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IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNCHAL PRADESH)  
ITANAGAR PERMANENT BENCH

**CRP 11 (AP) 2016**

Appeal From  
Writ Petition (Civil)

Appellant  
Petitioner.

SHRI MIJANG YEBU (PANGKAM)

----VERSUS----

Respondent  
Opposite Party

SHRI ALO YEBU (PANGKAM)

Counsel for the Appellant  
Petitioner.

N.DANGGEN  
O.DUGGONG  
P.SANGEETA  
A.PANOR  
T.TATAK  
O.PERME  
B. GADI  
D.TAGGU  
J.LOMI

Counsel for the Respondent  
Opposite Party

Noting by Officer or Advocate	Serial	Date	Office not, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

-AND-

**IN THE MATTER OF:**

Shri Mijang Yebu (Pangkam), H/o Smti  
Neyang Yebu, Village Ramsing, P.O. /P.S  
Jengging, Upper Siang District (Arunachal  
Pradesh).

Ph. No. 9436045777

..... Petitioner

-Versus-

Shri. Alo Yebu (Pangkam), S/o Lt. Padam  
Pangkam, Village Ramsing, P.O/P.S  
Jengging, Upper Siang, P.O/P.S Jengging,  
Upper Siang District, (A.P)

..... Respondent

**ITANAGAR PERMANENT BENCH**

**CRP No. 11 (AP)/2016**

**BEFORE**  
**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**15-05-2017**

Heard Ms. N. Dangen, learned for the petitioner as well as Mr. M. Pertin, learned senior counsel for the sole respondent.

2. By filing this application under the Regulation 50 of the Assam Frontier (Administration of Justice), Regulation, 1945 (for short, 'the Regulation of 1945'), the petitioner has prayed for quashing of the order dated 4.12.2016 passed in Kabeng Appeal No. 1/2015/3135 passed by the learned Additional Deputy Commissioner, Upper Siang District, Yingkiong.

3. The case projected by the learned counsel for the petitioner is that by virtue of an order dated 17.4.2015 passed by the Circle Officer, Upper Siang District, Jengging, the Head Gaonburah of Ramsing village was once again directed to conduct a local Kebang on 1.5.2015 in connection the land dispute between the parties herein. Pursuant to the said direction, a Kebang was held on 1.5.2015 and it was agreed by the all the persons present in the Kebang that Tako paddy field have to be possessed by the respondent herein.

4. Aggrieved by the said decision, the petitioner filed an appeal before the learned Deputy Commissioner, Upper Siang District, which was registered as Kebang Appeal No.1/2015/3135. Thereafter, the said case was forwarded to the court of learned Additional Deputy Commissioner for disposal. The said learned court by its judgment dated 4.12.2016 upheld the decisions of the Kebang dated 17.6.2014 and 1.5.2015. Aggrieved by the said decision, this revision has been filed by the petitioner.

5. The learned counsel for the petitioner submits that as per the provisions contained in Regulation 46(3) of the Regulation of 1945, the appellate court has three options for deciding the appeal, firstly, the appellate court has the power to examine the parties in appeal and if a decision appears to be just, the appellate court has the power to affirm the decision of the village authority and has the power to enforce the decision as its own. Secondly, if the appellate court has any reason to doubt on the justice rendered by the said decision, it may try the case de-novo. Thirdly, if the appellate court doubts the decision, it also has the option to refer the matter to a Panchayat. In such an event, as per the said Regulation, the provisions of Regulation 38 shall apply, as if the parties have agreed to go for arbitration.

6. It has further been submitted that as per the impugned judgment dated 4.12.2016 passed by the learned Additional Deputy Commissioner, Upper Siang District, wherein it has been mentioned that the statements of respondent and as many as 14 witnesses were recorded in presence of private counsels of both the parties on 26.10.2015 and 28.10.2015 and these witnesses, as per the said judgment, were cross examined by the learned

counsels for both the parties during recording of their statement. It is further submitted that if the records of the said appellate court is perused, the cross examination of those witnesses would not be found on record. It is submitted that a copy of the statements of those witnesses are filed in this application as Annexure-X series. It is also submitted that as the witnesses have been examined and cross-examined, it would appear that the learned appellate court was tried the case de-novo and therefore, having not maintaining the record of cross-examination of those witnesses, the decision by the appellate court stand vitiated and the same is liable to be set aside and quashed.

7. Additionally, the learned counsel for the petitioner submits that in course of appeal hearing, she had also produced the documentary evidence to show that the vendor of the suit land was not a minor as sought to be projected by producing the service record, however, those evidence were not recorded and the learned appellate court did not deal with the same in the judgment impugned herein.

8. Per contra, Mr. M. Pertin, learned senior counsel for the respondent submits that the present case is not a case where the learned appellate court was heard the case de-novo, as projected by the petitioner. He submits that the learned appellate court was exercising first option under the provision of Regulation 46(3) of the Regulation of 1945. The appellate court merely examined the parties, as they appeared before him but the decision was just to affirm the decisions of the Kebang. In support of his submission, learned senior counsel submits that the respondent had claimed to have purchased the land from the petitioner herein. However, as per the service

record of the petitioner, who was working as P.I. in the Deputy Commissioner's office, the petitioner was born on 1.4.1973. Therefore, the case of the petitioner was unbelievable as the alleged sale of the land took place in the year 1974, when the alleged seller (Mijang Pangkam) was only of 1 year old. Since, a one year old minor is not competent to enter into a contract of sale, therefore, the petitioner herein could not be said to have validly purchased the land in question in the year 1974. He further submits that it is for this limited purpose, that the learned appellate court had recorded the statement of the parties and arrived at a conclusion that the decision of the Kebang was correct. He further submits that non-reflection of the cross-examination of witnesses on record, does not vitiate the proceeding as there was no prescribed form for recording of proceedings at the appellate stage. As the learned appellate court did not find merit in the sale of the disputed land by the one year old person/seller, the revision is without any merit and the same is liable to be dismissed. It is also submitted in the same context that under the provision of the Regulation of 1945, Civil Procedure Code or the Evidence Act does not require mandatory compliance but only the spirit of the Civil Procedure Code would apply, therefore, it is not a fit case for interfering only on the ground of procedural irregularity alone, as on merit, the case projected by the petitioner is not sustainable.

9. Having heard the rival submission of both sides and on perusal of the records, it is seen that although the learned appellate court had recorded in the impugned judgment that the witnesses were cross-examined but the record of such cross- examination is not available on record.

10. In view of the fact that it is a matter of record contained in the impugned judgment dated 4.12.2016 that the witnesses were cross-examined but the record of cross-examination is not available in the appellate court record, this Court is of the view that there has been a procedural irregularity in the decision making process, which has caused consequent error in the impugned judgment. This Court is of further view that if the appellate court has recorded the evidence of witnesses, such record must be kept in the proceeding. Therefore, it is not a question as to what is the procedure, required to be followed by the appellate court in conducting the proceeding, but it is the basic requirement of law that if the parties or witnesses have led their evidence in the case, the evidence must be produced in writing in the words uttered by the witnesses, as far as practicable. The trial court or the appellate court does not have an option to allow cross of witnesses to be recorded and omit to make it to form part of the record. This omission, in the opinion of this Court vitiates the appellate judgment.

11. In the present case in hand, as this Court finds that the learned appellate court had a specific recording in the judgment that witnesses were cross-examined but the same is not form part of the record, I am inclined to interfere with the appellate judgment dated 4.12.2016 passed by the learned Additional Deputy Commissioner, Upper Siang District, Yingkiong, in Kebang Appeal Case No.1/2015/3135, which is hereby set aside and quashed. The case is remanded back to the court of learned Additional Deputy Commissioner, Upper Siang District, Yingkiong, with the direction to deal with the matter afresh.

12. As the case is remanded the matter back for a fresh decision on holding that the record of the proceeding was not correctly maintained, by not recording the cross-examination of witnesses, which is contrary to the contents of the impugned judgment, this Court is not inclined to give any decision on the merit and on issues raised in the present revision, keeping it open for the parties to re-agitate the same before the learned appellate court.

13. This revision is, therefore, allowed in the terms indicated above by remanding the matter back to the aforesaid appellate court, who on receipt of record, shall proceed with the matter afresh. It is open for the said appellate court to hear the matter afresh in accordance with law.

14. Parties are directed to appear before the court of the learned Deputy Commissioner, Upper Siang District, Yingkiong, on 22.6.2017 to seek further instruction from the said learned court without any further notice for appearance in this regard.

15. The revision petition stands disposed of.

16. Let the case records be returned forthwith.

*Sdy. K. R. Surana*  
**JUDGE**

Mks/