
(1982) 04 GAU CK 0013

In the Gauhati High Court

Case No : Civil Revision No's. 2 (K) and 16 (H) of 1979

Vimede Angami

APPELLANT

Vs

Ziekrue-o Angami

RESPONDENT

Date of Decision : 22-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Oaths Act, 1969 — Section 7

Citation : AIR 1982 Guw 108

Hon'ble Judges : T.C. Das, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : R.K. Singh, for the Appellant; W.A. Shishak, for the Respondent

Judgement

Lahiri, J.—This is a revision under the Rules for the Administration of Justice which involves several substantial questions of law.

2. The petitioners claim that the water course of the river flowing by the paddy fields of the petitioners and those of the opposite parties was interfered with by the opposite parties to the detriment of the petitioners. A dispute was lodged with the Gaonburahs P. Khel of Kohima village. The Gaonburahs did not decide the case of the parties in any form whatsoever. What they did was to prohibit both the villagers not to interfere with the natural flow of the river and forbade the parties to take any action which might endanger or damage the paddy fields of the parties. Shortly, put, the Gaonburahs maintained "status quo", kept alive the disputations between the villagers and merely passed a prohibitory order restraining the parties to do certain acts. In view of the non-determination of the rights the inevitable consequences followed. The villagers of the petitioners alleged that the villagers of the opposite parties had violated the order of the Gaonburahs who had decided matter in favour of the petitioners. In consequence of the complaint the opposite parties were fined Rs. 100 and the obstruction put up by them was directed to be removed. Even during the second round of the disputation, the Gaonburahs did not determine the rights of the parties but

merely penalised the opposite parties. Against the imposition of the fine, the opposite parties preferred an appeal to the court of the Dobhasis. The Dobhasis Court also did not decide the rights of the parties. No issue was framed nor did the court determine the right, title and interest of the parties. The Dobhasi Court accepted the age old method of oath taking. By this method the parties are asked to take oath on their life or the life of the villager. If any misfortune happens due to natural calamities or otherwise on any of the parties he loses the case although the claim of that party may be just, legal and valid. By adopting the procedure the courts do not decide the real rights of the parties but leave them to Almighty. Nagaland has progressed by leaps and bounds, it is one of the most forward States in India, a great leap is evident in the life style of the Nagas. advancement is noticeable all around and in every sphere of Naga activities. It is an intriguing question whether the court system constituted under "the Rules" should remain passive to the great march and advancement and instead continue to decide cases not on merit but leave the decision to Nature or to chances. This case is a shining example that old values should give way to new and some of the practices followed so far by the courts governed by the Rules for the Administration of Justice and Police require changes. We must seriously consider the advisability of forcing the parties to take oath and leave the ultimate decision to Almighty.

3. It is true that oath taking is an age-old custom which has been acted upon in practice for a long period and we know that it was by common consent remained as the governing rules of the Nagas. A valid custom must not only be ancient, certain and reasonable but must be sound and reasonable. A custom to which the people do not pin faith must give way, as no unreasonable and anti-people custom can or should be retained and continued to be treated as Customary Law. In the instant case the petitioners refused to take oath. Naturally, they wanted a decision from the court. However, we refrain from expressing any opinion whether the practice of oath taking by the parties to an action should be encouraged or discouraged, valid or invalid, as it is for the legislature to decide the question. We would like to impress upon all including the courts of the Gaonburahs as well as the Courts of the Dobhasis that whenever a dispute arises, it is their obligation as judges to make all out efforts for effective and speedy disposal of disputes. Delay in disposal of the disputations create hardships, tensions, anxieties and hostilities among the parties. In good old days such disputes were decided by these courts in a silver quick fashion and that too finally. The Courts never dilly dallied with the disputes. They used to set at rest all disputes speedily. Therefore, we have had a glorious court-system in Nagaland where the litigants obtained speedy and cheap justice. We feel that the old practice should be restored and the courts should be up and doing to decide all intra-village and inter-village disputes speedily. In the instant case we are unhappy to say that the Dobhasis Court did not make any exercise to determine the dispute. Instead it took a short cut slipshod method of asking for parties to take oath. Oath taking is a voluntary act. There should not be any compulsion.

Where a party refuses to take oath, the court should proceed to discharge its obligation and decide the case according to the Naga Custom and the Law. It is true that these courts as enjoined by "the Rules" should first of all see that the parties arrive at a settlement. Indeed they ought to assist the parties to reach at an amicable settlement. However, when the parties fail to arrive at an amicable settlement the court should earnestly try to decide the legal rights of the parties. The aforesaid courts are part of the court-system in India; they have constitutional obligation to determine the cases upon hearing the parties and their witnesses. In our opinion the easy method of forcing the parties to take oath should be discarded.

4. In the instant case in the court of the Dobhasis the petitioners refused to take oath for which they were fined Rs. 500.

5. The learned counsel for the parties have failed to show before us any law or custom which authorises the court to impose fine on a party, if it decline to take oath. In the interest of public or the villagers, it was the obligation of the Courts to see that paddy fields of the parties got reasonable and proportionate water. They should have looked to the interest of the villagers, decided the rights of the villagers to draw reasonable water from the river. Surely the Court could have made necessary prohibitory order restraining the parties not to do any act which was harmful or injurious to the interest of the villagers. From the decision of the Court of Dobhasis the parties came to the court of the Additional Deputy Commissioner, Kohima but could obtain "no decision". The learned ADC was of the view that the claims of the petitioners were barred by principles of "res judicata" so nothing was decided at that end.

6. We fail to fathom the order. How the appeal was barred by res judicata? Realising the hollowness of the decision the learned counsel for both the parties prayed before us that the case should be sent down to the court of the learned ADC, Kohima to decide the disputes according to law. The learned counsel for the parties also expressed that we should lay down the laws regarding framing of issues, the importance thereof and the meaning of principles of "res judicata".

7. It is well known that the courts governed by the Rules for the administration of justice in Nagaland are not governed by the Civil P. C. Only the spirit of the Code is applicable and the courts are not bound by the letter of the Code. The people of Nagaland are simple, trial machinery and the trial system are simple and "the Rules" were framed with an eye to simplify that the technicalities of the Code should not trammel litigation embarked upon by a people not used to them. The guiding factor of "the Rules" is that both the parties should be able to present their cases effectively and unhampered by the technicalities of complex laws. Therefore, the complex Civil P. C, have not been applied and instead only the spirit of the Code has been directed to be applied so that justice may not fail on account of technicalities. The object of "the Code" is to restrain or control the discretion of the courts. In Nagaland, it was considered necessary that the cases should be decided on the basis of 3 pillars (1) Justice, (2) Equity and (3) good

conscience. Therefore, discretion should play a greater role than technical Rules and the spirit of the Code has been made applicable for the best interest of the people. In Nagaland discretion of the courts or judicial Officers is not subjected to rigid control. Removal of the technicalities was aimed at speedy but deliberate justice and meant for cutting short what we say "long distance litigation".

8. However, there are certain rules or legal maxim applicable the world over; they are of universal application One amongst them is that it is the duty of the Presiding Officer of the Court to know and let know the disputants the real claims of the respective parties. When both the parties file their respective claim the court has to find what was affirmed by the one party and denied by the other. Framing of issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The court must ascertain what material propositions of fact or law (including customary law) are affirmed by the one party and denied by the other. The court must inform the parties what are the matters of dispute between the parties. These are called issues under "the Code", Without ascertaining the issues, i.e. material proposition on which the parties will bring witnesses and adduce evidence, it is not possible for the parties to lead evidence nor is it possible for the court to decide the real disputes. Since the beginning of civilization throughout the world it was considered by the court to determine such issues and inform them to the parties. This enables the parties to get opportunity to adduce evidence. In Nagaland, if we look to the past history of the court-system we find that the courts used to get a grip of the issues and used to inform the parties about them. The reasons are too obvious, as after issues are framed, the parties adduce evidence and thereafter the court renders decision. On the issues, such decisions are final decisions. Of course subject to appeal. If the decisions are appealed and the findings are upheld or partly upheld or wholly rejected such decisions of the appellate court becomes final.

9. Framing of issues in a manner laid down in Order XIV of the C.P.C. is essentially necessary in Nagaland as the principles governing the rules are of universal application. Even in the recent past, all Officers and Courts constituted by "the rules" used to inform the parties about the material proposition of fact or law affirmed by the one party and denied by the other, and while writing out judgments they used to formulate the points for decision. This is our past tradition. Framing of issues is necessary for court to get a grip of the case, which enable it to determine the material propositions affirmed by the one party and denied by the other. It affords the parties to know the real case put up by the parties and to adduce evidence accordingly. It also enables the appellate or the revisional court to determine whether substantial justice has been done to the parties. This apart, the spirit of the provisions of Section 11 of the C.P.C. has been made applicable in the areas governed by the Rules of Administration of Justice by the Supreme Court in *Gurumayum Sakhi Gopal Sarma v. K. Ongi Anisija Devi*. Civil Appeal No. 659 of 1957 decided on 4-2-61. The Supreme Court has laid down that the spirit of Section 11 is applicable in the areas governed by "the rules". That being the position of law. it is now imperative for the courts

governed by "the Rules" to frame issues, for the simple reasons that Section 11 of the Code forbids a Court to try a suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suits in which such issue has been substantially raised and has been finally decided by such Court. Therefore, it is crystal clear that issues need be framed in a civil action even in Nagaland where Civil proceedings are governed by "the Rules".

10. The doctrine of res judicata rests on the principle that one should not be vexed twice for the same cause and there should be finality of litigation. The rule also rests on public policy. Res judicata debars retrial of the same issue once again in respect of the issues which have been conclusively determined in a previous suit. The principles of res judicata are applicable under the following conditions: (1) There must be identifiability of the issues, that is, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. (2) There must be identity of parties, that is, the former suit must be between the same parties or between the parties under whom they or any of them claim, litigating under the same title. (3) The parties to the suit must litigate under the same title in the former suit. (4) The Court which decided the former suit was competent to try the said suit. (5) Finality of the decision. The matter directly and substantially in issue in the subsequent suit must have been heard and finally determined in the former suit. These are the main factors which govern the principles of "res judicata" as defined and explained in Sections 11 and 12 of "the Code".

11. A word about the meaning of the expression "cause of action". The expressions are inextricably mixed up with the provisions of Section 11 of the Code. In a civil suit or action the plaintiff is required to include the whole of the claim to which he is entitled to make in respect of the causes of action. In short, the expressions cause of action mean the whole of the material fact which is necessary for the plaintiff to allege and prove in order to succeed. It does not, however, necessarily include other facts including those facts which have no relation to the material evidence necessary to prove the case of the plaintiff.

12. We have set out the meaning of the term of "cause of action". We have explained why issues need be framed by the Courts governed by "the Rules". We have also pointed to the decision where-by the Supreme Court has categorically stated that principles of res judicata are applicable in the areas governed by the Rules where the letter of the Code are inapplicable, but the spirit of the set is applicable.

13. The impugned order is bad as the learned Additional Deputy Commissioner failed to appreciate the true meaning of the expressions "res judicata". Accordingly we remand the matter to the learned Additional Deputy Commissioner, Kohima. He shall frame appropriate and proper issues. If the

learned Additional Deputy Commissioner considers that the parties should be given an opportunity to adduce evidence, he may take evidence and decide the issues finally and for good, so that decisions rendered by him may become res judicata in a subsequent suit or action. We direct the learned Additional Deputy Commissioner to determine all the disputes between the parties, namely, their right, title and interest in respect of the subject matters of the dispute fully and finally. In Nagaland litigants villagers suffer miseries, agonies and anxieties due to failure of the courts to decide the main dispute. Almost all such litigations are at par with public interest litigations because the dispute arises between the villagers of one village with those of the other village. Such disputes ought to be tried and disposed of fully and finally so that hostility between the villagers do not mount to the extent which might create law and order problems. We are constrained to observe that the learned Additional Deputy Commissioner shall uphold the mandate of the Constitution and recognize human rights and shall dispose of the matter as expeditiously as possible.

14. For the foregoing reasons we set aside the impugned judgment and orders and remit the case to the learned Additional Deputy Commissioner. Kohima, for disposal of the disputes between the parties in accordance with law. No order as to costs.