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

FAO2(AP)/2016

Shri BalamsoTayang,
S/o Lt. Somu Tayang,
Tafragam village, P.O. & P.S. –Tezu,
Lohit District, Arunachal Pradesh.
-Vs-

..... Appellant.

Sri Gandhina Ngadong,
S/o late Khungso Ngadong, Duraliang village
P.O. & P.S. –Tezu, Lohit District, Arunachal Pradesh.
.....Respondent.

Advocate for the Appellant : Mr. M. Kato

Advocate for the Respondent : Mr. M. Batt

BEFORE

HONOURABLE MR. JUSTICE MIR ALFAZ ALI

Date of Hearing : 30-07-2019
Decided on : 02-08-2019

JUDGMENT & ORDER (CAV)

This regular first appeal by the defendantagainst the judgment and decree dated 24-02-16 passed by the learned District Judge, Tezu in Title Suit No. 1/10, whereby the suit of the plaintiff was decreed.

2. The facts leading to the present appeal may be stated thus :-

The plaintiff filed the suit for declaration of title, recovery of possession, permanent injunction and other consequential relief. The case of the plaintiff is that he is the owner of the suit land measuring 35 acres situated at village Duraliang. The land was developed by him and he and his father have been cultivating the same. There was a boundary dispute between Tafragam and Duraliang village,which was amicably settled and the plaintiff has been possessing the suit land peacefully.

On 04-05-2002,the defendant,who is resident of another village, illegally entered into the suit land and destroyed various plants like orange, cardomon, etc. as well the other cultivation causing huge loss to him and also claimed ownership over the suit land. Accordingly, the plaintiff lodged a complaint before the Deputy Commissioner, Tezu, wherein the Deputy Commissioner, Tezu passed an order directing the parties to maintain status-quo and peace and also directing the parties to approach the Gaonburah to settle the dispute.

3. The case of the defendant is that the plaintiff was not the permanent resident of Duraliang village and he was a permanent resident of Mekaliang village. The further case of the defendant is that the suit land belonged to the defendant, which was initially occupied and possessed by his forefathers since the time of British regime.Then plaintiff illegally occupied 9 acres of land out of the suit land and started cultivation. Though the defendant asked the plaintiff to vacate the land, the plaintiff did not pay any heed and out of anger the defendant destroyed some of the plantations of the plaintiff. It is also stated that the plaintiff started cultivation of the suit land only in the year 1998. On the basis of the above pleadings, learned trial court framed the following issues : -

i) Whether the suit is maintainable under the law and fact ?

ii) Whether suit land is inherited property of the plaintiff ?

iii) Whether the suit land is under the possession of plaintiff, if yes, since when ?

iv) Whether the defendant had trespassed into the suit land and destroyed the property of plaintiff ? If yes, any compensation is entitled to by the plaintiff.

v) Whether the plaintiff is entitled to be declared as a legal owner of the suit land ?

vi) If any other relief can be granted ?

4. There was a village keba to settle the dispute which took a decision that the suit land belonged to the defendant. The plaintiff was not satisfied with the said decision and at the instance of the plaintiff there was another Keba, wherein the matter remained unresolved and the parties were left to approach the court of law and accordingly, the plaintiff filed a suit before the Deputy Commissioner, Tezu, which was decreed in favour of the plaintiff. Challenging the said judgment and decree an appeal was preferred before this court and this court set aside the decree and remanded the suit for fresh disposal and the learned trial court by the impugned judgment decreed the suit in favour of the plaintiff. Aggrieved, the defendant has preferred the instant appeal.

5. Heard Mr. M. Kato, learned counsel for the appellant and . Mr. M. Batt, learned counsel for the respondent.

6. Learned counsel for the defendant/appellant submitted that the dispute was already decided in the Keba and the said Keba decision is still in force, and as such, the subsequent suit was barred by *res-judicate*. Further submission of the learned counsel for the defendant/appellant is that the plaintiff failed to adduce any documentary evidence. However, learned trial court decided the ownership of the plaintiff over the suit land on the basis of certain documents being Exts. 1 (C), 1 (D), 1 (F), 1 (G), 1 (H), 1 (J), 1 (K), which have nothing to do with the suit land, inasmuch, all those documents related to caste proof, driving license, gun license, etc. Learned counsel for the defendant/appellant further contended that the learned trial court decided the ownership and title of the plaintiff over the suit land solely on the basis of the oral evidence adduced by the witnesses of the plaintiff and did not

take into consideration the decision of the Keba, reflected in Annexure-3 to the memo of appeal,which decided the ownership of the land in favour of the defendant long back.

7. Learned counsel for the plaintiff/respondent submitted that in the state of Arunachal Pradesh land law has not developed and still people are governed by the customary law and ownership of the land is decided on the basis of possession. It is also submitted that as per customary law and practice a person who clears the jungle and possess the land by developing it is recognised as the owner of the land. It is also submitted by the learned counsel, that although recently Government started issuing land possession certificate (LPC) for certain limited purpose, such certificate is also issued on being asked by a party, on the basis of ownership by possession. No one has any document pertaining to title over the land in the state of Arunachal Pradesh because of non-existence of codified land law.

8. Admittedly the suit land is situation in Duraliang village. Plaintiff in his evidence stated that the suit land was originally possessed by his father in the year 1989 by clearing jungle and he has inherited the said land in the year 1992 and has been possessing the same by cultivating various horticultural plants and other crops. All thewitnesses of the plaintiff have stated that the suit land belonged to the plaintiff since the time of his father, which was possessed by his forefather by clearing jungle. Though the defendant has pleaded in the written statement that the plaintiff does not belong to Duraliang village, the documentary evidence, more particularly, Ext. 1-series as indicated above, clearly shows, that the plaintiff is a permanent resident of Duraliang village. The oral evidence of the plaintiff's witnesses that the plaintiff and his father have been possessing the suit land by clearing the jungle and cultivating the same remained unchallenged. The defendant also claimed

ownership over the suit land stating that the land was occupied long back by his forefathers. However, later on, the father of the defendant shifted from Duraliang village.

9. Evidently the defendant is not a resident of Duraliang village and he also did not cultivate the suit land. The defendant has stated in his pleadings and evidence that he engaged one NanduTayang to keep watch over the suit land. However, from the oral evidence of said NanduTayeng(DW-6), it appears that he was aware of the suit land since 1996 only, when he noticed the plaintiff cutting and taking away timber from the suit land. Although the witness of the defendant deposed that the great grandfather of the defendant occupied the suit land many years ago,having regard to the age of the DWs, except the DW-3 CholaksoTayang, it can be well understood that the DWs did not have any personal knowledge as regards to occupation and cultivation of the suit land by the great grandfather of the defendant. Evidently the father of the plaintiff also shifted from Duraliang village and they are residents of another village. Although the defendant stated that he had kept one NanduTayang to keep watch over the suit land, said NanduTayang (DW-6) stated that he is a resident of Ziku village and originally belonged to Koroliang village, wherefrom he shifted to Ziku village in 1996 and during that time, i.e., in the year 1996 he had seen the plaintiff cutting and carrying timber from the suit land. Therefore, evidently NanduTayang also had no personal knowledge about the suit land prior to 1996. What is further evident from the oral testimony of the DW-6 is that he has negated the claim of the defendant that plaintiff trespassed into the suit land for the first time in 1998. Though the defendant's witnesses have stated that the suit land was occupied by the forefathers of the defendant, from the oral testimony of the witnesses of the defendant, it was abundantly clear, that they did

not have any personal knowledge of the fact, that the great grandfather or grandfather of the defendant cultivated the suit land at some point of time and therefore, such evidence of DWs with regard to possession of the suit land by the great grandfather or grandfather of the plaintiff appears to be hearsay and the same was rightly rejected by the learned trial court. Admittedly the defendant is neither the resident of the Duraliang village where the land is situated, nor he himself ever cultivated the suit land. The admitted position is that as per customary law and practice, whoever clears the jungle and cultivate land first in point of time becomes the owner of the land.Examination of the oral evidence of both the sides, in the touchstone of preponderance of probability, clearly shows that the defendant has not been able to adduce any admissible evidence to substantiate his claim that the suit land was occupied long back by his forefathers. Admittedly the defendant never cultivated the suit land and heis the resident of another village.

10. Referring to certain documents pertaining to making complain to Deputy Commissioner, and a purported decision of the Keba held in 1992 i.e. Exts. 2 (D) and Annexure-3 to the memo of appeal, though learned counsel for the defendant/appellant tried to impress upon this court, that the land belonged to the defendant, such complaint, Ext.- 2(D) is hardly acceptable as evidence of possession and ownership of the land. That apart, Ext. 2(D) was subsequently disowned by the complaint through Ext. 2(C). Learned counsel for the plaintiff/respondent referring to Annexure-4 to the memo of appeal contends that alleged resolution as reflected in Annexure-3 was not obeyed by the parties and the matter was carried forward to another Keba, which could not decide the dispute and left the parties to approach the court of law and thereafter, the plaintiff filed the suit before the D.C., which was duly contested by the defendant. The Annexure-3 as well as Annexure-4 to the

memo of appeal, which were not brought on record as evidence cannot be taken into account in appeal, unless such documents are allowed to be adduced as additional evidence as per Order 41 Rule 27 C.P.C. Be that as it may, filing of the suit by the plaintiff in the court of law and conduct of defendant in contesting the suit demonstrated that they there were not satisfied with the resolution and decision of the village Keba. Therefore, such decision of the Keba, which apparently left the parties for approaching the court of law cannot also be considered as suit deciding the dispute finally in order to attract the bar of section 11 C.P.C. Therefore, the submission of the learned counsel for the defendant that the suit is barred by res-judicate also cannot stand. The consistent evidence of the plaintiff's witnesses is that the suit land has been in possession of the plaintiff and his father, who have occupied the same by clearing jungle. Therefore, the oral evidence adduced by the parties clearly established that the suit land was occupied by the plaintiff and his father by clearing jungle and they have been possessing and cultivating the same. Evidently the plaintiff is also the permanent resident of Duraliang village, wherein the suit land is situated. Therefore, as per the admitted prevalent custom, the plaintiff has to be construed as the owner of the suit land. In view of the above facts and circumstances, findings of the learned trial court on the basis of the evidence discussed hereinabove that the plaintiff is the owner of the suit land by virtue of their possession over the same after clearing the jungle cannot be faulted.

11. The defendant himself admitted in the written statement that when the plaintiff did not stop his cultivation over the suit land he cut and destroyed the plantation of the plaintiff which supports the claim of the plaintiff that the defendant trespassed into the suit land and cause damage to the horticultural plants. When the plaintiff has succeeded in proving his ownership and evidently the defendant

trespassed into the suit land and caused damage to the plants and other cultivation of the plaintiff, the impugned judgment and decree passed by the learned trial court holding the plaintiff to be entitled to declaration of his ownership as well as consequential relief does not appear to have suffered from any infirmity requiring interference by this court.

12. In view of the above, the appeal appears to be without merit and deserves to be dismissed. Accordingly, the appeal filed by the appellant/defendant stands dismissed and the judgment and decree passed by the learned trial court is affirmed.

13. Decree be prepared accordingly. Parties to bear their own costs.

JUDGE

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