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**(1979) 05 GAU CK 0003**  
**In the Gauhati High Court**  
**Case No : Second Appeal No. 7 of 1974**

R. Maipileng and Others

APPELLANT

Vs

L. Lalmani Sharma

RESPONDENT

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**Date of Decision :** 25-05-1979

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 91  
Easements Act, 1882 — Section 52

**Citation :** AIR 1980 Guw 12

**Hon'ble Judges :** K.N. Saikia, J

**Bench :** Single Bench

**Advocate :** T. Bhupon Singh, for the Appellant; G.C. Roy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K.N. Saikia, J.—This defendants' Second Appeal is from the judgment of the Additional District Judge, Manipur, passed in Civil Appeal Case No. 109/67 of 1970, affirming the judgment and the decree of the Subordinate Judge, Manipur in O. S. No. 12 of 1968, ordering eviction of the defendants-appellants from the area of Uyok (forest reserve) of the Seijang villagers. The plaintiff on behalf of the villagers of Seijang claimed that the hill area within the boundaries as shown in Sechedule "A" to the plaint was granted to the villagers of Seijang village, to use it as Uyok and to enjoy the forest produce by way of collecting fuels and cutting woods therefrom, by the Maharajah of Manipur by para 3 (b) of Durbar Resolution No. 10-A of 20-7-1932, and since then the villagers of Seijang have been collecting fuels and cutting woods for cremation and other purposes continuously, peacefully and uninterruptedly. It is pleaded that the defendants are the inhabitants of a self-styled Sailen village situated near the said Uyok who, coming recently from different villages stealthily and behind the back of the plaintiffs, started constructing three houses in some southern portion of the said Uyok, shown in the Schedule "B", and also started cutting fuels from the Uyok thereby causing loss to the plaintiffs and obstructing the plaintiffs' enjoyment of

their rights over the Uyok. They did not heed the objections of the plaintiffs. The houses were constructed a few months back and the last demand for their vacating the land was made on 24-12-1967. Hence, the suit for eviction and stopping them from obstruction and destruction of the Uyok.

2. The appellants as the defendants, in their written statement, answered : that no right was conferred on the plaintiffs under the said para 3 (b) of the Durbar Resolution No. 10-A, dated 20-7-1932; that it was not correct that the plaintiffs had been using the said Uyok for collecting fuels and cutting woods for cremation and other purposes since 1932 as alleged; that it was not correct that the three houses were stealthily constructed since 6/7 months back in the southern portion causing loss and obstruction; that the defendants' village, namely, Sainen village, lies within the boundaries: north -- Osipi Lok; south -- Paokhulok, east -- Tomjing Chingy-ang and -- West -- Naibi Turel, and this village fell outside the boundaries of the Seijang village; that the defendants purchased the land from one Shangreingam Khullakpa of Ngaruphung Waichet, who was the original occupant of the land in question, over which the defendants' village is situated.

3. The learned Subordinate Judge, Manipur, in O. S. No. 12 of 1968, framed as many as 8 issues and decided them in favour of the plaintiffs, arriving at the findings that since the grant by the Manipur Durbar in the year 1932, the villagers of Seijang have been collecting fuels and cutting woods from the Uyok continuously and uninterruptedly, and they have got the right and interest to do so on the basis of the grant by the sovereign Manipur Durbar in 1932; that the defendants could not prove any right by purchase over the suit land and they had no right and title over that portion of the Uyok; their illegal construction of the houses caused loss and obstruction to the plaintiffs' villagers in their possession and enjoyment of the Uyok; and the defendants were liable to be ejected from the suit land after demolition of their structures. The suit was accordingly decreed with costs, ordering that the defendants be ejected from the suit land removing their structures therefrom.

4. The defendants having appealed, the learned Additional District Judge, Manipur, in Civil Appeal No. 109/67 of 1970 by his judgment dated 23-11-1973, concurred in the findings that the plaintiff and his villagers had acquired the right under the grant from the Government in the year 1932 and since then they have been exercising their right for cutting fuels and collecting wood therefrom; that the defendants had no right to occupy the suit land as it did not fall within the village site of the defendants; that the licence granted to the plaintiff was not a bare licence but one coupled with a profit a prendre and as such, the plaintiff could maintain a suit of this nature against the defendants who are a third party. In the result, the appeal was dismissed with costs throughout. Hence, this Second Appeal.

5. Mr. T. Bhubon Singh, the appellants' learned counsel, submits, inter alia, (1) that the Durbar Resolution (Ext. A/4) did not confer any right upon the plaintiffs and the learned Courts below erred in holding that it did; (2) that the learned

Courts below misconstrued the documents in Exts. A/1 to A/4 and arrived at an erroneous finding which is liable to be set aside; (3) that the tauzi entry is not an evidence of any right; and (4) even if the Durbar Resolution Ext. A/4 conferred any right, such a right ceased to exist on introduction of Indian Forest Act to Manipur u/s 3 of the Merged States (Laws) Act, 1950, and the plaintiffs have no right to evict the defendants.

6. The questions that arise for determination are; (1) whether the Durbar Resolution No. 10-A of 20-7-32 (Ext. A/4) conferred any right over the plaintiffs? (2) whether the plaintiffs' villagers have been enjoying such a right till date? (3) whether they have right to evict the defendants from the suit land by virtue of such right? and (4) whether the Manipur Land Revenue and Land Reforms Act and the Indian Forest Act as extended to Manipur have put an end to such a right?

7. The fundamental facts concurrently found by the learned lower Courts are : the Resolution No. 10-A in para 3 (b) granted to the villagers of Seijang the right to collect fuel and cut woods from the Uyok; that the plaintiffs' villagers have been enjoying this right since it was so granted in 1932; the Forest Authorities have on record a Touzi in which the Seijang villagers are given right to use forest produce within the hill area bounded by the following;

North -- Naibi Nadi.

South -- Soijin Sinpham lake

East -- Nogamangkha lake

West -- Valley,

and this coincides with the Uyok of the villagers, (Ext. A/2); that in Hill Misc. Case No. 33 of 1952, in which the prayer was made by another Chief to prevent preservation of Uyok by the Seijang villagers, it was rejected on the basis of para 3 (b) of the Durbar Resolution No. 10-A of 20-7-1932; that the defendants' village site was not within the Uyok and the defendants could not produce any semblance of a right to the suit land, their plea of purchase having not been proved; that by constructing houses and cutting timber, the defendants were obstructing the enjoyment of the plaintiff villagers' right over the Uyok. These being findings of fact are not liable to be interfered with in this second appeal.

8. As regards the submission that the touzi entry, Ext. A/2 was wrongly interpreted as an evidence of a right as it did not amount to any evidence under the Manipur Land Revenue and Land Reforms Act, under which no such right can be granted, it may be observed that both the Courts below have found that the villagers have been enjoying the rights as recorded in the Touzi presumably pursuant to the Durbar Resolution of 1932. In face of this fact the submission is untenable. As regards the submission that even if the plaintiffs have acquired the right of cutting and collecting fuels from the Uyok, they were not entitled to bring the suit for ejectment of the defendants, inasmuch as, the plaintiffs are simply

licencees under the Government of Manipur, it is found that the learned Additional District Judge discussed this aspect of the question and relying on AIR 1954 All 83, he came to the conclusion that the licence involved in this case is not a bare licence but one coupled with a profit a prendre and as such the plaintiffs can maintain a suit of this nature against the defendants, who are a third party.

9. The application of the concept of a licence with a profit a prendre may not reveal the full connotation of the right granted under Resolution No. 10-A to the villagers. A right granted to the villagers of a village, over a servient tenement is more than a mere licence with a profit a prendre. It is a kind of right intermediary between public and the private rights and the servient tenement is subjected to such right. Any destruction or deprivation of the servient tenement may affect the orbit resulting in infringement of the intermediary right. Such an intermediary right enjoyed by the villagers of a particular village may arise out of custom or by grant. Such rights have often been recognised in this part of the country. The Durbar resolution No. 10-A is in the following language :

"10. Considered certain proposals submitted by the Forest Member to deal with the matter of Uyok.

The Durbar propose that the following rules shall be brought into force forthwith regarding the collection of fuel and cutting of woods from the various forests in the valley;

(1) That there shall be four kinds of fuel and forest reserves,

(a) Hill Village Reserves,

(b) Valley Village Reserves,

(c) State Reserves,

(d) Open Reserves.

(2) As regards (a), Hill Village Reserves will be areas within 1/4 mile radius of any Hill Village. In these reserves the Hill Villages concerned have exclusive rights to cut fuel and wood.

(3) As regards (b), there are certain villages, situated actually in the valley but very near the hills. These villages have in the past enjoyed fuel and wood rights in the areas immediately around their villages and they will continue to be entitled to these rights.

(4) As regards (c) A few large forest areas in which there are few or no villages will be reserved as State Forest Reserves -- these places will be notified in due course.

(5) As regards (d) Any person may cut fuel and wood in any open reserve provided he first obtains a permit to do BO from the State Forest Office. Permit will be issued at nominal prices viz. As 2 per cart of firewood. As 4 per tree

"Achangba". As 1 per tree "Ucharn".

The Forest Department will allot localities in which the wood may be collected and will supply all details regarding any of the above reserves.

Sd/- C. W. L. Tarvey, President, Manipur State Darbar."

From this, it appears that para. 3 (b) gives legal recognition to a right already enjoyed by the villagers in the past and allows the continuation of the right. This right created in favour of the villagers, unless expressly withdrawn or cancelled, will continue to exist. Introduction of the Indian Forest Act or the Manipur Land Revenue and Land Reforms Act ipso facto will not put an end to such a right. The Land Revenue Laws are in the nature of fiscal regulations and will not, by implication, terminate such a right conferred on the villagers. The succeeding ruling power may repudiate the grants made by the previous Ruling power, but the repudiation should be express and not implied. This right having been created by the then sovereign Durbar by Resolution and it having been continuously, peacefully and uninterruptedly enjoyed by the villagers, cannot be repudiated by implication, and until it is so repudiated, it is entitled to be protected by law and any interference with it shall be treated as illegal. Both the Courts below have found that the plaintiffs' village falls under para 3 (b) of the resolution. So the right conferred on the villagers will exist even outside the Manipur Land Revenue and Land Reforms Act and also the Indian Forest Act, as is indicated by the Tauzi entry of the forest department.

10. If an instance is permitted, reference may be made to Section 6 of the Assam Land and Revenue Regulation, 1886, which provides as under :

"6. No right of any description shall be deemed to have been, or shall be, acquired by any person over any land to which this Chapter applies, except the following. :--

(a) rights of proprietors, land-holders and settlement-holders other than land-holders, as defined in this Regulation, and other rights acquired in manner provided by this Regulation;

(b) rights legally derived from any right mentioned in Clause (a);

(c) rights acquired under Sections 26 and 27 of the Indian Limitation Act, 1877;

(d) rights acquired by any person as tenant under the Rent Law for the time being in force;

Provided that nothing in this section shall be held to derogate from terms of any lease granted by or on behalf of the Crown".

This section does not envisage any right of pasturage or right of cutting fuels, conferred on the whole body of villagers, yet in Asrabulla and Others Vs. Kiamatulla Haji Chaudhury and Others, Asrabulla v. Kiamatulla Haji Chaudhury, it was held :

"The Assam Land and Revenue Regulation does not purport to repeal all laws, so far as the province of Assam is concerned under which various other kinds of rights over property could be acquired nor does it abrogate all customs or customary rights as invalid. It is to all intents and purposes a revenue Code. For purposes of settlement of land revenue, and for exercising the powers conferred by the Regulation, Government would not recognise any other pieces of right over the land save and except those which are specified in Section 6. But that does not mean that as between any parties, these rights could not be acquired under the provisions of the laws which are also in force in Assam, or that the rights already acquired would stand confiscated. A right based on custom or presumed grant, is in its ultimate analysis a right derived from the true owner either expressly or from acquiescence. Acquisition therefore of a right of pasturage based on customs is not prohibited by Section 6 of the Regulation".

As to the nature of such rights their Lordships observed:

"Where rights of pasturage are claimed by a whole body of villagers, such rights are not easement in the proper sense of the word. They are not privileges attached to individuals in respect of their lands. These are rights claimed for a fluctuating class of persons in respect of a locality. They come under the description of class of rights -- intermediate between public and private rights and they attach to certain classes of persons or portions of the public and have their origin ordinarily in custom".

The learned counsel for the appellants has not shown to me any provision of the Manipur Land Revenue and Land Reforms Act excluding such a right. In the instant case, the right is clearly established in the grant of 1932 and continued uninterrupted and peaceful enjoyment of it has been found as a fact. This right's orbit is sure to be affected by any destruction of forest or reduction of the area over which the right subsists. Construction of houses by the defendants will necessarily infringe the orbit of that right giving its holders the remedy of preventing such a destruction or obstruction.

11. In this view of the matter, the learned Courts below cannot be said to have committed any error in decreeing the plaintiff's suit against the defendants. This appeal is found to be without merit, and it is dismissed with cost. Appeal dismissed.