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**(1991) 04 GAU CK 0019**  
**In the Gauhati High Court**  
**Case No : M.A. (F.) No. 29 of 1989**

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| Shri Temjenkaba and Others | Vs | APPELLANT  |
| Shri Temjenwati and Others |    | RESPONDENT |

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**Date of Decision :** 26-04-1991

**Acts Referred:**

Constitution of India, 1950 — Article 371A  
Limitation Act, 1963 — Article 30

**Citation :** AIR 1992 Guw 8

**Hon'ble Judges :** Srivastava, J

**Bench :** Single Bench

**Advocate :** A.K. Bhattacharjee, B.N. Sarma and K. Agarwal, for the Appellant;  
J.P. Bhattacharjee and R. Gogoi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Srivastava, J.—This plaintiff's appeal is directed against the judgment and order dated 12-4-88 passed by the learned Additional Deputy Commissioner (Judicial), Mokok-chung, Nagaland, whereby the plaintiffs' suit was dismissed.

2. Briefly, the residents of village Dibuia, through their Gabhburah Sri Temjenkaba and others had on 18-2-75 filed the suit for declaration of their right to the land in suit described in the schedule and in the map, and for recovery of possession by eviction of the defendants the residents of village Waramong represented by Sri Temjenwati and others, on the allegation that the plaintiffs were the owners of the suit land and had title thereto which was declared by the Ao Tribal Council by judgment and order dated 16-1-53, that between 1955 to 1960 the defendant village people had occasionally encroached on the suit land and cultivated the land without authority despite objections raised by the plaintiffs. In view of the disturbed conditions in Nagaland, the matter was settled between the parties amicably. However, sometime in October, 1972 the villagers of the defendant's village started erecting "keti-huts" and cultivation of the suit land and they were still presisting in their illegal cultivation and occupation of the

suit land. Hence the suit. The defendants had resisted the suit and denied all the allegations. The defendants pleaded that they have been in possession of the suit land since their village Warmong was established and that they had every right to possess the land, The suit was barred by limitation and was liable to be dismissed. The learned trial Court had framed the following issues:

1. Whether there is cause of action.
  2. Whether the suit is maintainable in its present form.
  3. Whether the suit is under valued.
  4. Whether Ao Tribal Council was validly constituted under law.
  5. Whether the suit in Range Council and Ao Tribal Council was identical to the present suit land.
  6. Whether Gaon Bureas are competent to represent villagers in respect of the suit land.
  7. Whether Waromong villagers have been possessing the suit land openly continuously and as of right for more than 15 years.
  8. Whether the plaintiffs villagers encroached upon the suit land in 1955 to oust the defendants.
  9. Whether the suit is barred by limitation.
  10. Whether the suit land is owned by the community a a whole or individual villagers own their respective land.
  11. Whether plaintiffs are entitled to mesne profit.
  12. Whether the plaintiffs are entitled to the reliefs sought for in the plaint.
3. The suit was earlier decided on 26-2-82. The defendants preferred an appeal and this Court by judgment and order dated 7-7-87 had set aside the judgment of the trial Court and remanded the suit for fresh consideration and decision in accordance with law. The suit was, thereafter, heard and dismissed by the judgment arid order impugned in this appeal.
4. Aggrieved, the plaintiffs have come in appeal, and Sri A. K. Bhattacharjee, learned counsel appearing on their behalf, has submitted that proper issue on the plaintiffs" right and title to the land in suit had not been framed even though the suit was on the basis of title and the evidence of the parties was considered under another issuewith the result that the plaintiffs appellants had been materially prejudiced. Sri Bhattacharjee has accordingly submitted that the matter should be remanded to the trial Court for framing fresh issue on the question of title and for decision afresh in accordance with law. Sri Bhattacharjee has also submitted that the view taken by the learned trial Court that the suit was barred by limitation was erroneous in as much as the Limitation

Act did not apply to the State of Nagaland. In view of the provision of Article 371A of the Constitution of India, the State Legislative Assembly of Nagaland had not adopted any resolution for application of the Limitation Act, 1963 to the State of Nagaland and consequently it could not be said that the said Limitation Act was applicable. In any case the period of limitation would start running from 1-1-64 when the Limitation Act came into force and the suit filed within 12 years was within time, that the law of limitation was for the first time applied to the State of Nagaland and the plaintiffs were not aware of its provision. Sri A. K. Bhattacharjee has also submitted that the plaintiffs' evidence established that they were the owners of the land in suit, that the defendants had subsequently encroached upon the land in suit and consequently the trial Court was in error in not accepting the plaintiffs' case.

5. Sri J.P. Bhattacharjee, learned counsel for the respondents, on the other hand, has opposed the submission for the appellants, on the ground that the suit had earlier been decided once and was remanded for fresh decision and accordingly there was no need for another remand of the suit for fresh trial. Sri Bhattacharjee has also submitted that the plaintiffs had claimed title to the land in suit on the strength of the Ao Tribal Council's judgment and order dated 16-1-53 and that since the said decision was held not to be in respect of the land in suit, there was no other case for the plaintiffs and hence no ground for remand of the suit to the trial Court. Sri Bhattacharjee has further submitted that the parties had understood the respective claims and had led evidence in respect of their contentions and as such there was no need for any remand for fresh decision in the matter by the trial Court.

6. In so far as the submission for remand of the suit for fresh trial is concerned, I think it should not be accepted for the reasons that the suit was earlier decided by the trial Court on 26-2-82, but since the trial Court had not recorded finding issuewise, this Court by judgment and order dated 7-7-67 in M.A.(F.) 14 of 1982 had remanded the suit for fresh decision. Besides, the parties were well aware of each other's case and had adduced evidence in respect of their respective claims. Moreover, the plaintiff had claimed title to the land in suit as declared by the Ao Tribal Council by judgment and order dated 16-1-53. The learned trial Court had gone into the question and held that the aforesaid decision of the Ao Tribal Council pertained to individual land and as such the dispute in regard to the land in suit could not be covered by the aforesaid judgment. The learned trial Court held that the title to the suit land as such was not decided by the Ao Tribal Council. Besides, even though no specific separate issue in regard to the title of the plaintiffs was framed, yet issue No. 10 was that whether the suit land was owned by the community as a whole or individual villagers own their respective land, and issue No. 7 was whether Waromong villagers had been possessing the suit land openly continuously and as of right for more than 15 years and issue No. 12 was whether the plaintiffs were entitled to the reliefs sought for in the plaint. In view of the above issues there could not have been any misconception in the minds of the plaintiffs in regard to the main dispute and it appears from

the evidence on record that the parties had adduced all the evidence they had and no useful purpose shall be served by further remand of the suit to the trial Court.

7. The next question is that whether the suit was barred by limitation. The trial Court has taken the view that the suit was barred by limitation because the cause of action for the suit from the time possession was taken by the defendants' villagers, related to the year between 1952-1953 and as such the suit filed in the year, 1972 was barred by limitation.

8. Sri A. K. Bhattacharjee, learned counsel for the appellants, has argued that the Limitation Act, 1908 was not applicable in Nagaland and the Limitation Act of 1963 also did not apply to the State of Nagaland. It appears, however, that the learned counsel for the plaintiffs in the trial Court had not disputed that the Limitation Act of 1963 was applicable in Nagaland. However, being a question of applicability of the law, the submission of Sri A. K. Bhattacharjee may be considered. The Limitation Act, 1963 which came into force with effect from 1-1-64 extended to the whole of India which also included the State of Nagaland and as such the Act extended to the State of Nagaland. Sri A. K. Bhattacharjee has, however, argued that the Nagaland Code which gives the list of Central Acts in force did not include the Limitation Act, 1963 and accordingly it could not be said that the said Act extended to Nagaland. It is difficult to accept this argument because the list of Central Acts in force was up to, before 1-12-1963 as contained in Part VII of Nagaland Code Vol. I (First edition) 1970. The last Act in the list was the Unit Trust of India Act, 1963. The Limitation Act came into force w.e.f. 1-1-64. Besides it was prepared by the State of Nagaland, and just because the Act was not included therein it should not follow that the Act did not extend to the State of Nagaland. The question is to be determined with reference to the provisions of law, as may be relevant for the purpose. On the face of it the State of Nagaland being part of the India and the Parliament being competent to make law, the Limitation Act, 1963 in view of its extent clause extended to the whole of India which also included the State of Nagaland.

9. Sri A. K. Bhattacharjee, learned counsel for the appellants has argued that under Article 371A of the Constitution of India, no Act of Parliament could extend to the State of Nagaland if it related to administration of civil and criminal justice involving Naga customary law unless the Legislative Assembly of Nagaland by a resolution so decided, and that since the Legislative Assembly of Nagaland had not adopted any resolution to extend the Limitation Act of 1963 to Nagaland the said Act did not extend to the State of Nagaland.

10. Article 371A of the Constitution of India provides:

"371A. Special provision with respect to the State of Nagaland-- (1) Notwithstanding anything in this Constitution,--

(a) no Act of Parliament, in respect of-

- (i) religious or social practices of the Nagas,
  - (ii) Naga customary law and procedure,
  - (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
  - (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;
- (b) to (d) xxxxx".

The Limitation Act, 1963 even though in respect of administration of civil justice did not involve decision according to Naga customary law, and as such, in my opinion, , the provisions of Article 371A of the Constitution were not attracted.

11. Sri A. K. Bhattacharjee, learned counsel for the appellants, has further submitted that the Limitation Act, 1963 reduced the period which otherwise was 30 years u/s 3 of the Naga Hills Jhumland Regulation, 1946, hereinafter referred as the Regulation, and the said provision was rendered ineffective by the Limitation Act, 1963. The Regulation in its S. 3 speaks of jhum cycle and provides that customary right to jhum land thereunder would be deemed to be established in case the right was enjoyed for thirty years. It has nothing to do with the period of limitation prescribed by the Limitation Act, 1963 for filing of suit which involves the rights of the defendants under the Limitation Act and consequently reference to S. 3 of the Regulation is not quite of help for the purpose of the question under consideration.

12. Sri A. K. Bhattacharjee, learned counsel for the appellants, has further submitted that prior to 1-1-64, there was no period prescribed for filing of suit in Nagaland, the innocent villagers in Nagaland could not understand the technicalities of law of limitation and as such it shall not be proper and just to take the view that the suit was barred under the Limitation Act, 1963. It is difficult to accept this submission. When the law made is applicable it shall not be justified to make exceptions on the ground that the people did not understand the law or were ignorant about the law. The law once it comes into force has to be applied and if there be any difficulty in its application it can suitably be considered as provided within the framework of the law, but on the ground that people were Unaware of the law it shall not be justified or proper to ignore it or its effect.

13. The Indian Limitation Act, 1908 was not applicable to the State of Nagaland which was repealed by Limitation Act, 1963. Section 30 of the Limitation Act, 1963 is relevant and requires consideration, which reads:

"30. Provision for suits, etc. for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908 -- Notwithstanding anything contained in this Act,--

- (a) any suit for which the period of limitation is shorter than the period of

limitation prescribed by the Indian Limitation Act, 1908 (9 of 1988), may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier;

(b) xxxxx"

As said before, the Limitation Act, 1908 did not apply to Nagaland and as such it may be taken as a case where the Limitation Act, 1963 prescribed shorter period of limitation for suit. Clause (a) of Section 30 above should be considered attracted for having prescribed a shorter period than was available earlier when no period of limitation was prescribed at all. Under Clause (a) of Section 30 above, the suit should have been filed within seven years next after the commencement of the Act, i.e. from 1-1-64. It may be noted that the period of seven years earlier was five years and it was raised to seven years by amendment by Act 10 of 1969.

14. Sri A. P. Bhattacharjee, learned counsel for the respondents, has cited Syed Yousuf Yarkhan and Others Vs. Syed Mohammed Yarkhan and Others, where also the law of limitation was not applicable to the State of Hyderabad and when the new law of Limitation was applied, it was held, that u/s 30 of the Limitation Act, 1963 the suit ought to have been filed within five years of the commencement of the Act, i.e. from 1-1-64 and not having been so filed the suit was barred by limitation. Sri A.K. Bhattacharjee, learned counsel for the appellants, has submitted that this authority has no application on the facts of the present case because there was no period of limitation at all and even Clause (a) of Section 30 of Limitation Act, 1963 was not applicable because earlier there was no period of limitation at all. The submission for the appellant is not sound because the Limitation Act, 1963 prescribed a period of 12 years, when earlier there was none, and it should be clear that the period of limitation was made shorter than it was earlier and consequently Clause (a) of Section 30 of the Limitation Act, 1-963 should be considered attracted. The learned trial Court has taken the view that the period of 12 years was to run from 1-1-64. The view taken was not correct. The proper law to be applied is u/s 30(a) said above and once the Limitation Act of 1963 came into force w.e.f. 1-1-64 the suit should have been filed within seven years from 1-1-64 and not having been so filed, the suit was barred by limitation. The finding of the learned trial Court that the suit was barred by limitation though for different reasons, was correct.

15. The next question to be seen is that whether the plaintiffs had established title to the land in suit for possession over the land in suit, a claimed by them.

16. Sri A. K. Bhattacharjee, learned counsel for the appellants, has argued that the plaintiffs' title was proved because it was admitted and hence no issue of title was there; because the defendants had claimed possession over the land in suit for a number of years and as such the plaintiffs' title to the land in suit was not disputed. It is difficult to accept the submission. The defendants had nowhere

admitted the title of the plaintiffs. All that appears to have happened was that some witnesses have testified about the possession of some villagers from the plaintiffs' village, but it would not be correct to say that the defendants had accepted title of the plaintiffs over the land in suit. However, the evidence for the parties may be examined.

17. The plaintiffs had examined fourteen witnesses, whereas the defendants has examined twelve witnesses. PW 1 Imangdangba claimed to have taken permission from the Gaonburah of the plaintiffs' village to cultivate some kheti located in the disputed area and also claimed to have collected chillies with permission. He, however, could not state the boundary of the disputed area. He had not seen the disputed area after the dispute arose. PW 2 Imkengmar Ao stated that the plaintiffs' villagers had earlier cultivated the land but at present he had seen defendants' villagers cultivating the same. In cross examination, however, he said that the last two cycles he has seen the defendants' village people cultivating the same whereas in former days he saw the plaintiffs' village people cultivating the land between Aluba stream and Angarangmang stream. PW4 Temjankaba was the Gaon Burah of the plaintiffs' village who deposed that the dispute arose in 1952-53 because at that time villagers of Waramung (defendant village) claimed ownership over the land and in 1950 about 26-27 villagers of Waramung cultivated the present suit land on payment of rent. This witness also clearly admitted that the defendants of the present suit were not the parties in the suit of 1952. i.e. the Ao Tribal Council Court case. He also stated that there was 564 Khetis of Dibua (plaintiffs' village) and each kheti on average consisted of three acre and that eleven persons were the owners of the said khetis. He clearly, admitted in cross-examination that "since 1955 Waramung villagers are forcibly occupying and cultivating the suit land" although he disputed that the suit -land is the land of Waramung. The statements of the above witnesses are clear that Waramung villagers, i.e. the defendants' village people have been cultivating the land even though forcibly from the year 1955. It may be noted that PW-2 Imkengmar Ao also accepted that at least for the last two cycles Waramung village people had been cultivating the land and the dispute arose in the year 1952. According to this witness, jhum cycle was 12 years in the past, but it has been reduced to ten years. According to this witness, therefore, for the last 24 years or at least 20 years the Waramung villagers had been cultivating the land, and his statement had been recorded on 11-5-1976, that means in the year 1955 at least the defendants had been in possession of the land in suit by cultivating the same. PW-6 Tekatiba also stated that a part of Alongpok land was sold to Waramung and it was cultivated by Waramung villagers in 1952. He stated that in the year 1955 Waramung villagers drove away Dibua villagers from the suit land and took forcible possession of the suit land. It should, therefore, be clear from his statement also that in the year 1959 at least the defendants villagers had been in possession after having possibly driven away the plaintiffs' villagers. PW-8 Marlemba also said that in the year 1955, Waramung villagers cultivated the Western side of the suit land including

some parts of the eastern side and in the year 1960 the remaining portion of the eastern side was cultivated by the Waremung villagers. According to him, Waremung villagers had driven away Dibua villagers in 1960. PW-10 Semaker, one of the plaintiffs, in cross-examination admitted that Waremung has been cultivating forcibly in spite of protest not to do cultivation, since 1952. PW-11 Aemeren and PW-13 Temendangba stated that in the year 1952 Waremung villagers were trying to have forcible possession of their land and in cross-examination it was admitted that it was a fact that from 1952 Waremung forcibly cultivated the suit land on the eastern side, western side and all the sides. In view of above facts as emerge from plaintiff's own evidence it is not considered necessary to further examine the defendants' evidence. It should, therefore, be clear from the statements of the plaintiffs' own witnesses that since 1952 or at least 1955 the waremung villagers, i.e. the defendants' villagers have been cultivating the suit land and the plaintiffs' version that the defendants had taken possession in the year 1972 was not correct. The suit was filed in the year 1975. The plaintiffs' suit was, therefore, clearly barred by times as shown earlier and the judgment and order of the learned trial court requires no interference.

18. In view of the above findings, the appeal is dismissed. Costs on parties.