

IN THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL
PRADESH)**

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

FAO 03 (AP) 2009

Shri Tani Riba,
S/o Shri Tage Riba
Village Lumpo, PO/PS Nari
District East Siang,
Arunachal Pradesh.

.....Appellant.

-VS-

Shri Tanya Ronya,
S/o Late Mukbom Ronya
Village Lumpo, PO/PS Nari
District East Siang,
Arunachal Pradesh.

..... Respondent.

By Advocates:
For the appellant:

Ms. N. Danggen,

For the respondent:

Mr. M. Pertin, Senior Advocate,
Mr. W. Sawin,
Mr. I. Riram,
Mr. G. Riba,

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **14.12.2017.**

Date of Judgment : **30.01.2018.**

JUDGMENT & ORDER (CAV)

This is an appeal under Section 48 of the Assam Frontier (Administration of Justice) Regulation, 1945 (for short 'Regulation, 1945') against the orders, dated 26.07.2006, 11.09.2006 and 18.03.2009, passed by the Deputy Commissioner, Pasighat in Title Suit No.HT-20/06.

2. Heard Ms. N. Danggen, learned counsel appearing for the appellant and Mr. M. Pertin, learned senior counsel assisted by Mr. W. Sawin, learned counsel appearing for the respondent.

3. The appellant's case precisely is that he purchased a plot of agricultural land, measuring 2 puras and 3 bighas, at a price of Rs.1,10,000/- and other plots of WRC field and Jhum land, measuring 1 bigha each @ Rs.30,000/- only, located at Lumpo village from one Shri Gandhi Ronya, who is the elder brother of the respondent No. 3, by executing a sale deed on 20.12.2004. Shri Gandhi Ronya had also sold other plots of ancestral land to several other persons namely, Shri Banya Gadi and Shri Babom Sora among others. Since then, the appellant had been cultivating on the said plots of land. However, after elapse of about 1(one) year, the respondent made a complaint against his said elder brother, namely, Shri Gandhi Ronya before the SDO (C), Nari. Pursuant thereto, a Kebang was held on 29.10.2005. The Kebang passed orders for division of the land between the 02(two) brothers. Consequently, the land which was sold to the petitioner and others fell within the portion demarcated by the respondent. In the said Kebang, neither the appellant nor the seller Shri Gandhi Ronya was present. Aggrieved by the decision of the Kebang held on 29.10.2005, the appellant preferred an appeal against the Keba decision before the Deputy Commissioner, East Siang District, Pasighat on 24.11.2005. The Deputy Commissioner referred the dispute to a Kebang and accordingly Keba was held at Pasighat on 26.04.2006. In the said Kebang, held on 26.04.2006, the seller namely,

Shri Gandhi Ronya admitted to selling of the land to the appellant and others. The Kebang held that at the time of sale of the land to the appellant, the ancestral landed property had not been partitioned between the 02(two) brothers. The seller-the elder brother, Shri Gandhi Ronya, therefore, acted as a fatherly figure in the family and took all the important decisions including sell of land to fetch money for medical treatment of their mother. The Kebang also observed that since the buyer (the appellant herein), and the seller were not present during the Keba proceeding held on 29.10.2005, it was bad for non-joinder of necessary parties and accordingly, the Keba decision, dated 26.04.2006, overruled the Keba decision, dated 29.10.2005.

4. The respondent (original appellant) preferred a title appeal against the aforesaid Keba decision, dated 26.04.2006, impleading the brother of the present appellant Shri Getu Riba, who had no connection with him otherwise. The aforesaid mistake on the part of the appellant (respondent herein) was brought to the notice of the Deputy Commissioner, Pasighat and prayed to implead himself as a party, but it was advised to make the prayer on subsequent dates, when the appellant (the respondent herein) would be present. In the meantime, the respondent/appellant had applied for a Land Possession Certificate (LPC) on the petitioner's land and pursuant to that, objections were invited, if any. The Deputy Commissioner, Pasighat and Circle Officer, Pasighat passed 02(two) orders, dated 26.07.2006 and 11.09.2006 respectively. By order, dated 26.07.2006, the Deputy Commissioner, Pasighat granted a prayer for withdrawal of the Title Appeal filed by the appellant (respondent herein) and at the same time granted prayer for execution of the earlier Kebang orders, which were actually non-existent and further, stayed the proceeding for arbitration/kebang, although there was no pending of Kebang/arbitration on the dispute. The Circle Officer purportedly passed the order, dated 11.09.2006, on behalf of the Deputy Commissioner pursuant to the aforesaid order, dated 26.07.2006. While the aforesaid

2(two) orders, dated 26.07.2006 and 11.09.2006, were passed, the appellant was never given the opportunity of being heard nor he was summoned for the said purpose. Therefore, the appellant and other buyers of the portions of land of Shri Gandhi Ronya made a prayer for review of the aforesaid orders, dated 26.07.2006 and 11.09.2006 and also raised objection against grant of LPC to the respondent before the Deputy Commissioner, Pasighat. Shri Gandhi Ronya (the seller) also made similar objections before the Deputy Commissioner, Pasighat on 21.05.2007. Although the Deputy Commissioner, Pasighat admitted the review application, dated 21.05.2007, the matter was, however, endorsed to the Circle Officer, Kebang. Therefore, the appellant again approached the Deputy Commissioner, Pasighat on 09.04.2008, to restrain the respondent from cultivating on the disputed land, which was again endorsed to the Circle Officer, Kebang, whereupon, the Deputy Commissioner directed the Circle Officer, Kebang to examine and process the entire case.

5. Aggrieved, the appellant made 02(two) representations, dated 09.07.2008 and 15.12.2008 praying for early disposal of the case and/or in the alternative to transfer the case to the Fast Track Court at Basar. The Deputy Commissioner endorsed the representations to the Circle Officer, Kebang with a direction 'to process urgently'. The Circle Officer, on behalf of the Deputy Commissioner, Pasighat rejected the representation, dated 15.12.2008, on the ground that the matter had already been disposed of in case No.HT-20/06, on 26.07.2006 the aforesaid order of disposal of the case was passed without hearing the parties. Aggrieved, the appellant preferred a revision petition against the aforesaid impugned orders, dated 26.07.2006, 11.09.2006 and 18.03.2009 before this Court on 04.04.2009. The said revision petition was withdrawn, as an appeal was maintainable, as per Section 48 of the Assam Frontier (Administration of Justice) Regulation, 1945 against the aforesaid orders.

6. On perusal of the appeal records, it appears that by a judgment and order, dated 09.12.2010, this Court remanded the instant matter back to the Deputy Commissioner, Pasighat to pass appropriate order and accordingly, the impugned order, dated 26.07.2006 and its subsequent orders, passed on the basis of the said order were set aside and quashed. However, by a subsequent order, dated 26.11.2015, passed in Review Petition No.07(AP)2015, the review of the order, dated 09.12.2010, whereby the appeal was disposed of, was recalled and accordingly, the appeal was restored to file. Hence, by filing the instant appeal, it is prayed to set aside and quash the impugned order, dated 26.07.2006, passed by the learned Deputy Commissioner, Pasighat in Title Suit No.01/2006 and the order, dated 11.09.2006, passed by the Circle Officer, on behalf of the Deputy Commissioner, Pasighat and further, the order, dated 18.03.2009, passed by the Circle Officer in HT No.42/2009.

7. Ms. N. Danggen, learned counsel for the appellant submitted that the disposal of the case No.HT-20/2006, by order, dated 26.07.2006, was *parse* illegal, as the order was passed after the appellant/respondent herein, made a prayer for withdrawal of his Title Appeal filed before the Deputy Commissioner, Pasighat against the Kebang decision, dated 26.04.2006. Ms. Danggen further submitted that the Deputy Commissioner, Pasighat granted a prayer for execution of earlier Kebang orders, which were actually non-existent as it was quashed by Kebang held on 26.04.2006 and also staying the proceeding for arbitration/Kebang, when there was no such pending of arbitration/kebang on the issue. According to Ms. Danggen all the aforesaid impugned orders were passed without hearing the appellant herein. Ms. Danggen submitted that when the Title Appeal against the Kebang order, dated 26.04.2008, filed by the appellant/respondent herein was withdrawn, no case, in fact, remained for the respondent and as such, the order of the Deputy Commissioner, Pasighat for execution of earlier Kebang order, was already quashed by the aforesaid Kebang

order, dated 26.04.2006, which was apparently illegal. Ms. Danggen further submitted that as the Assam Frontier (Administration of Justice) Regulation, 1945 does not provide any provision for second appeal, the Kebang order, dated 26.04.2006, was the result of appeal against the earlier Kebang order, dated 29.12.2005 and the matter should have ended then. The Deputy Commissioner, Pasighat has also committed illegality by delegating his judicial powers in an appeal preferred before him and allowing the Circle Officer, Kebang to act on his behalf as a Civil Judge and on the other hand, all the orders were passed by the Circle Officer, Kebang without hearing the appellant.

8. Mr. M. Pertin, learned senior counsel appearing on behalf of the respondent submitted that the moot question involved in the instant appeal is whether the suit land was purchased by the appellant from a *bonafide* owner?. According to Mr. Pertin the suit land was the joint property of the 02(two) sons of late Mukbom Ronya, the original owner of the suit land and as such, after the death of Mukbom Ronya, his son Shri Gandhi Ronya had no legal right to sell the ancestral joint landed property without the consent of his brother Shri Tanya Ronya. In this regard, Mr. Pertin has referred to the statement of Shri Gandhi Ronya, dated 28.07.2003, wherein he clearly admitted that he sold the land to the appellant which would have been his own share of the ancestral landed property, although he had no right to sell part of the ancestral land without permission of his brother. According to Mr. Pertin, the learned senior counsel, the dispute was judicially settled with the disposal of the review petition No.07(AP)2012 against the judgment and order, dated 09.12.2010, passed by this Court in the instant appeal, against which, the appellant has not preferred any appeal. Drawing attention to the Kebang decision, dated 29.10.2005, Mr. Pertin submitted that as per the aforesaid decision, amongst others, the landed property left by late Mukbom Ronya was divided between his 02(two) sons, namely, Shri Bomnya Ronya and

Shri Gandhi Ronya giving the greater part of his land to the eldest son and the remaining part to the independent share of Bomnya Ronya.

9. On perusal of records, it appears that by an unregistered agreement for sale, dated 20.12.2004, the respondent herein, one Gandhi Ronya agreed to sell 11 bighas (2 puras and 3 bighas) Wet Rice Cultivation (for short 'WRC') field to him and accordingly, besides demarcating the land sold, as such, acknowledged receipt of Rs.1,10,000/- (Rupees One Lakh Ten Thousand) only. The aforesaid land is situated at Lumpo village, East Siang District, Arunachal Pradesh. The aforesaid land, as it appears from the Kebang decision, dated 29.10.2005, was left by Late Mukbom Ronya, the father of 02(two) sons, namely, Shri Bomnya Ronya and Shri Gandhi Ronya and as it remained un-partitioned during the period of sell transaction, the landed property was partitioned between the said 2(two) brothers well defining their interest in respect of the respective shares, in presence of them and others. The aforesaid Kebang decision refers to 02(two) earlier Kebang decisions, dated 20.03.1997 and 24.03.2005, the copy of which were, of course, not exhibited.

10. Aggrieved, the present appellant, who purchased the land from Shri Gandhi Ronya preferred an appeal against the aforesaid Kebang decision, dated 29.10.2005, to the Deputy Commissioner, East Siang District, Pasighat, vide Memo of Appeal, dated 31.10.2005, praying to set aside the aforesaid Kebang decision, which was instantly endorsed to the Circle Officer, Kebang. It may be mentioned that the suit land fell to the share of Tanya Ronya, the brother of the seller, Shri Gandhi Ronya in terms of the partition of land effected by the aforesaid Kebang decision, dated 29.10.2005 and it was done without giving opportunity of hearing to him, who was the purchaser of the land and further, the said plot of land was partitioned in favour of Shri Gandhi Ronya by his deceased father. However, no action was taken on the aforesaid appeal. Thereafter, based on the complaint, dated 24.11.2005, filed by the appellant, the

Circle Officer, Nari convened a Keba on 26.04.2006 to settle the dispute between the appellant Shri Tani Riba, the purchaser of the land and Shri Gandhi Ronya, the seller, where none of them was present, but noted in his decision that at the time of the admitted sale of the land by Shri Gandhi Ronya, their ancestral property was not partitioned between the 02(two) brothers and there was no evidence to show that the mother objected to the sale transaction and further, that the Ronya family will not make any further claim regarding the said land sold to the appellant as the aforesaid sale agreement provided for not rescinding the same. It was noted in the aforesaid Keba decision, dated 26.04.2006 that no Kebang can be conducted and decision adopted in absence of the seller and the buyer of the disputed land. Aggrieved, the respondent namely, Shri Tanya Ronya preferred a Title Appeal against the Kebang decision, dated 26.04.2006, before the Deputy Commissioner, Pasihat, praying for declaration of title over an area of 17 puras of land at Detak Reke under Nari circle, wherein instead of the appellant, impleaded the appellant's brother, namely, Getu Riba, who had no interest in the sale transaction of the disputed land. The Deputy Commissioner, Pasihat convened a Kebang in his office on 17.07.2006. However, no hearing had taken place. The appellant has contended that when the said appeal was pending before the Deputy Commissioner, Pasihat, the respondent/appellant had applied for LPC in respect of the appellant's purchased land and pursuant thereto, invited objections, if any, from the inhabitants of the 04(four) boundaries of the land. In the meantime, the Deputy Commissioner, Pasihat, based on the petition filed by the respondent herein in Title Suit No.01/2006, prayed for permission to withdraw the said Title Suit and further, prayed for execution proceedings of the earlier Kebang decisions which were allowed and further, stayed the non-existent proceeding for arbitration/Kebang and directed for processing for execution of decree. The aforesaid impugned order, dated 26.07.2006, reads as herein below extracted-

"T/Suit No.01/2006

Perused the petition filed by Ori Tanya Ronya alias Bomnya Ronya through his advocate Ms. Geeta Panging praying for withdrawal of the title suit and further prayed for execution proceedings of the earlier Kebang decision.

The prayer is granted.

Proceeding for arbitration/Kebang is stayed.

Process for execution of decree be expedited.

***Sd/- Illegible
Deputy Commissioner
Pasighat"***

11. The above impugned order, dated 26.07.2006, apparently indicates passing of contradictory composite orders, as while allowing the withdrawal of the suit, the Deputy Commissioner, Pasighat also simultaneously directed for execution of the earlier Kebang decisions, which were already overruled by the Kebang decision, dated 26.04.2006, against which the Title Suit was preferred and stayed the arbitration/Kebang proceeding which was non-existent and also directed for execution of the decree, which Title Suit was withdrawn on the prayer of the plaintiff, i.e. the respondent herein. Again by another order, dated 11.09.2006, vide No.HT25/06/03-706/2066-75, the PI O. Moyong (SE), LM Branch of the Office of the Deputy Commissioner, Pasighat namely, Shri T. Pabo, after visiting the suit land and in absence of the respondents, surveyed and handed over the land to Shri Bonya Ronya in execution of the decree with a direction that he can proceed for registration of the 02(two) plots of land, after obtaining the required LPC and no objection from the persons concerned. The aforesaid order, dated 11.09.2006, was passed without giving opportunity of being heard to the appellant, namely, Tani Riba, the purchaser of the land. The aforesaid order of the Circle Officer, Kebang on behalf of the Deputy Commissioner, Pasighat, it was further recorded that no objection of any person including that of the present appellant, who were the purchasers of different plots of land from Shri Gandhi Ronya `will be entertained and will be rejected as per and according to the Kebang decisions, dated the 20th

March 1997 and 26th March 2006'. The aforesaid order, dated 11.09.2006, apparently appears to have been passed without hearing the present appellant. The aforesaid impugned order, dated 11.09.2006, is extracted herein below-

**"GOVT OF ARUNACHAL PRADESH
OFFICE OF THE DEPUTY COMMISSIONER::: EAST SIANG DISTRICT
PASIGHAT
No. HT-25/06/703-706/2066-75, dated Pasighat, the 11th Sept 06.
ORDER**

11/09/2006: On 11/09/2006 along with Shri T. Pabo, PI, O. Moyong (SE), LM Branch and accompanied by Shri Bomnya Ronya and his learned counsel Ms. Geeta Panging visited the disputed land at Gumpa village. None of the opposite parties were present to raise their objection if any and neither any counsels from their side were present though all of them have been served with the notice of this spot verification for execution of the instant case.

The SK, Shri O. Moyong, (SK) LM Branch surveyed the disputed land and as decided by the Kebang Decisions dated 20th March 1997 and 26th March 2006, the land marked out for Sri Bomnya Ronya named WRC field and barren land was surveyed and the proper measurement were taken and the map of the above two plots were drawn.

As per the said measurements the WRC field is 17151.5 Sqm (4.7 Hecter) (11 Acres) and bounded in the North West by the barren land of Shri Bomnya Ronya in the North East by the land of Shri Bamen Sopa, in the East by the land of Shri Ebom Zirdo in the south by the land of Shri Jomi Bomjen and in the west by the land of Smt. Y. Likar and by a Nallah.

As per the said measurements the barren land is 33287 Sqm (43.3 Hectre) (8.2 Acres) and bounded in the North by the land of Shri Tanya Miro, in the South by Nallah, in the east by the land of the Shri Tadul Rida, the WRC field of Shri Bomnya Ronya, in the west by the land of Shri Tadek Eshi. All the above mentioned persons who have their land in the boundary of the land of Shri Bomnya Ronya also signed the said two maps.

Hence in the execution thereof the lands in the said two maps has been handed over to Shri Bomnya Ronya and he can proceed for registration of the above two plots of land with the instant two maps for obtaining the required the land possession certificate and no objection from any persons including Shri Ito Zirdo, Forest camp nari, Shri Ibom Zirdo,

camp Nari, Shri Getu Riba, Lumpo village. Shri Tani Riba, Lumpo village, Shri Tagam Riba, Pasighat Shri Talsi Doye Seren village will be entertained and will be rejected as per and according to the Kebang Decisions dated the 20th March 1997 and 26th March 2006.

With the above directions, the instant execution case stands disposed off.

Given under my hand and seals of the Court on the 11th day of September 2006.

*Sd/-
Circle Officer (K)
For Deputy Commissioner"*

12. Aggrieved, the appellant Shri Tani Riba and others, who purchased different plots of land from Shri Gandhi Ronya preferred a review petition against the orders, dated 26.07.2006 and 11.09.2006 and also objected the grant of LPC in favour of the respondent, Shri Tanya Ronya, before the Deputy Commissioner, Pasighat on 21.05.2007, was illegally endorsed to the Circle Officer, Kebang, and it was kept pending without any decision. Not only this, the Deputy Commissioner, Pasighat endorsed an application of the appellant, whereby the appellant prayed to restrain the respondent from cultivating on the disputed land to the Circle Officer, Kebang with a direction to examine and process the entire case/issue, but no action was also taken on the said petition. Thereafter, the appellant submitted 02(two) other representations, dated 09.07.2008 and 15.12.2008, praying for early disposal of the case and/or in the alternative, to transfer the case to the First Track Court at Basar, was also endorsed to the Circle Officer, Kebang with a direction 'to process urgently', but no action was taken by the said Circle Officer. Surprisingly, the appellant came to know on enquiry, from the office of the Circle Officer, Kebang, when he received a copy of the letter, dated 18.03.2009, wherein it was shown communicated to him on behalf of the Deputy Commissioner, Pasighat that the appellant's representation, dated 15.12.2008 was rejected, as the matter had already been disposed of by an order, dated 26.07.2006, passed in case No.HT-20/06.

13. In the backdrop of the above irregularities committed by the authorities, it needs to be pertinently mentioned that the procedure established by law, as contemplated by Article 21 of the Constitution of India is that every trial must be right, just and fair and not arbitrary, oppressive or fanciful. In order that the procedure is right, just and fair, it should conform to the principles of natural justice, i.e., fair play in play. Therefore, in the interest of fair trial, the necessary parties should be impleaded in every proceeding for settlement of disputes and opportunity of hearing should also be given to them, because assurance of a fair trial is the first inspiration of the dispensation of justice. It is apparent on the face of the impugned orders, dated 26.07.2006, 11.09.2006, 18.03.2009 and 26.07.2006, aforementioned, that those orders are apparently devoid of fair trial of the real controversies in issue between the parties, as stated above.

14. For the reasons, set forth above, **the appeal stands allowed** and accordingly, the impugned orders, dated 26.07.2006, 11.09.2006, 18.03.2009 and 26.07.2006 are set aside, with direction to adjudicate the matters afresh expeditiously, strictly, in accordance with the procedure established by law.

Send back the LCRs along with a copy of this judgment and order.

Cha Gang

JUDGE