

(1989) 05 GAU CK 0016

In the Gauhati High Court

Case No : Second Appeal No. 11 of 1974

Phajurman Mia

APPELLANT

Vs

Paolelung Kabui, Khullakpa

RESPONDENT

Date of Decision : 24-05-1989

Acts Referred:

Civil Procedure Code, 1908 — Section 21(2), 24

Civil Procedure Code, 1908 (CPC) — Section 21(2), 24

Citation : (1989) 2 GLJ 293

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : T.Bhubon Singh, A.Nilamani Singh, Advocates appearing for Parties

Judgement

1. This is an appeal filed by the defendants against whom the learned Munsiff passed the decree holding that the suit land is included within the Chaobok Kabui Village. It was further directed in the said decree to demolish all sheds constructed by the defendantappellants in the suit land and for perpetual injunction restraining the defendants from interfering with the use and enjoyment of the land by the plaintiffs. This decree was confirmed by the learned Additional District Judge, Manipur by the impugned judgment and decree.

2, The plaintiffs are the villagers of the said village, namely Chaobok Kabui Naga Village which is the hill village and the provisions of the Land Revenue Regulation are not applicable. It is alleged that the plaintiffs are in usual occupation of the land of the said village as owner from time immemorial by paying hill house tax regularly. There is a hillock known as "Tharaolok Chingdum" within the boundary of the said Village as pleaded by the plaintiffs and the said hillock is the suit land. The defendants are the residents of the neighbouring village and it is alleged that they forcibly entered the suit land despite the protest by the plaintiffs and cut down the trees and other plants on the suit land and occupied the suit land by putting up sheds. An unsuccessful criminal proceeding under section 107 Cr. P. C. was started. Hence, the present suit in representative capacity under Order 1

Rule 8 C. P. C.

3. According to the defendants, the suit land does not form part of the plaintiffs' village and the provisions of the Land Revenue Regulation are applicable to the suit land. They averred that in the year 1954 the Deputy Commissioner settled the land with them but subsequently, in 1955 the settlement order was cancelled as the defendants could not fulfil the contention of the settlement. According to defendants, they are in possession of the suit land and though the settlement order was cancelled, they continued to be in possession.

4. The learned trial Court framed as many as 8 issues, decreed the suit which was upheld by the learned lower appellate Court as stated earlier.

5. The first contention of Mr. A. Nilamani Singh, the learned counsel for the appellants is that the decree passed is a nullity as the learned trial Court, namely that Munsiff at Imphal has no territorial jurisdiction in respect of the suit land. In support, the learned counsel has placed reliance in *Kiran Singh vs. Chaman Paswan*, AIR 1954 SC 340 where it was held that it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity. I find from the judgment of the learned trial Court that this point was agitated at the trial stage and ultimately, the Hon'ble Judicial Commissioner after setting aside the orders of both the trial Court and the first appellate Court transferred the suit to the file of Munsiff No. 1, Manipur at Imphal for trial. Section 24 C. P. C. empowers the Hon'ble Judicial Commissioner to pass such an order of transfer as all the powers of the High Court are vested in the Judicial Commissioner of the Union Territory. Mr. A. Nilamani Singh has urged that the above order was passed on concession by the counsel of the parties and as consent cannot be given against the law the settlement order which was bad in law. I am unable to accept the contention of learned counsel inasmuch as the powers under section 24 C.P.C. is wide enough to pass such an order of transfer with consent or otherwise.

6. That apart, subsection (1) of section 21 C. P. C. inter alia, provides that no objection as to the places of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of the first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. Subsection (2) of section 21 further provides that no objection as to the competency of the Court with reference to the pecuniary limits of its jurisdiction shall be allowed by an appellate or revisional Court unless such objection was taken in the Court of the first instance at the earliest opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. This section was amended in the year 1976 in order to avoid delay in disposal of cases and in the interest of litigant public. It is urged by Mr. A. Nilamani Singh that as the present suit was filed before the above amendment, the amended provision is not applicable to this appeal. I am unable to accept the contention of the learned counsel inasmuch the amendment being a beneficial legislation shall apply to all pending cases. As the present

appeal has come up for hearing after the above amendment, I hold that subsection (2) of section 21 shall apply. Moreover, the objection regarding pecuniary jurisdiction was taken at the trial stage which was overruled by the Highest Court of the erstwhile Union Territory and the said order is binding. This objection about the pecuniary jurisdiction cannot be taken at this stage in view of subsection (2) of section 21 C. P. C.. It may be worthwhile to mention that the learned counsel for the appellants has failed to show that there was a failure of justice in the case in hand. I, therefore, do not find any force in the contention of the learned counsel for the appellants.

7. The learned counsel for the appellants has drawn my attention to two documents, namely, order dated 17. 9. 1960 passed by the learned Deputy Commissioner, Manipur in Hill Misc. Case No. 74 of 1959 and order dated 24. 1. 1979 passed by the learned Director of Settlement and Land Records in Case No. D. L. R. Misc. Case No. 6 of 1969 and has urged that though the certified copies of these documents were filed before the first appellate Court, these were not accepted though these are relevant. Mr. T Bhubon Singh, learned counsel for the respondents has tried to impress that these documents are not interparty and as such not relevant. It was urged by the learned counsel for the appellants that before the Court of the learned Director of Settlement and Land Records, the plaintiffs filed the petition against the present defendant No. 6 and the dispute before the learned Deputy Commissioner was between the plaintiffs and the father of the defendant No. 8. Mr. T. Bhubon Singh, the learned counsel for the respondents, has further submitted that no final order was passed by the Director of Settlement and Land Records but only directed the parties to go to the civil Court. I have perused the order of the Director and I find some relevant observations but I do not want to express any opinion regarding the evidentiary value of this order. In my opinion these documents are not only relevant but also necessary for arriving at a proper decision of the present dispute. I am therefore* of the opinion that the learned lower appellate Court erred in law in not accepting these documents. Mr. Nilamani Singh has further urged that the two material documents produced by the defendants before the trial Court though admissible in evidence, being copies of the public documents; were not marked as exhibits and were ignored. I need not enter into this aspect of the matter as I propose to remand the case to the learned first r appellate Court and the present appellants may urge these points before the said Court.

8. Mr. A. Nilamani Singh has raised various other points namely, that the decree was passed on the basis of inadmissible documents concerning title, the suit as a whole, abated for nonjoinder of legal heirs of defendant No. 3 and next friend of defendant No. 4 who according to the learned counsel is an insane person. The learned counsel has also urged that as the plaintiffs have not asked for relief of recovery of the possession by evicting the defendants, the suit is hit by section 34 of the Specific Relief Act. These points may be urged before the first appellate Court and I need not express any opinion at this stage.

9. From what has been stated above, I set aside the impugned judgment and decree and remand the case to the learned first appellate Court for disposal in accordance with law and after hearing the parties. The learned lower appellate Court shall take into evidence the order of the learned Director, Settlement and Land Records dated 24. 1. 70 and the order dated 17.9.60 of the learned Deputy Commissioner, Imphal. Parties shall be at liberty to urge all the points which were pleaded before this Court. As the dispute is a long pending one, it shall be disposed of within a period of 6 months from the date of the receipt of the record and parties shall appear before the said Court on 5. 6. 89 and shall obtain necessary orders. Office to transmit the records forthwith. Considering the facts and circumstances of the case, I leave the parties to bear their own costs of this appeal.