
(2011) 08 GAU CK 0069
In the Gauhati High Court
Case No : Second Appeal No. 8 of 1996

State of Manipur and Others	Vs	APPELLANT
Soukhojam Haokip and Others		RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 56, 57, 58
General Clauses Act, 1897 — Section 27
Manipur (Village Authorities in Hill Areas) Act, 1956 — Section 3, 58

Citation : (2011) 4 GLT 519

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : A. Modhuchandra Singh, GA, for the Appellant; R.K. Lalit, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—This Second Appeal is directed against the judgment and decree dated 24.01.1996 passed by the First Appellate Court i.e the learned District Judge, Manipur West in First Appeal No.2 of 1995 upholding the judgment and decree of the trial court dated 29.09.1994 passed by the learned Sub-Judge, Manipur West in O.S. No.81/88/61/91 and the concurrent finding of both the Courts below is that the respondent No. 1 /plaintiff is the owner of the suit-land, particulars of which, are being mentioned in the later part of this judgment and order or in other words, the suit-land is a part of the Monpi Sumchinum Village.

2. Heard Mr.A.Modhuchandra, learned Government Advocate appearing for the appellants and Mr.R.K.Lalit, learned counsel appearing for the respondents/ plaintiff.

3. The substantial questions of law formulated for the decision in the present Second Appeal are: "Non-consideration of the provisions of the Manipur State Hill

Peoples (Administration) Regulation, 1947 and the schedule thereto, the Census Book, 1971 for the State of Manipur and the Durbar Resolutions, which are admittedly very vital documents for the appellants/defendants in deciding the Issue Nos. 1,2,3 and 4 will render the findings of the Courts below in Issue Nos. 1, 2, 3 and 4 perverse or not?"

4. The pleaded facts of the case, in nutshell, of the respondent No. 1 /plaintiff in the plaint of the Original Suit No. 81/1988/61/ 1991 of the Court of Sub-ordinate Judge, No.II, Manipur West, are that the respondent No. 1/plaintiff is the Chief of the Monpi Sumchinum Village, which is a hill village situated within the Churachandpur District, Manipur. The village land of Monpi Sumchinum Village measuring about 18 miles from North to South and 15 miles from East to West is bounded on the North by Lamva River, on the South by Paldai river, on the East by Khuga River and on the West by Tulia river. There has been an area of land known as "Haokip Reserve" in the Churachandpur District, which is bounded on the north by Koiite river/stream, on the south by Paldai river/stream, on the east by Khuga river/ stream, and on the west by Tuila river/stream. Within the area of Haokip reserve, there are three separate hill villages belonging to three different village Chiefs including the respondent No.1/plaintiff. The names of the said three villages are Monpi Sumchinum Village (the plaintiff's village), Thingkangphai village and Songpi village. The said hill area of "Haokip Reserve" has been set apart from Churachandpur Khoupum Protected Forest vide order dated 24.6.1986 passed by the Forest Settlement Officer, Manipur in Objection Case No. 305 of 1971 upon an application moved by the Chief of Songpi village on behalf of all the said three villages. The Respondent No. 1/plaintiff's aforesaid village, Monpi Sumchinum Village, has been in existence since the year 1907 till date; with a specific village area, which has been described above. The Monpi Sumchinum Village is an old village inhabited by more than 80(eighty) hill houses tax paying household villagers and the Respondent No.1 /plaintiff along with his villagers have been occupying the village land as the absolute owner thereof till today. At the time of establishment of the plaintiff's aforesaid village, Shri Onkhosain Haokip, the father of the plaintiff, was the Chief and on his death, the Respondent No.1/plaintiff succeeded to the Chief-ship of the said Monpi Sumchinum Village.

5. In the month of March, 1988, the appellant /defendant No.3 obstructed the Respondent No.1/plaintiff and his villagers from using the eastern and southern portions of the village land of RespondentNo.1/plaintif's village, which are called and known as "Thumkhonglong and Tahtamjang", which lies contiguously and jointly, is bounded on the north by Samnguldung, on the south by Paldai river/stream, on the east by Khuga river/ stream and on the west by Tiddim road (which shall be referred to as the suit-land) and more fully described in the Schedule "B" to the plaint. The respondent No. 1/plaintiff and his villagers requested the appellant/defendant No.3 for not interfering with their peaceful possession and enjoyment of the suit-land. However, the appellant/defendant No.3 summoned 6(six) villagers, namely, 1) Shri Kama, 2) Shri Enkhenkham, 3)

Shri Khupmang, 4) Shri Ginchin, 5) Shri Ginkhanthang and 6) Shri Paujausuan, all of Monpi Sumchinvum Village vide order No.3/ 9/88/DFS/1824-5 dated 16.7.1988 to appear before him on 28.7.1988 at 11 a.m. When 3(three) of the said villagers appeared before the appellant/defendant No.3 on 28.7.1988, they were compelled to pay a sum of Rs.200/- each saying that they performed Jhum cultivation on the "Cheklaphai Reserve Forest Area" by issuing various similar orders bearing No.3/9/88/D.F.S. dated 28.7.1988. It is the further case of the respondent/plaintiff that the said Cheklaphai Reserve Forest Area is situated outside the village area of Monpi Sumchinvum Village i.e. outside the suit-land. However, the appellant/defendant No.3, without any right and authority has been claiming the suit-land to be within the said Cheklaphai Reserve Forest Area. The appellant/defendant No.3 with the help of his official staff are always obstructing the Respondent No. 1 /plaintiff and his villagers from possessing and enjoying the suit-land by them; and as a result of the said illegal and unauthorized acts of the appellant/defendant No.3, the Respondent No. 1/plaintiff seeks for a decree for declaration of his title over the suit-land as against the appellants/defendants and also a decree for permanent injunction restraining the appellants/defendants from interfering with the peaceful possession of the suit land by the Respondent No. 1 /plaintiff and his villagers.

6. The appellants/defendants filed a joint written statement in the Original Suit No. 8/ 1988/61/91 categorically stating that there is no single village called Monpi Sumchinvum Village in the Churachandpur District, Sadar Circle No.3 under the Manipur State Hill Peoples (Administration) Regulation, 1947.

7. It is the further case of the appellants/ defendants that there is no village called "Monpi Sumchinvum Village" (the Respondent No. 1/plaintiff's village) situated within Sadar circle/Churachandpur District. The Schedule, Sadar Circle No.3 to the Manipur State Hill Peoples (Administration) Regulations, 1947 mentioned the names of the recognized hill villages and their headman/ Khullakpa of the villages situated within the Churachandpur Circle (Sadar Circle No.3). Under the Entry No.116 of the Schedule (Sadar Circle No.3) to the Manipur State Hill Peoples (Administration) Regulations, 1947 hereinafter referred to as the "Regulations, 1947", there is only one recognized village called "Munpi" and the name of its Headman/ Khullakpa is Shri Suonkhojam. In the written statement, the appellants/defendants had categorically pleaded that the Respondent No. 1/ plaintiffs village "Monpi Sumchinvum Village" is not recorded in the list of the villages in the New Churachandpur Circle of the Regulations, 1947 and that the Monpi and Songpi are two separate hill villages and distance between them is 4 or 5 kms. According to the 1971 Manipur Census, Monpi and Sumchinvum Villages are different hill villages. The Monpi and Sumchinvum Villages are found in the Manipur State District Census Handbook under the sub-division of Thinghat @ Singhat at Sl.No.25 and 27 respectively; and there is no standing order of the government for amalgamation of the said villages by the name of "Monpi Sumchinvum Village".

8. The so-called "Haokip Reserve Forest" having the boundary viz Koite river/stream on the north, Khuga river/stream on the East, Paldai river/stream on the South and Tuila river/stream on the West created by Mr. Cosgrave's Order in his Misc. Case No. 616 of 1907 had been made extinct or ceased by the order of Mr. Stewart, the then Political Agent of Manipur on 15.7.1938. The appellants/defendants in their written statement also categorically denied the boundaries of the Respondent No. 1 /plaintiff's village described in Schedule "A" to the plaint and also the boundaries of the suit-land described in Schedule "B" to the plaint and also categorically pleaded that the suit-land lies within Cheklaphai Reserve Forest. The learned trial Court, after perusal of the pleaded case of the plaintiff in the plaint and that of the appellants/defendants in the written statement and supplementary written statement framed as many as 11 (eleven) issues:-

1. Whether the plaintiffs father Onkhosem Haokip was the Chief of Munpi-Sumchinvum Hill village at the time of establishment in the year 1907, whether the plaintiff became the Chief of the suit Village on the death of his father and is the plaintiff the present Chief of the suit village?

2. Whether Munpi and Sumchinvum are the names of two different villages established at different times and different place at a distance of 2 miles away from each other or whether Munpi-Sumchinvum is the name of a single village?

3. If it is a single village whether the suit village or the suit land was established in 1907 with such specific area and boundary as given in the plaint and plaint schedule?

4. If Munpi and Sumchinvum are two different villages whether Sumchinvum village lies/ situates along the western boundary of and beyond Cheklaphai Government Reserve Forest and whether Munpi Village lies/situate at the western side of the reserve Forest-

5. Has the Cheklaphai Reserve Forest the following boundaries:- North by ZOZO stream, south by Takze, Tahtanglui, East by Khuga River and West by Tiddim Road.

(A) If so, does the area covered by Eastern portion of Sumchinvum Village fall within the boundaries of the said Reserve Forest.

OR

(B) Does the Eastern and Southern portion of the suit land fall/lies within the said Forest area?

6. (A) Whether the plaintiff and his villagers have been occupying the suit land as absolute owner till to day?

OR

(B) Whether the villagers of the plaintiff have been using the suit land through their chief as owner thereof since 1907 by doing cultivation works and by

growing various types of trees on different parts of the suit land.

7. Has the plaintiff right and title to the suit land?

8. Has the suit Cause of Action?

9. Whether Notice was served on the defendant properly u/s 80 C.P.C.

10. Has the plaintiff Locus Standi to bring the suit?

11. Is the plaintiff entitled to the relief claimed?

9. The respondent No. 1/plaintiff examined six PWs and exhibited 10(ten) documents i.e. Exts. A/1 to A/10 in support of their cases and the appellants/defendants also examined six DWs and exhibited 6(six) documents i.e. Exts. D/1 to D/6. Ext.A/3 is the Manipur Gazette June, 1948 for publishing the order of His Highness in Council dated 31.5.1948 pursuant to the Council Resolution No.23 of 26.5.1948 for canceling Haokip Reserve Forest and Ext. D/4 is also the Manipur Gazette No.4 Imphal, Wednesday April 4, 1962, for publishing the notice issued by the Chief Forest Officer, Manipur Administration dated Imphal, the 20th March, 1962 for notifying the boundaries of Checklapai Reserved Forest. Ext.D/4 is the schedule to the Sadar Circle No.3 to the Manipur State Hill Peoples (Administration) Regulation, 1947 which contains the list of the recognized villages situated within the New Churachandpur Circle/Churachandpur District (Sadar Circle No.3) and Ext.D/5 is the relevant portion of the Manipur South District Census Hand Book under Sub-Division of Thinghat @ Singhat.

10. Both the Courts below had not considered the documents at Exhibits D/3 to D/5 in the right perspective while considering the Issue Nos. 1,2,3 and 4 and also had not completely taken into consideration of the evidentiary value and importance of the entries/names of the recognized villages and their Headman mentioned in the said Schedule to the Regulation, 1947 and also the Census Handbook of the Government of Manipur, which recorded the census of the recognized villages situated within the Churachandpur District/New Churachandpur Circle.

11. Interference with the concurrent finding of fact by this court in an appeal u/s 100 of the CPC i.e. in Second Appeal should be only in exceptional circumstance where the learned courts below failed to consider the vital evidence and the learned courts below also relied upon inadmissible evidence. The Apex Court in Hari Singh Vs. Kanhaiya Lal, held that the concurrent finding of facts cannot be interfered with merely because there are lack of details in the pleading and the concurrent finding of facts can be interfered with when there is perversity in the finding of facts or in other words finding of facts are based on no evidence.

12. The Apex Court in Hero Vinoth (minor) Vs. Seshammal, considered the circumstances under which the High Court in a Second Appeal interfered with the concurrent finding of facts. Paras 13,19 and 24 (iii) of SCC in Hero Vinoth (Minor) (supra) reads as follows :-

Para 13. Though as rightly contended by learned counsel for the appellant the scope for interference with concurrent findings of fact while exercising jurisdiction u/s 100 CPC is very limited, and reappreciation of evidence is not permissible (sic except) where the trial court and/or the first appellate court misdirected themselves in appreciating the question of law or placed the onus on the wrong party certainly there is a scope for interference u/s 100 CPC after formulating a substantial question of law.

Para 19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

Para 24(iii). The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence: (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously : or (iii) the courts below have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the findings.

(Emphasis supplied)

13. The Apex Court in Jagdish Singh Vs. Natthu Singh, had considered the scope of jurisdiction of the High Court to reappreciate the evidence in the Second Appeal. In Para 10 of SCC in Jagdish Singh (supra), the Apex Court held that:

Para 10. In our opinion, the High Court was right in its view. The notices must be presumed to have been served as contemplated by Section 27 of the General Clauses Act. As to the jurisdiction of the High Court to reappreciate evidence in a second appeal it is to be observed that where the findings by the court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper finding. We find no substance in the first contention.

(Emphasis supplied)

14. The Hon''ble Apex Court in Ram Swaroop Vs. State of Rajasthan, held that the general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

15. It is well settled law that High Court, while exercising jurisdiction u/s 100 of the Code of Civil Procedure, cannot reverse the finding of the lower court on facts merely on the ground that another view was possible. The findings of the facts by the first appellate court, which is the final court of fact, based on appreciation of evidence cannot be interfered on re-appreciation of evidence. However, the High Court can interfere with the findings of facts when there is perversity in the findings; and in other words, finding is made by completely neglecting the vital evidence.

16. This Court (incidentally authored by me) in Saria Ahmed Vs. State of Assam and Others, held that :-

8. It is the well settled law that in a civil suit the plaintiff would not be expected to prove his pleaded case beyond any reasonable doubt but a high degree probability of the pleaded case would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiffs burden of proof can safely be deemed to have been discharged. Reference may be made to R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another,

17. This Court, keeping in view of the ratio laid down by the Hon''ble Apex Court as well as this Court in the cases discussed above, had given anxious consideration to the cases of the appellants/defendants and the respondent No. 1/plaintiff pleaded in their pleadings for deciding the substantial question of laws formulated in this Second Appeal. It is the clear case of the respondent No. 1 / plaintiff that his village, Monpi Sumchinvum Village, is a recognized old village established as early as 1907 within the erstwhile New Churachandpur Circle (Sadar Circle No.3), at present Churachandpur District. The names of all the recognized villages established at the time of enactment and enforcement of the Manipur State Hill Peoples (Administration) Regulation, 1947 are all entered in the list of recognized villages i.e. scheduled to the Regulation, 1947, and the concerned authorities also issued orders for recognizing hill villages. The Manipur State Hill Peoples (Administration) Regulation, 1947 had been repealed by the Act called "The Manipur (Village Authorities in Hill Areas) Act, 1956" vide Section

58 of the Manipur (Village Authorities in Hill Areas) Act, 1956, which reads as follows:-

58. The Manipur State Hill Peoples (Administration) Regulation, 1947, in so far as it relates to the constitution and functions of Village Authorities and the administration of justice, both civil and criminal, by courts of Village Authorities, is hereby repealed;

Provided and the said repeal shall not affect-

- (a) the previous operation of the said regulation, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Regulation, or
- (c) any penalty, forfeiture or punishment in respect of any offence committed under the said Regulation, or
- (d) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that subject to the above provisions, anything done or any action taken (including any appointment or delegation made or any notification, instruction or direction issued or any rule, regulation or form made or framed) under the said Regulation shall in so far as such thing or action is not inconsistent with the provisions of this Act, continue in force, and be deemed to have been done or taken under the corresponding provisions of this Act, unless and until it is superseded by anything done or any action taken under the provisions of this Act.

18. u/s 3 of the Manipur (Village Authorities in Hill Areas) Act, 1956, for every village having twenty or more tax paying houses, there shall be a Village Authority. u/s 3 of the Manipur (Village Authorities in Hill Areas) Act, 1956, there shall be a Village Authority by the name of Village Authority of Monpi Sumchinum Village if there is a recognized Monpi Sumchinum Village and the concerned authority would have also issued order for constitution of the Village Authority of the hill village i.e. "Monpi Sumchinum Village Authority".

19. It is rule of best evidence that the best possible evidence should be placed before the Court and withholding of best evidence will have an adverse effect. In the present case, best evidence for proving that there is a recognized single village called Monpi Sumchinum Village and the plaintiff is the Chief of the said village are the order of the competent authority for recognizing the said village and also the order for constitution of the Village Authority of the said village but the respondent/plaintiff did not produce those documents, therefore, there should be adverse inference. (Reference: - (1) Janki Narayan Bhoir Vs. Narayan

Namdeo Kadam, (2) Roop Kumar Vs. Mohan Thedani, (3) M.S. Narayana Menon @ Mani Vs. State of Kerala and Another,

20. The Hon'ble Apex Court in J. Smt. J. Yashoda Vs. Smt. K. Shobha Rani, held that:-

The rule which is the most universal, namely, that the best evidence the nature of the case will admit shall be produced only means that, so long as the higher or superior evidence is within the possession of a person or may be reached by a person, that person shall give no inferior proof in relation to it. Essentially, secondary evidence is evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given.

(Emphasis supplied)

21. Part-2, Chapter III of the Indian Evidence Act, 1872 which consists of 3 (three) sections i.e. Sections 56, 57 and 58 deal with facts which need not be proved. u/s 56 of the Indian Evidence Act, no fact of which the Court will take judicial notice need be proved and the facts of which Court must take judicial notice are clearly mentioned in Section 57 of the Indian Evidence Act, which reads as follows:-

57. Facts of which Court must take judicial notice - The Court shall take judicial notice of the following facts :-

[(1) All laws in force in the territory of India;]

(2) All public Acts passed or hereafter to be passed by Parliament [Ins. By the A.O. 1950 (of the United Kingdom), and all local and personal Acts directed by Parliament [Ins. By the A.O. 1950 (of the United Kingdom) to be judicially noticed;

(3) Articles of War for [Subs. By the A.O. 1950, for "Her Majesty's"(the Indian)] Army, Subs. By Act 10 of 1927, sec. 25 and Sch. I, for "or Navy"[Navy or Air Force];

(Subs, by the A.O. 1950, for para 4) (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any law for the time being in force in a Province or in the State;]

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice: the seals of all the [Subs, by the A.O. 1948, for "Courts of British India"] Courts in [Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States"(India)], and all Courts out of [Subs, by the A.O. 1950, for para 4 (India) established by the authority of [Subs, by the A.O. 1937, for the "the G.G. or any L.G in council" (the Central Government or

the Crown representative)): the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by [Subs. by the A.O. 1950, "any Act of Parliament or other"(the constitution or an Act of Parliament of the United Kingdom or an)] Act or Regulation having the force of law in [Subs, by Act 3 of 1951, sec. 3 and Sch., for "the States" (India)];

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in [Subs, by the A.O. 1937, for "the gazette of India, or in the Official Gazette of any L.G."(any Official Gazette)];

(8) The existence, title and national flag of every State or Sovereign recognized by [Subs, by the A.O. 1950, for "the British Crown"(the Government of India)];

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion off Subs. by the A.O. 1950, for "the British Crown"(the Government of India));

(11) The commencement, continuance, and termination of hostilities between [Subs. by the A.O. 1950, for "the British Crown"(the Government of India)] and any other State or body of persons;

(12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

(13) The rule of the road [Ins. by Act 18 of 1872, sec. 5 (on land or at sea)].

In all these cases, and also on all matters of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

22. The Court can take judicial notice of the list of the recognized villages situated in the erstwhile New Churachandpur Circle (Sadar Circle No.3) mentioned in the Schedule to the Manipur State Hill Peoples (Administration) Regulation, 1947 and also the entries of the Census Handbook of the Manipur State and also the Durbar Resolution of the erstwhile Manipur Durbar Resolution, State of Manipur. As stated above, both the Courts below did not take judicial notice of those facts and made the concurrent findings of the Issue Nos. 1,2,3 and 4, in favour of the respondent No. 1/plaintiff, which are contrary to the evidence and also the Courts below had completely lost sight of the rule of best evidence when deciding the Issue Nos. 1, 2, 3 and 4 in favour of the respondent

No. 1/ plaintiff.

23. For the foregoing reasons, the substantial questions of law formulated in the present Second Appeal are answered in favour of the appellants/defendants. In the result, the judgment and decree of the First Appellate Court dated 24.01.1996 passed in First Appeal No.2 of 1995 and the judgment and decree of the trial Court dated 29.9.1994 passed in Original Suit No. 81/88/ 61/91 are hereby set aside and the O.S. No. 81/88/61/91 is dismissed. The Second Appeal is allowed.