarterly instalments, (i.e. at interval of 3(three) months starting from the month of February, 2007.

3) The appellants/defendants shall, on and from the month of November, 2006 shall pay Rs. 20,000/ (Rupees twenty thousand) per month as rent for the suit land to the plaintiffs/respondents. The rent for the month of November, 2006 shall be paid by 15.12.2006 and for the subsequent months it shall be paid within 15th day of the next month and so on.

It is provided that in case of default in payment of decretal amount or any monthly rent as agreed to, the plaintiffs/respondents would be entitled to recover the defalcated amount and will also be at liberty to pay for the other consequential reliefs as permissible under the law.

The appeal is, accordingly disposed of with the aforesaid directions as agreed to by the learned counsel of the parties.

The judgment and decree passed by the learned Trial Court stands modified/ substituted by this order."

6. Mr. Jamir, learned Sr. counsel for the petitioner submits that ever since the litigation pertaining to the land started, the respondent No.6 never took any steps in any manner to defend the case for ownership of the land and that he had abandoned the land and thereafter suddenly made an application seeking substitution of his name in place of his father. According to him, the respondent No.6 having not taken any steps in due time, his right over the land stood extinguished. In this connection, he referred to Section 50 of the Assam Land Revenue Regulation which is applicable to the State of Nagaland.

7. As regards to appearance of the name of the respondent No.6 in the cause title of the suit as well as in the judgment and decree passed by the Trial Court as well as by this Court in the aforesaid appeal, he submits that mere inclusion of name cannot clothe the respondent No.6 with any right over the land. He further

submits that it is the petitioner who has been looking after the land over the years and now after disposal of the appeal he has been collecting the rents by taking all steps. According to him, the respondent No.6 never took interest in respect of the land nor in any litigation pertaining to the same.

8. Another submission made by Jamir, learned counsel for the petitioner is that the respondent No. 6 having abandoned his right over the land, the Deputy Commissioner ought to have exercised the power and jurisdiction vested on him under Rule 116 framed under the said Regulation towards striking out the name of the respondent No.6 from the revenue records.

9. Mr. I. Longjem, learned counsel appearing for the respondent Nos. 6 to 10 on the other hand, submits that the whole basis of the claim of the petitioner is totally ill founded and is not based on any sanction of law behind it. Referring to the above mentioned proceedings in the title suit and thereafter in the appeal in which the name of the respondent No.6 appeared, he submits that the respondent No.6 was very much interested in the proceedings. Thus, the existing right of the respondent No.6 over the said land cannot be said to be extinguished.

10. Mr. Jamir, learned counsel for the petitioner has referred to Section 50 of the aforesaid Regulation which inter alia provides that every proprietor or land holder succeeding to any estate or share in an estate, whether by transfer or on inheritance, and obtaining possession of the same, shall within six months from the date of taking possession or assumption of charges, apply to the Deputy Commissioner of the District on the general registers of which the estate is borne for registration of his name as such proprietor, landholder, manager or mortgagee, and of the nature and extent of the interest in respect of which the applicant is made.

11. Learned counsel appearing for the respondent No.6 on the other hand has referred to Section 58 and Rule 125 of the Rules framed under the said Regulation. For a ready reference, Regulation 58 and Rule 125 are quoted below:

"58. Penalty for non registration:

1) If any person, being required by Section 50 to apply for registration, voluntarily or negligently omit to do so within the time specified in that section, he shall be liable to a fine, to be imposed by the Deputy Commissioner which may extend to five times the amount of fee which would be payable under Section 57 for registration, and so such further daily fine as the Deputy Commissioner may think fit to impose, not exceeding one rupee for each day during which the person omits to apply for registration after a date to be fixed by the Deputy Commissioner in a notice requiring him to apply for registration; and

2) A person required by Section 50 to apply for registration shall not acquire, or be deemed to have acquired, as against the Government any interest in land as proprietor, landholder, manager or mortgagee, or be entitled to prefer any claim against the Government in respect of such interest, as long as he omits to apply

for registration, but shall be subject to all the liabilities of a proprietor, landholder, manager or mortgagee so far as regards the payment of revenue and all other obligations to the Government."

"125. No penalty on persons applying for registration suomotu Notwithstanding anything contained in Section 58 of the Land and Revenue Regulation, no fine shall be imposed under that section on any person who shall, at any time after the expiration of the time fixed for registration by Section 50, of his own motion, and otherwise than after the issue of a notice under Section 58, apply for the registration of his name, and of the character and extent of his interest."

12. On perusal of the provision of Section 58, it is seen that the provision in Section 50 is not absolute and subject to conditions prescribed in Section 58. In Section 58, if any person, being required by Section 50 to apply for registration, voluntarily or negligently omit to do so within the time specified in that section, he shall be liable to a fine and on payment of fine, he is entitled to get registration in place of his predecessor. Thus, Section 50 will have to be read alongwith Regulation 5 8 which provides the exceptions to Section 50. Further Rule 125 provides that notwithstanding anything contained in Section 58 of the Land and Revenue Regulation, no fine shall be imposed under that Section on any person who shall, at any time after the expiration of the time fixed for registration by Section 50, of his own motion, and otherwise than after the issue of a notice under Section 58, apply for the registration of his name, and of the character and extent of his interest.

13. On a total reading of the aforesaid provisions of Section 50,58 and Rule 125, it cannot be said to be an absolute bar for registration/mutation of name by way of substitution in place of earlier incumbent. Further, the prescription of six months in Section 50 is from the date of taking possession or assuming charge and not from the date of death of the predecessor. The admitted position being that the petitioner is a joint owner of the land alongwith the father of the respondent No. 6 and the father of the respondent Nos.7 to 10, the said joint ownership cannot be diluted on the death of the fathers of the respondent No.6 and the respondent Nos.7 to 10. The litigations referred to above, will go to show that the legal heirs including the respondent No.6 was substituted in place of the earlier owners. If the constructive possession of the land of the joint owners remained over the years, it cannot be said that such right of the respondent No.6 got frustrated by operation of Section 50 of the Regulation.

14. In the instant case, the respondent No.6 made an application to the Deputy Commissioner for mutation of his name in place of his deceased father. Alongwith the said application, he had also submitted succession certificate a copy of which is annexed as AnnexureH to the affidavit. Although an objection has been raised to the said succession certificate being not specific about the land in question, same may not detain us for deciding the issue in view of the fact that the respondent No.6 is the son of the joint owner of the land in question alongwith the petitioner and another, i.e. the deceased father of the respondent Nos.7 to

10.

15. The Deputy Commissioner, Dimapur in his order dated 27.01.09 has clearly recorded that the records revealed that the respondent No.6 and his mother have substituted Late Yoso Angami who was their father and husband respectively. Such substitution was as plaintiffs/petitioners or defendants/respondents in all Court proceedings in respect of the said plot of land till the case was finally decided by this Court in the aforesaid appeal.

16. As regards the provision of Rule 116 to which the learned counsel for the petitioner has placed emphasis, suffice it to say that the said provisions will not be applicable in the present case inasmuch as the respondent No.6 is the son of Late Yoso Angami and that his name was substituted in place of his father. Rule 116 of the aforesaid Rules provides that whenever it comes to the notice of the Deputy Commissioner that any person whose name is recorded in the General Registers as proprietor, settlementholder or manager of an estate is no longer in possession of any such interest in the estate, the Deputy Commissioner may order the name of such person to be struck out from the register. However, the provision of Rule 116 further provides that such a course of action shall not be adopted without giving a due notice to the person concerned and a hearing for any objection.

17. In the instant case having regard to the facts and circumstances discussed above, it cannot be said that the respondent No. 6 has abandoned the land and he is no longer in possession of the land. Possession can be either actual or constructive/implied. Any narrow definition of possession permitting the same only for actual physical possession will frustrate the very meaning of possession. However, this may not detain us in view of what has been discussed above.

18. For all the aforesaid reasons, I do not find any infirmity in the order dated 27.01.09(AnnexureXX)and consequently, the writ petition is dismissed. There shall be no order as to costs.