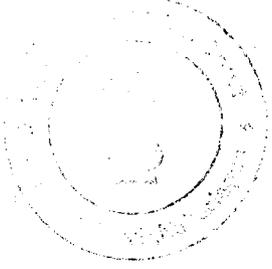


# IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM:NAGALAND:MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH



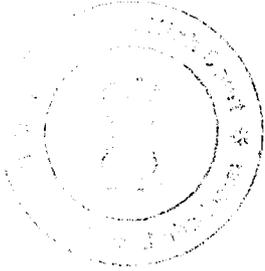
CRP No. 24 (AP) OF 2014

Shri Tagam Jenpen,  
S/o. Tapor Jenpen,  
R/o Namasibo village,  
P.O. - Monigong, P.S. - Mechuka,  
West Siang District, Arunachal Pradesh.  
Representing the Jenpen Clan.

..... Petitioner.

- Versus -

1. The Tayong Puning, (ASM),  
Resident of Saji-II Village, Monigong,  
P.O.- Monigong, P.S - Mechuka,  
District - West Siang, Arunachal Pradesh.
2. Sri Tasi Pujen,  
S/o. Late Tabia Pujen,  
Resident of village - Korle,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
3. Sri Tashing Jenpen,  
S/o. Tatam Jenpen,  
Resident of village - Chengo,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
4. Sri Tanya Pujen,  
S/o. Late Tasob Pujen,  
Resident of village - Korle,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.



5. Sri Talok Jenpen,  
S/o. Talam Jenpen,  
Resident of village - Chengo,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
6. Sri Tame Pullom,  
S/o. Taning Pullom  
Resident of village - Pullom,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
7. Sri Tabey Pullom,  
S/o. Mere Pullom,  
Resident of village - Remang,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
8. Sri Longdong Yorchi,  
S/o. late Tapu Yorchi,  
Resident of village - Pullom,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
9. Sri Mame Yorchi,  
S/o, Tadi Yorchi,  
Resident of village - Lobokore,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
10. Sri Tapu Puning (GB),  
S/o. Tako Puning,  
Resident of village - Soyorgang,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
11. Sri Tai Dupu,  
S/o Lt. Tanya Dupu,  
Resident of Village-Monigong  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.



12. Sri Singtung Dupu,  
S/o. Tapor Dupu,  
Resident of village - Monigong,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
13. Sri Tatum Pullom,  
S/o. Late Tachuk Pullom,  
Resident of village - Nemangsibo  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.
14. Sri Lingdung Pujen (PI),  
S/o. Late Tasap Pujen,  
Resident of village-Simugang,  
P.O. - Monigong, P.S. - Mechuka,  
District - West Siang, Arunachal Pradesh.

..... Respondent.

Advocates for the appellant : Mr. R. Saikia,  
Mr. L. Nochi,  
Ms. C. D. Thongchi.

Advocates for the respondent : Mr. M. Kato,  
Mr. B. Sora.

BEFORE

**THE HON'BLE MR. JUSTICE M. R. PATHAK**

**DATE OF JUDGMENT AND ORDER: 12<sup>TH</sup> OF JUNE, 2017**

**JUDGMENT AND ORDER (CAV)**

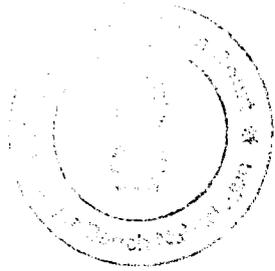
Heard Mr. Rintu Saikia, learned counsel for the petitioner and Mr. Marto Kato, learned counsel for the respondent Nos. 1 to 14.

2) This revision petition is against the Judgment and Order dated 21.08.2014 passed by learned Additional District Judge, Eastern Zone, Basar, West Siang

District, Arunachal Pradesh, by which the learned Trial Court dismissed the suit of the petitioner/plaintiff as being not maintainable and is hit by the provision of Section 10 of the Code of Civil procedure 1908, as a matter with similar cause of action is subjudice before the High Court and for non joinder of necessary party.

3) The petitioner, from *Jenpen* clan and also an Anchal Samity Member, being authorized by the said clan members, representing the said clan preferred this revision petition stating that the members of the said *Jenpen* clan are settled at *Chengo* and *Namasibo* Villages, situated between *Monigong* town and *McMohan* line, called *Hanker* area, since their ancestors and no other clan members have ever disputed regarding occupation of said area by the said *Jenpen* clan.

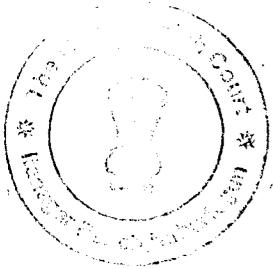
4) It is when the GREF proposed to construct a road for a stretch of about 20 kms. from *Tadadege* to *Hanker* (near *McMohan* line), the members of *Saji* clan and other sub-clan started disputing with regard to the area occupied by the *Jenpen* clan in those two villages, *Chengo* and *Namasibo* with vested interested. To acquire the aforesaid land for construction of the road by the BRTF, the Deputy Commissioner, Aalo vide order dated 17.08.2011 called for a public meeting on 28.10.2011 at *Monigong* Community Hall. In the said meeting held on 28.10.2011 *Jenpen* clan claimed the entire land of 20 kms. from *Tadadege* to *Hanker* where acquisition had been proposed as they were occupying the said land since the days of their ancestors and stated that from the days of their four fathers, area from *Yormyo* Hill to *Mc.Mohan* line, which also includes land from *Tadadege* to *Hanker* area, falls within the *Jenpen* Clan, since no one from *Saji* Clan or *Saji* Sub clan or their ancestors ever occupied any area beyond said *Yormyo* Hill, except *Jenpen* clan, In the said meeting *Saji* Clan and *Saji* Sub clan also claimed the land in question to be theirs, though they are not in occupation of the same. In the said meeting the *Saji* clan members submitted that land belongs to common *Saji* clan, namely, *Puning*, *Pulom*, *Pujem*, *Yarchi*, *Dupu*, *Jenpen* and *Heyo* and they are willing and are supporting the proposal for construction of the road over the said land on the condition that the Government must pay the compensation amount in advance, before any such construction commences and rejected the claims made by the *Jenpen* clan only and remained



stick to their claim that the said land totally belongs to the common *Saji* clan. In the said meeting, however, both the *Jenpen* clan as well as *Saji* clan assured that they all fully support for construction of the said road and further assured that they will solve the claims and objections regarding ownership of the said land. It is stated that a copy of the said minute of the public hearing dated 28.10.2011 was duly forwarded by the Extra Assistant Commissioner, Monigong to the Deputy Commissioner, Aalo and other authorities.

5) Later, pursuant to an order dated 05.12.2011 of the Deputy Commissioner, Aalo, another public hearing was held on 24.01.2012 in the Monigong Community Hall, under the chairmanship of Extra Assistant Commissioner, Monigong to finalise regarding the acquisition of land for the road from *Tadadege* to *Hanker* area and the GREF camp sites at *Tadadege* and *Monigong*. After the said meeting, the EAC, Monigong on his own, 24.01.2012 came to a finding that the entire area proposed for the aforesaid purpose belongs to *Saji* common clan and that there is no question of any land dispute and even if, there is any petty dispute among them, they assured that will solve the dispute among themselves and further hold that the land owners, namely, *Saji* clans of Monigong circle accepted the rate of land proposed by the Deputy Commissioner, Aalo @ Rs.150/- per square meter and therefore, there is nothing to discuss in public regarding the rate of the said land and accordingly, forwarded the said Board Proceeding dated 24.01.2012 to the Deputy Commissioner, Aalo and others. The *Jenpen* clan members are aggrieved by the said decision of the Board Proceeding dated 24.01.2012 wherein the EAC, Monigong unilaterally took the decision regarding the ownership of the land in question in favour of the *Saji* clan, though said clan members are not having their occupation, possession, right and title over the said land, which is in continuous possession of occupation of *Jenpen* clan since long years.

6) The petitioner submitted that the Deputy Commissioner, Aalo vide order dated 05.12.2011 directed to hold a public hearing on 24.01.2012 only for the purpose of fixation of the rate of the land proposed for acquisition for construction of road from *Tadadege* to *Hanker* area and the GREF camp sites at *Tadadege* and *Monigong*. The petitioner contended that since the said public hearing dated



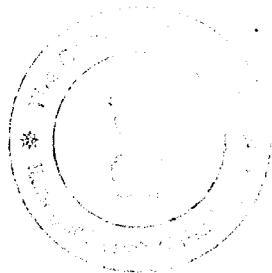
24.01.2012 was not for determining and ascertaining the ownership right of the land involved in the case in favour of either of the clans, whether *Jenpen* clan or that of *Saji* clan or that of *Saji* sub clan and as in the said public hearing, the ownership of the land involved in the case was not an issue; the decision of the EAC, Monigong holding that the entire land of the area belongs to the *Saji* common clan, disregarding the claim of the *Jenpen* clan is illegal, arbitrary and lopsided.

7) The petitioner representing the *Jenpen* clan preferred a writ petition before the Itanagar Bench of this Court, being W.P.(C) No. 167 of 2012 challenging the said finding and report of the EAC, Monigong dated 24.01.2012, with further prayer not to disburse/release any compensation amount pursuant to said illegal and improper report of the EAC, dated 24.01.2012.

8) While issuing notice to the respondents in the said W.P. (C) No. 167/2012, the Court, in the interim, on 02.05.2012 passed an order directing the respondents therein not to disburse/release the compensation amount towards acquisition of the land for construction of the road from *Tadadege* to *Hanker* area in pursuance of the said illegal and improper report dated 24.01.2012 of the EAC, Monigong, West Siang District, Arunachal Pradesh, the respondent No. 3 therein.

9) During pendency of said W.P.(C) No. 167/2012, the petitioner as a plaintiff preferred the suit, being BSR/Title Suit No.161 of 2014 before the Additional District Judge (ADJ, in short), Basar District, Arunachal Pradesh for the right, title and ownership of the land from *Yorinyo Tarok* (Hill) to McMahon Line measuring at length about 20 kms. consisting approximately an area of 314800 square meters called *Tadadege - Hanker* BRTF road at Monigong circle, West Siang District, Arunachal Pradesh as the ancestral community land of *Jenpen* clan. Alongwith the said prayer the plaintiff *Jenpen* clan also prayed to set aside the impugned report of the Board Proceedings dated 24.01.2012 issued by the Extra Assistant Commissioner, Monigong that the plaintiff have alleged to have been made by the said EAC in illegal and improper manner.

10) In the said BSR/Title Suit No.161/2014, the learned Trial Court issued notice to the defendants/respondents therein. The defendants/respondents herein



on 03.06.2014 filed a preliminary objection in the said suit against it, stating that the title and ownership of the land involved in the case amongst the other areas under Monigong circle of West Siang District, Arunachal Pradesh has always been vested with the *Saji* clan as a single unit only since the time immemorial and that no point of time said ancestral land of *Saji* clan was ever divided or partitioned amongst its sub-clans viz., *Pulon, Pujen, Yorchij, Dupe, Heyo* and *Jenpen* clan and/or ceded to any individual and that until the said dispute, the members of the *Saji* clan is equally enjoying and are using the area inhabited by them, as per the prevalent customary practice, without any individual ownership and title. In the said preliminary objection the defendants also contended that regarding the question of ownership and title of the land in dispute has reached its finality as per the Board Proceeding report dated 24.01.2012 EAC, Monigong, as the said duly constituted Board determined the title of the land in question in favor of the defendant *Saji* clan. The defendants further submitted that the said suit of the plaintiff is barred by Section 10 of the CPC as the plaintiff has already preferred a writ petition being W.P.(C) No.167 (A) of 2012 with the same cause of action, as that of the said title suit, which is pending disposal before the High Court at Itanagar Bench and that the said suit of the plaintiff is pre-matured and being barred by provisions of law is not maintainable. The defendants also contended that though the plaintiff's additional prayer is to quash the Board Proceeding dated 24.01.2012 and because of non impleadment of the concerned signatories of the said Board Proceeding in the suit, who are necessary parties, the said suit of the plaintiff suffers from serious infirmity, therefore, the said suit is bad in law and for the aforesaid reasons the suit of the plaintiff should be dismissed in the interest of justice.

11) The learned ADJ, Basar in the said suit framed 5 (five) main issues and with regard to preliminary objection raised by the defendants/ respondents framed 4 (four) reasons as preliminary issues, which are as follows:

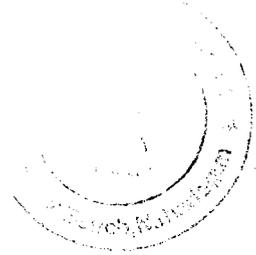
- (i) Whether the present suit is maintainable in its present form in the fact and law?
- (ii) Whether the W.P.(C) No.167 (AP) of 2012 pending before the Hon'ble High Court has the same cause of action as of this title suit?

(iii) Whether the Title suit is paid by Section 10 of CPC, 1908, Law of Res-judicata, Limitation or Estoppels?

(iv) Whether the necessary parties have been impleaded in the suit?

12) Before the learned Trial Court the defendants/respondents submitted that the plaintiff as petitioner has already filed a writ petition praying for similar relief which is pending for disposal and as such the said suit is hit by section 10 of the CPC and further, it is also bad for non-joinder of parties. On the other hand, the plaintiff submitted that mere identity of one issue in the suit does not attract Section 10 of CPC and as the said Court have the original jurisdiction, the matter of Title suit can be decided by the said Court only and not by the High Court in a Writ jurisdiction and therefore, the issues involving in both the proceedings cannot be said to be same. It was also urged before the Trial Court by the plaintiff that the Board constituted by the DC, Aalo doesn't have the jurisdiction and authority to decide title of the land and persons having interest on the land being necessary parties have been impleaded in the suit and since the EAC, Monigong is not claiming the title of the land he has not been impleaded in the suit.

13) The Trial Court took up the preliminary objection raised by the defendants/respondents first and observed that in the Writ Petition W.P.(C) No.167 (AP)/2012 before the High Court, preferred by the plaintiff as petitioner, made a prayer to quash and set aside the report of the Board Proceeding dated 24.01.2012 and the Hon'ble High Court in that regard already passed an interim order on 02.05.2012 and considering the same the trial Court came to the conclusion that the said suit is not maintainable in law and in fact. The Trial Court though came to the finding that in the said suit, the plaintiff has prayed for title of the suit land and that it is just for the Title of the suit land, the EAC, Monigong was not required to be impleaded, but in the said suit, in addition, the plaintiff has also prayed for quashing of the Board Proceeding dated 24.01.2012, which was passed by the EAC, Monigong and as such it is mandatory on the part of the plaintiff to implead the said EAC, Monigong as party defendant in the suit. The Trial Court also found that in the said suit the plaintiff has prayed for quashing of the Board Proceeding submitted by the EAC, Monigong on 24.01.2012 and in W.P.(C) No.167 (AP)/2012 that was pending disposal before the High Court, the

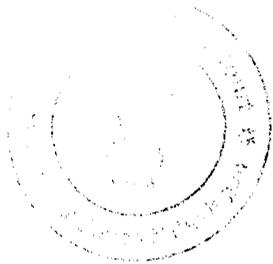


plaintiff prayed for quashing and setting aside the said Board Proceeding dated 24.01.2012 submitted by the EAC, Monigong and that the Hon'ble High Court on 02.05.2012 in said W.P.(C) No.167 (AP)/2012 interfered with the said proceeding and since the said prayer for quashing of the Board Proceeding of the EAC, Monigong dated 24.01.2012 is same before the Trial Court in the said Title Suit as well as before Hon'ble High Court in W.P.(C) No.167 (AP)/2012, and therefore, the Trial Court came to the finding that the said suit of the plaintiff/petitioner is hit by Section 10 of the CPC, 1908 as the same matter being subjudice is before the High Court. As such learned Additional District Judge, Barar, West Siang District, Arunachal Pradesh by his Judgment and Order dated 21.08.2014 dismissed the said Title Suit No. BSR/Title Suit No.161/2014 of the plaintiff/petitioner as the cause of action is subjudiced before the Itanagar Bench of this Court and that the said Title Suit has been filed prematurely and for non impleadment of necessary party.

**14)** Hence this revision petition by said plaintiff/petitioner.

**15)** Mr. R. Saikia learned counsel for the petitioner submitted that in the suit petitioner/plaintiff's prayer was twofold, one for the right, title and ownership over the disputed land and the other for setting aside the report of the Board Proceeding dated 24.01.2012 issued by the EAC, Monigong. Mr. Saikia learned counsel also brought to the notice of the Court that by the impugned though the Trial Court in its Judgment and Order dated 21.08.2014 came to the finding that for determination of title over the suit land, the EAC, Monigong is not required to be made a party in the suit, but it is mandatory for the plaintiff to implead the EAC, Monigong since sine in the said suit the plaintiffs have also prayed for quashing the Board Proceeding dated 24.01.2012 forwarded by the said EAC.

**16)** Mr. Saikia submitted that the Writ Court cannot decide title over a disputed land and it is only a civil court or the Trial Court, that passed the impugned judgment & order can determine such issues as provided under Section 9 of the CPC. In this regard, Mr. Saikia relying on the decision of the Hon'ble Supreme Court in the case of *Dwarka Prasad Agarwal -Vs- B.D. Agarwal*, reported in (2003) 6 SCC 230.



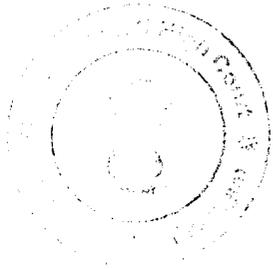
17) Mr. Saikia also submitted that when the trial Court by the impugned judgment and order found that the suit of the petitioner/plaintiff is hit by Section 10 of the CPC, he should have stayed the further proceeding of the said Title Suit but in its place, the trial judge dismissed the entire suit. It is also contended by Mister Saikia that as the learned trial judge found that the suit relates to ownership and title of the disputed land wherein the EAC, Monigong is not a necessary party, but for the other prayer of the plaintiff said EAC is a necessary party; the trial judge instead of dismissing the entire suit, for just adjudication of the suit, the Trial Court could have directed the plaintiff/petitioner to join or implead the EAC, Monigong as party defendant to settle all the disputes involved in the suit as provide under Order I Rule 10 (2) of the CPC. As such, Mr. Saikia on behalf of the petitioner/plaintiff submitted that after quashing the impugned judgment and order dated 21.08.2014 passed by learned ADJ, Basar in the Title Suit No. BSR/Title Suit No.161/2014, remand back the matter to the appropriate Court directing it to determine the issues involved in the said suit of the plaintiff/petitioner a fresh.

18) On the other hand Mr. M. Kato appearing for the respondents in support of the impugned judgment and order dated 21.08.2014 submitted that the Chairman of the Board Proceeding dated 24.01.2012 i.e. the EAC, Monigong was not made a party by the plaintiff in his suit though the said proceeding was challenged by him in his said suit and therefore, learned ADJ, Basar writer part of the impugned judgment dismissing the suit of the plaintiff due to non-joinder of necessary party as provided under Order I Rule 9 of the CPC. In this regard Mr. Kato relied on the judgment of the Hon'ble Supreme Court reported in *(2003) 3 SCC 472* in the case of *Chief Conservator of Forests, Govt. of A.P. -Vs- Collector and Others*.

19) Considered the arguments placed by the parties and the judgments cited by them.

20) Section 10 of the CPC provides for stay of the suit which reads as follows:

**S. 10. Stay of suit.** - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief



claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

- 21) From the aforesaid provisions it can be seen that Section 10 provides – where a suit is instituted in a Court to which the CPC applies, the Court shall not proceed with the trial of the suit if –
- (1) the matter in issue in the second suit is directly and substantially in issue in a previously instituted suit between the same parties;
  - (2) the previously instituted suit is pending –
    - (i) in the same court in which the subsequent suit is instituted; or
    - (ii) in any other Court in India (whether superior, inferior or co-ordinate); or
    - (iii) in any Court beyond the limits of India established or continued by the Central Government; or
    - (iv) before the Supreme Court and
  - (3) where the previously instituted suit is pending in any of the Courts mentioned above, such Court is a Court of jurisdiction competent to grant the relief claimed in the subsequent suit.

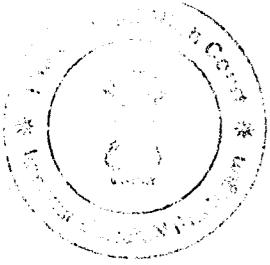
22) As such reading of Section 10 of the CPC it makes clear that where the subject matter of the suit is one and the same and the parties are also the same, under such circumstances, if the owner two suits between the parties, if the subsequent suit, which has to be stayed and not in the previous one.

23) It is settled that the basic object of the Section 10 CPC is to protect a person from multiplicity of proceedings between the same parties. Language of Section 10 CPC clearly refers to a suit instituted in a civil court. A writ proceeding before the High Court cannot be equated with the proceedings before a civil court as the jurisdiction of the High Court in exercising its writ power is not the Courts of concurrent jurisdiction of a civil court.

24) In the case of *National Institute of Mental Health & Neuro Sciences -Vs- C. Parameshwara*, reported in (2005) 2 SCC 256, the Hon'ble Supreme Court have held that –

*"The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which*

are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute."

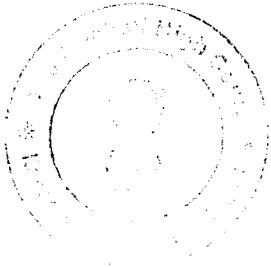


**25)** With regard to the case in hand, the High Court in W.P.(C) No.167 (AP)/2012 on 02.05.2012 only directed the respondents of said writ petition not to disburse/ release the compensation amount towards acquisition of the land for construction of the road from *Tadadege* to *Hanker* area in pursuance of the said illegal and improper report dated 24.01.2012 of the EAC, Monigong, West Siang District, Arunachal Pradesh, but the Court in the said writ petition neither stayed the said Board proceeding dated 24.01.2012 nor quashed the Board Proceeding forwarded by the EAC, Monigong on 24.01.2012. For the reasons above, the Court is of the view that Section 10 CPC has no application to the facts of this case. Even assuming that the said Title Suit filed by the petitioner/plaintiff is hit by Section 10 CPC due to pendency of said W.P.(C) No.167 (AP)/2012, in that case, learned Trial Judge should have stayed the proceeding of the suit in question but should not have dismissed it that it is hit by Section 10 CPC.

**26)** It is seen from the impugned judgment and order dated 21.08.2014 that the leaned Trial Judge in the main suit framed five issues and to decide the preliminary objection, raised by the defendants, the Court framed four different issues. It is settled that ordinarily the Court should try all the issues together and an issue may be taken up as a preliminary issue only if it relates to the question of jurisdiction and is based on a question of law. If it is considered that the issue relating to maintainability of the suit in question is hit by Section 10 CPC and the said issue is taken up as a preliminary issue to be decided, in that case if it is found correct, the Court has only to stay the proceeding of the second suit, but the Court cannot dismiss the second suit as a whole until the first suit is decided. Therefore, the learned ADJ, Basar committed illegality in dismissing the said Title Suit No. BSR/Title Suit No.161/2014 of the plaintiff/petitioner while deciding it in the stage of adjudicating the preliminary issues. Moreover, learned ADJ, Basar also committed illegality in not deciding all the issues involved in the suit.

**27)** This Court in the case of *Motoi Mia and others -Vs- Abdul Haque and others* reported in *AIR 1984 Gauhati 77* after consideration the provisions of Order

1, Rule 10 (2), Order 6, Rule 17, provisoes to Section 99 and Order 1, Rule 9 of the CPC and exposition of the legal position in relation thereto held as follows:



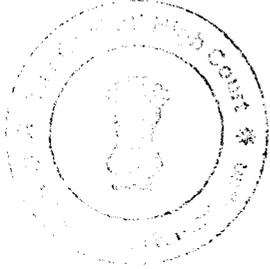
"The purport of the provisoes is not to non-suit a plaintiff if relief may be made available to him by the Court in exercise of its power under Order 1, Rule 10 (2) and Order 6, Rule 17. It is indubitable that the general purport of the provisoes is merely to circumscribe or curtail the scope of operation of the main provision. It cannot, and does not, therefore, normally expand the scope of the main provision or otherwise contain in itself any substantive right or rule or procedure. There cannot be any doubt about the position that both Sec.99 and Order 1, Rule 9 are remedial provisions. The object of both these provisions is to ensure that prolixity in litigation is avoided on the one hand and on the other hand technicalities which inevitably bear its stamp on the procedural law must not be allowed to defeat the ends of justice. This object, in my opinion, has not in any way been affected by the two provisoes. Because, in that case the object thereof would be clearly repugnant to the substantive provisions contained in the main part but a proviso is not allowed by the canons of interpretation to achieve such a result. In my opinion the core object of the two provisoes is that no decision should be rendered in any suit in the absence of the necessary parties and if that was done such a decision could not be varied by virtue of the remedial measures enacted in the main part or rather the unamended provisions of Section 99 and O.1, R.9, C. P. C. and therefore the two provisoes were merely inserted by way of abundant caution. Indeed, these two provisoes were made more meaningful and effective by the addition of the provisoes to pre-empt prolixity and circuitry in litigation. These are, therefore, not to be so construed as to mean that merely because a necessary party was not before the Court the suit must be dismissed. Indeed, in such cases, the power of the Court which it can exercise under Order 1, Rule 10 (2) and Order 6, Rule 17 which remain unamended can be invoked and this power is not impaired or indented in any manner by the two new provisoes, the real purport of which, is not penal but remedial."

28) In the case of *Ramesh Hirachand Kundanmal -Vs- Municipal Corpn. of Greater Bombay*, reported in (1992) 2 SCC 524 the Hon'ble Supreme Court have held that --

"The Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of implementation of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a

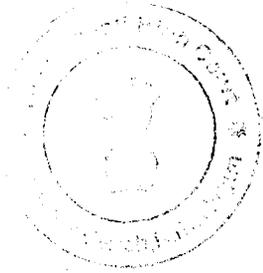
*complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."*



29) Considering the above, the learned Trial Judge, since he came to finding that the plaintiff made two fold prayer in his suit and EAC, Monigong is not a necessary party for determination of title and ownership of the disputed land involved in the case, but it is a necessary party for the other prayer of the plaintiff in setting aside and quash the Board Proceeding dated 24.01.2012 that was forwarded by the said EAC, in that circumstances, learned Trial Judge under the provisions of Order I, Rule 10 (2) in order to enable the Court effectually and completely to adjudicate upon the said Title Suit preferred by the plaintiff/petitioner and settle all the questions involved in the suit adding EAC, Monigong as party defendant in the said Suit. In not doing the same the learned ADJ, Basar committed illegality in dismissing the said Title Suit No. BSR/Title Suit No.161/2014 of the plaintiff/petitioner completely.

30) In *Dwarka Prasad Agarwal -Vs- B.D. Agarwal*, reported in (2003) 6 SCC 230 the Hon'ble Apex Court have settled that no writ can be issued if the disputes involve private law character and that the writ court has also no jurisdiction to determine an issue on private dispute over a property or right under a partnership. Further it is settled that with regard to any dispute regarding title, ownership of land can be considered by Civil Court only as for such finding evidence are to be recorded and in writ proceeding evidence are not recorded. Therefore, the learned ADJ, Basar committed illegality in dismissing the Title Suit of the petitioner by the impugned Judgment and Order dated 21.08.2014.

31) In the meanwhile, said WP(C) No. 167 (AP) 2012 was disposed of on 08.10.2015 with observation that if so desired, it will be open for the authorities to go ahead with the acquisition of land involved in the case, by following the due process of law and that till disposal of the Title Suit No. BSR/Title Suit No.161/2014 payment on account of compensation for the acquired land shall not be made to the rival parties. This decision passed in said writ petition has not been challenged by the respondents/defendants in any higher forum.



32) For the reasons above, the impugned Judgment and Order dated 21.08.2014 passed by learned Additional District Judge, Basar, West Siang District, Arunachal Pradesh dismissing the Title Suit No. BSR/TS No.161 of 2014 preferred by the petitioner/plaintiff is hereby set aside and quashed and the said Title Suit No. BSR/TS No.161 of 2014 be restored to the file and further, the said ADJ, Basar, West Siang District, Arunachal Pradesh shall rehear the said Title Suit of the plaintiff/petitioner, afresh, in accordance with law and under the provisions of the Code of Civil Procedure, after issuing fresh notice to both the parties for their appearance in the matter.

33) Registry shall communicate this order to the Court of learned Additional District Judge, Basar, West Siang District, Arunachal Pradesh for its necessary use.

34) With the aforesaid observation and direction, this petition stands allowed. No order as to Costs.

JUDGE

*Annetta*