
(2015) 06 MEG CK 0004
In the Meghalaya High Court
Case No : Tr.P(C) No. 2 of 2014

Ram Sunder Devi

APPELLANT

Vs

Lucy Sawkmie and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Citation : (2015) 3 GLT 135

Hon'ble Judges : S.R. Sen, J

Bench : Single Bench

Advocate : P. Upadhaya, for the Appellant; G.S. Massar, Sr. Adv., K. Baruah and K. Paul, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sudip Ranjan Sen, J.

1. The brief facts of the case in a nutshell is that the petitioner has filed this application for transfer of Title Suit No. 1 of 2007 from the Subordinate District Council Court, Shillong, to the general competent Court, Nongpoh. The Respondent No. 1 filed the said Title Suit against the Respondent No. 2 for declaration of her right, title and interest and also for permanent injunction in respect of the land measuring about 20,000 Sq.ft of 9th Mile, Baridua. Along with the said Title Suit, the respondent No. 1 also filed an application for grant of temporary injunction which was registered as Misc Case No. 1/2007. The temporary injunction was granted on 05.10.2007 restraining the respondent No. 2, her agent or any person acting through or under her from entering into the suit land and from interfering with it from any manner. The respondent No. 1 claimed the land of the petitioner also and enforced the said injunction dated 5.10.2007 order against her and she was not allowed to construct the house over her land. The petitioner tried to be impleaded in the said Title Suit but she was not allowed by the District Council Court on the ground that she being non tribal she could not be impleaded in the said Title Suit. The petitioner has been suffering on account of the said injunction order. Unless the said Title Suit is

transferred to the general competent Civil Court, she will not be able to get any relief. As such, the transfer of the said case from the Subordinate District Council Court, Shillong, to the general competent Civil Court, Nongpoh, is necessary for ends of justice. Hence this Transfer application.

2. Mr. P Upadhaya, learned counsel for the petitioner submitted that initially a Title Suit was initiated before the Court of the District Council, Shillong, where both the parties were tribal. Subsequently, the petitioner tried to implead herself into the suit as she has got certain interest on the said Title Suit, but the same was rejected on the ground that the petitioner is a non tribal and District Council Court can adjudicate matters only between tribals. Being aggrieved by this order the petitioner approached the then Hon"ble Gauhati High Court, but the matter remained undecided. The learned counsel contended that as per Section 7 of the High Court of Meghalaya (Jurisdiction Over District Council Courts) Order, 2014, the High Court has the power to transfer the Suit from one Court to another or to any other Court. However, he could not place any citation on the matter.

3. On the other hand, learned senior counsel, Mr. GS Massar, appearing for and on behalf of the respondent No. 1, submitted that as per United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, the District Council Court has the jurisdiction only to decide the disputes between tribals and the District Council Court has no power to decide and redress the grievances of non tribals and there is no provision that the case can be transferred from the District Council Court to normal Civil Court.

4. After hearing the submissions advanced by the learned counsels for the parties, and after considering the provisions of Rules for Administration of Justice and Police in the Khasi and Jaintia Hills, 1937, it is no doubt a fact that when a dispute arise between two tribals in an autonomous area, the matter is to be tried by the District Council Court. But, the question remains that since the petitioner want to implead herself in the case, whether she can be refused to be impleaded as one of the party because she has got the interest over the said Title Suit pending before the District Council Court? If she is not allowed to be impleaded in the Title Suit pending before the District Council or the case is not transferred to the normal Civil Court then she will have no place to get remedy and she will remain remedy less. In my considered view, no one can be remedy less before the Court of law. There must be remedy somewhere. The peculiar system of law prevailing in the State of Meghalaya, cannot be a hindrance for anyone to be remedy less. The Meghalaya High Court Rules, 2014, adopted a chapter under the caption of High Court of Meghalaya (Jurisdiction Over District Council Courts) Order, 2014. While going through Section 7 of the said Chapter, it is understood and clear that High Court has power to transfer a case from one Court to another Court to meet the ends of Justice. The said Section is reproduced herein below for ready reference:

"7.(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry, trial or adjudication cannot be had in any Court of the District Council; or

(b) that some question of law, tribal or otherwise of unusual difficulty is like to arise; or

(c) that an order under this clause will tend to the general convenience of the parties or witness; or

(e) that such an order is expedient for ends of justice or is required by the provision of any law applicable to the case; it may order-

(i) that any offence be inquired into or tried or a suit be adjudicated by any Court other than the Court of origin;

(ii) that any particular case or appeal, or class or cases or appeals, be transferred from any one Court to any other Court of equal or superior jurisdiction; and

(iii) that any particular appeal be transferred to or heard before itself.

(2) That High Court may act either on the report of the Lower Court or on the application of a party interested or on its own initiative.

(3) Every application for the exercise of the power conferred by this clause shall be made by motion, which shall except when the applicant is the Advocate General or Government Advocate, be supported by affidavit or affirmation.

(4) When an accused person makes any application under this rule, the High Court may direct him to execute a bond with or without sureties on the condition that he will if so ordered, pay any amount which the High Court may, under this clause award by way of compensation to the person opposing the application.

(5) Every accused person making any such application shall give to the Government Advocate or accredited representative of the District Council, as the case may be, notice in writing of the application together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application, unless at least forty-eight hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where any application for the exercise of the power conferred by this clause is dismissed, the High Court may, if it is of the opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding rupees twenty five thousand as it may consider proper in the circumstances of the case.

(7) If, before the argument(if any) for the admission of an appeal begins, or in the case of an appeal admitted before the argument for the appellant begins any party interested intimates to the Court that the party intends to make an application under this clause, the Court shall upon such party executing, if so required, a bond without sureties, of an amount not exceeding rupees twenty five thousand, that he will make such application within a reasonable time to be

fixed by the Court postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon."

5. Similarly, Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937, made a provision under Chapter 1-B which reads as follows:-

"1-B Power of High Court to transfer original cases. The High Court may, for any reason which it considers proper, transfer any original case, whether civil or criminal, at any stage when it is pending or under trial before any Court, to any other Court competent to try it."

6. After scanning the above quoted Rules I am of the view that the High Court has the power to transfer any case from one Court to another Court and there is no bar to transfer a case from the District Council Court to a normal Civil Court.

7. In this instant case, for the ends of justice and to avail the remedy to the petitioner, I am of the view that, it is a fit case which can be transferred from the District Council Court, to normal Civil Court such as Munsiff/Assistant to Deputy Commissioner.

8. After separation of Judiciary from Executive, now the Judicial Officers are also functioning as Assistant to Deputy Commissioner for redressing the grievances of tribal and non tribal for autonomous area. From that point of view also it is quite logical that Assistant to Deputy Commissioner/Judicial Officer of the District Court can try the Title Suit in question. For the reasons discussed above, I hereby order and direct that Title Suit No. 1 of 2007 be transferred from the Subordinate District Council Court, Shillong, to Assistant to Deputy Commissioner/Munsiff, Nongpoh.

9. With these observations and directions the instant transfer petition is allowed. No order as to cost.