

(1981) 09 GAU CK 0011
In the Gauhati High Court
Case No : Second Appeal No. 124 of 1977

U. Stoling Nonglang

APPELLANT

Vs

Ka Klin Lyngdoh Umiong and Others

RESPONDENT

Date of Decision : 24-09-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 41 Rule 1, Order 7 Rule 1, Order 7 Rule 11

Citation : AIR 1982 Guw 83

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : B.M. Mahanta, for the Appellant;

Final Decision : Allowed

Judgement

K. Lahiri, J.—This second appeal is directed against the judgment and decree dated 20-4-1972 passed by Mr. B. R. Laso, Judge, District Council Court, United Khasi-Jaintia Hills, Shillong in Misc. Appeal No. 11 of 1971 wherein the learned Judge has allowed the appeal, set aside the decree of the trial Court and non-suited the plaintiffs-appellants.

2. The appellants as plaintiffs filed a suit being Political Case No. 27 of 1968 in the Court of the Additional Subordinate District Council Court of Maharam Syiemship against five named defendants and 33 others but not named specifically in the plaint. The suit was for cancellation of the sale deed dated Aug. 27, 1965 executed in favour of the five named defendants by some members of their Nonglang clan in violation of the customary law, without any knowledge and consent of the Kur elders. The plaintiff asked for relief besides cancellation, of the sale deed, a decree against the sellers to return the consideration to defendants 1 to 5 and for declaration that the suit land Mawkhyllung Rombah should remain with the owners of Khyndew Ri Khain of the Sawkpoh (four stocks) of Nonglang clan. The defendants appeared and contested the suit. During trial the plaintiffs examined witnesses and thereafter prayed for

summoning the 33 persons arrayed as defendants (but not named) for examination. They were summoned by the Court and examined as witnesses. Thereafter the defendants (named) adduced evidence and the case of the parties closed. Upon hearing the parties the trial Court decreed the suit. On appeal the Judge District Council Court held that (1) non-framing of issues prejudiced the defendants and the trial was vitiated on that count; (2) the trial Court had committed error in summoning the 33 persons and examining them after the plaintiffs had examined their witnesses. The learned Judge, on these grounds, not only reversed the decree but non-suited the plaintiffs. It directed the plaintiffs to "file a proper suit, if so advised".

3. Mr. B.M. Mahanta, learned counsel for the appellants contends that the learned Judge has gone wrong on all the points determined by him.

4. The learned counsel for the appellant submits that settlement and determination of issues, whether on law or fact, are inconsequential insofar as the courts governed by the United Khasi & Jaintia Autonomous District (Administration of Justice) Rules, 1953 are concerned, as the Courts are not governed by the provisions of the Civil P.C. but are guided by the principles of justice, equity and good conscience. Issues need be framed in civil actions under Order XIV of the Code which are inapplicable in trial by the Courts. Contentious proceedings require determination of the points, deduced from the pleadings of the parties, which are affirmed on the one side and denied on the other. Issues are disputed points or questions to which the parties in an action have narrowed their several allegations, and upon which they are desirous of obtaining the decision of the proper tribunal. The formulation of the points or the issues have their origin from time immemorial and all Courts and Tribunals covered by the norms of justice or "the known principles of law", settle issues and determine the disputes on the basis of the issues. It is essential in all adversary system of trial where parties are called upon to produce their evidence. In criminal trials charges are framed to give adequate information of the case appearing against the accused. Framing of issues help the parties to know the disputed points and to adduce evidence in support or against the issues. Parties have rights to lead evidence on the issues. All material documents or oral evidence which travel beyond the issues are superfluous or what is styled as "irrelevant". Issues help Courts to decide the precise questions required to be determined. When issues are framed a civil court cannot go beyond them and formulate a new case for the parties. These are the main reasons why framing of issues are essential in civil action. This rule is of universal application in all trials or proceedings where evidence need be recorded. It is heartening to note that the Rules compacted in Order XIV of the Civil P.C., which are of universal application and beneficial provisions for just, decision of suits, have been adopted by the learned Judge. It is the right stance taken by the learned Judge and no objection can be allowed to be taken when the learned Judge has adopted the right principles to uphold the cause of justice. In my opinion all Rules contained in procedural laws need be applied in trial of suits Or cases by the Courts governed by the Rules of the

Administration of Justice, which are beneficial in nature and bear up the cause of justice. The principles of law, which are of universal application and those rules which accord with the principles of justice, equity and good conscience should be applicable in trials by the Courts concerned. In my opinion the learned Judge was absolutely justified in holding that failure to frame issues resulted in a failure of justice. In the result, the first contention is turned down.

5. However, the other findings of the Appellate Court are unsupportable by any standard. For procedural errors committed by the trial Court in not framing the issues, the learned Judge non suited the plaintiffs and directed them to institute a proper suit. The suit was properly framed but only the names of 33 defendants were not specifically mentioned. On that count a suit cannot be dismissed. The learned Judge should have directed the trial Court to add the said 33 persons as party defendants and to proceed on with the suit after framing proper issues on the pleadings. As such the order of throwing the plaintiffs out of Court for procedural error was invalid and must be set aside. The learned Judge also found fault with the trial Court for examining the said 33 persons. They were examined in presence of the parties and no objections were taken at the time of their examinations. It was merely a procedural irregularity and cannot be a ground to reject the plaint with the direction to file a fresh suit. As alluded, the learned Judge should have remanded the suit for fresh trial with the direction to add the said 33 persons as defendants, thereafter to frame the issues and to proceed to try the actions in accordance with law. The learned Judge has committed illegality in dismissing the suit as a whole.

6. In the result, the appeal is allowed and the matter is sent down to the learned Judge, District Council Court, Shillong who shall make endeavour to find out the records. If the records are not traceable, as reported by the learned Judge, he shall reconstruct the records with the help of the parties and thereafter send down the records to the trial Court. It has been stated that the case can now be tried by the Subordinate District Council Court at Shillong. The learned Judge shall remit the case to the Subordinate District Council Court at Shillong for trial, if he considers that it would be convenient for the parties to have the trial at Shillong, upon hearing the plaintiffs and the 5 defendants. On receipt of the records the learned Subordinate District Council Court, Shillong shall direct the plaintiffs to add the names of 33 defendants as party to the suit, frame appropriate issues and after examination of the witnesses dispose of the suit in accordance with law, on the available records at his disposal. In the result, the appeal is allowed. However, I leave the parties to bear their respective costs.