

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

ITANAGAR PERMANENT BENCH

FAO 03 (AP) 2014

(Arising out of TS No.01(W.S) 2013
in BSR/TS-56 of 2008)

**Sri Nyamo Kamduk,
S/o Late Kinya Kamduk,
Pakam Village, P.O. Along,
Dist- West Siang, A.P.**

....Accused Appellant.

Advocates for the Appellant:

Mr. M. Pertin, Sr. Counsel.

-VERSUS-

**Dr. Minge Loyi,
S/o Late Hormin Loyi,
R/o Pakam Village,
Dist-West Siang, A.P.
(On the death of Smti Kinyir Loyi,
W/o Lt. Mijum Loyi,
Pakam Village, P.O. Along,
Dist-West Siang, A.P.)**

.....Respondent.

Advocates for the respondents:

Mr. S. Tapin, learned Advocate.

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing - **03.11.2017.**

Date of judgment - **21.11.2017.**

JUDGMENT & ORDER (CAV)

This is an appeal under section 96 read with order 41 Rule 1 & 2 of the Code of Civil Procedure directed against the Judgment and Order, dated 20.01.2014, passed by the learned Additional District Judge, Basar, in Title Suit No. 1 (WS) 2013,

whereby the plaintiff/ appellant's said suit has been dismissed imposing a cost of Rs.20,000/- to be paid to the defendant/ respondent.

2. Heard Mr. M. Pertin, learned Sr. Counsel appearing for the appellant and Mr. S. Tapin, learned counsel appearing for the respondent.

3. The case of the appellant, in brief, is that the father of the appellant Late Kinya Kamduk permitted his sister Kinya Loyi defendant/ respondent (since deceased) to cultivate on the suit land due to her poor economic condition. After the death of the father, the plaintiff/ appellant also permitted her to continue cultivation on the suit land. Per amicable settlement effected by Kebang in regard to distribution of the ancestral property among the two brothers, the suit land fell to the share of the plaintiff/ appellant. The plaintiff/ appellant wanted an agreement to be executed with the defendant/ respondent to the effect that she would continue cultivation on the suit land till her death, but the respondent/ defendant failed to recognize his ownership and instead claimed that she purchased the land from the plaintiff/appellant's father Late Kinya Kamduk and therefore, she is the owner of the suit land having right, title and possession. Upon such refusal, the plaintiff/appellant submitted a complaint to the Deputy Commissioner, Along to convene a Kebang to decide the aforesaid dispute and hand over the land to him.

4. Upon receipt of the complaint submitted by the plaintiff/appellant, a Kebang was held on 30.05.1996, wherein, the Deputy Commissioner, West Siang District, Aalo clearly stated that the land in question was not purchased by the defendant/respondent Kinyir Loyi from late Kinya Kamduk nor it was gifted/ offered to Kinyir Kamduk @ Kinyir Loyi as gift or dowry, but permitted for cultivation without passing off the right, title and possession and hence upheld the kebang decision and declared the right, title and possession of the suit land in favour of the plaintiff/appellant on condition that, he will allow Kinyir Loyi (his paternal aunty) to cultivate the land if she has no other source of livelihood during her lifetime and further, paid Rs.10,000/- as development cost of the land.

5. Being aggrieved with the aforesaid order of the Deputy Commissioner, West Siang District, Aalo, the complainant/appellant felt that after payment of the aforesaid amount as development cost of the land, the defendant/respondent should not be allowed to use the land and as such, filed an appeal before this Court being

MA (F) No. 135/96 and the same was disposed of on 27.05.1997, whereby the matter was remanded back to the Deputy Commissioner, Aalo for deciding the dispute afresh, if necessary by taking evidence. Thereafter, the fresh proceeding commenced before the Court of the Deputy Commissioner, Aalo and later on, the case was transferred to the Court of learned Addl. District and Sessions Court, Basar, whereupon registered as Title Suit No. 01(W.S) 2013, but the same was dismissed after trial on 20.01.2014 with a cost of Rs.20,000/- only with a direction to pay the same to the defendant/ respondent within a period of 30 days. Hence, the instant appeal has been filed for setting aside the impugned judgment and order, dated 20.01.2014.

6. The further case of the plaintiff/ appellant is that the suit land measuring more or less one pura, namely, 'Mebbu Bibu Pokdum' situated at Pakam village, just above the confluence of the two streams, namely, 'Mebbu' and 'Bibu' was given to the defendant/ respondent by the father of the plaintiff/ appellant late Kinya Kamduk temporarily to cultivate on it, on her approach, since the defendant/ respondent was his sister and her financial condition was not sound. The permission stipulated the conditions, *inter-alia*, that as soon as she would become financially sound, the said plot of land would be given back. Thus, the said plot of land was never either gifted or sold to the defendant/ respondent by late Kinya Kamduk. The other conditions of the aforesaid permission were that if the defendant/ respondent had given birth to a male child, she would give a 'Mithun' to Kinya Kamduk, or if she gives birth to a female child, then the 'Mithun' received from the bridegroom would be given to Kinya Kamduk. She did not give birth to male child. Another condition was that during marriage of her daughter, she would get a 'Mithun' in order to enjoy the land permanently. Though their daughter was given marriage, no 'Mithun' was given. Hence, it was prayed for declaration of right, title, interest and possession over the suit land, known as Mebbu Bibu Pokdum in favour of the plaintiff.

7. The defendant/ respondent by filing the written statement has categorically denied all the claims of the plaintiff/ appellant and further stated that the suit land namely, Bibu land originally belonged to one Late Mimbe Kamduk, who was a blacksmith. The said plot of land was inherited by late Kinya Kamduk and gifted away to the defendant/ respondent without any condition. Thereafter, however, in order to avoid any future controversy in regard to the title/ ownership of the said gifted land, the defendant/ respondent purchased the suit land by giving a 'Mithun'

to late Kinya Kamduk, the predecessor in interest, as the price of the land. Therefore, the defendant/ respondent prayed that since the claims of the plaintiff/ appellant were false and fabricated, the suit may be dismissed.

8. In course of trial of the suit, the plaintiff/ appellant examined as many as 6 (six) witnesses, while the defendant/ respondent cross-examined them at length. The defendant/ respondent examined 9 (nine) witnesses, while the plaintiff/appellant cross-examined them. Both sides exhibited documents.

9. In view of the above pleadings, the learned trial Court framed the following issues:

“ISSUES

- 1.** *Whether the present suit is maintainable in its present form in the fact and law?*
- 2.** *Whether the land in question is named called Mebu, Bibu and Pokdum?*
- 3.** *Whether the land in question was given to the defendant by plaintiff for temporary used or was gifted to defendant with certain condition or without condition?*
- 4.** *Whether the Mithun received by Lt. Kinya Kamduk was given as Ditem Ngamtem (compensation) by Lt. Habjum Ete as a sale consideration for the suit land on behalf of the defendant?*
- 5.** *Whether the plaintiff is entitled to be declared as rightful owner of the disputed land?*
- 6.** *Whether any other relief is granted to the plaintiff?”*

10. With regard to the issue No. 2, which is primarily related to the identity of the suit land, it is the contention of the plaintiff/ appellant that on official and Kebang papers etc., the suit land was named as ‘Mebbu Bibu Pokdum’, which is also called either ‘Mebbu or Bibu or Mebbu Bibu Pokdum’. The boundary of which is described in the schedule of the plaint. The defendant/ respondent has contested the aforesaid contention of the plaintiff/ appellant stating that the suit land is located near the confluence of the Mebbu and Bibu streams and it is called Bibu land. According to the defendant/ respondent all the WRC plot of land of Pakam village are located either on the banks of Mebbu stream, which have different names on areawise basis as (a) Bibu Rigme (area), (b) Jori Rigme (area), (c) Mebbu Rigme (area) and (d) Hikker Rigme (area). The suit land falls within Bibu Rigme and so it is called Bibu land. The defendant/ respondent has also contested the plaintiff/ appellant’s averment that the suit land was on all the official and kebang papers called by the name as Mebbu Bibu and Pokdum. The defendant/ respondent alleged that the plaintiff/ appellant in collusion with few interested Kebang members unauthorizedly modified the name of the suit land in the Kebang decision as Mebbu-Bibu Pokdum, without the knowledge and consent of the defendant/ respondent and of the

relevant documents issuing authorities. It has been further contended that in the aforesaid forged kebang decision, the suit land is named as 'Yogmo Mimbe Ge Mebbu Rike', which means the Mebu land of blacksmith Mimbe and on the other hand, in his representation, dated 07.08.1996, the suit land was named as Mebu.

11. PW. 1 Nyamo Kamduk, the plaintiff/ appellant, in his examination-in-chief stated that the suit land is called both **Bibu land or Mebu-Bibu Pokdum**, the identity of which is the same with same boundary, which is located in the confluence of Mebu and Bibu rivers. In cross-examination, he admitted that there is existence of **Bibu Rigme at Pakam village** and further, that he and the defendant/ respondent are the members of Bibu Rigme. PW. 2 Tayom Ado has stated that the suit land is **situated inbetween Mebu and Bibu** streams. PW. 3 Boken Ete in his cross-examination could not say the name of the suit land. PW. 4 Smti. Yayi Das stated in her cross-examination that the suit land has two names as Mebu and Bibu. Further, PW. 5 Mebba Loyi in his cross-examination stated that the WRC land of the plaintiff/ appellant falls on the bank of Mebu stream not in Bibu stream. PW. 6 Hendar Loyi stated that so far his knowledge goes, the name of the suit land is Bibu and before initiation of the suit, he never heard the name of the suit land as Mebu Bibu Pokdum. In cross-examination, he has stated that if the suit land is called either Mebu or Bibu or by any other name, the location of the same will not get changed.

12. DW. 1 Kinyir Loyi (since deceased), the defendant/ respondent in her examination-in-chief asserted that the name of the suit land is Bibu.

13. It is noticed that the learned Trial Court has admitted photocopy of the documents, some of which are not readable, and not even compared with the original and signed by the Presiding Officer of the Court to identify the same. It is not even discernable from evidence as to whether the exhibited documents were admitted with objection or without objection of the adverse party. The documents upon which reliance is sought to be placed must be brought on records of the case legally because the documents do not prove themselves. Further, secondary evidence should not be accepted without a sufficient reason being given for non-production of the original and if the truth of the facts stated in a document is in issue, the same need to be proved by oral testimony. The oral testimony in

deserving cases may well be appreciated with the aid of opinion of the handwriting expert on the disputed documents.

14. Thus, the evidence of both the sides reveal that there is inconsistency and contradictions in the name of the suit land, which is significant in regard to its location with reference to the name of the streams on the bank of which it is exactly situated. Perusal of the schedule of the suit land given in the plaint reveals that on the north of it there is 'Bibu river then land of Bake Kamduk', but in evidence the plaintiff/ appellant without mentioning the name of the river stated that on the north, there is the land of 'Shri Beke Kamduk'.

15. Mr. M. Pertin, learned senior counsel appearing on behalf of the plaintiff/ appellant has submitted that the identity of the suit land along with its four boundaries described in the schedule of the plaint is not in dispute and that except in the town areas, no revenue record is maintained in respect of lands of Arunachal Pradesh and no revenue is also collected. On the other hand, Mr. S. Tapin, learned counsel for the defendant/ respondent has submitted that the Keba decisions of 1992 and 1996 were forged documents, made at a later stage and the location of the suit land, by its name and boundary as contended by the plaintiff/ appellant are vague.

16. Therefore, the point in issue between the parties in regard to the identity of the suit land by its name and its boundary being surrounded by confusions, this Court is of the view that the aforesaid confusions could have been removed for the purpose of proper appreciation of the evidence of both the sides had the suit land been locally investigated by issuing an appropriate commission for local investigation as provided under **Order XXVI Rule 9** of Code of Civil Procedure to find out the exact location of the suit land along with its four boundaries which has not been done in the instant suit.

17. Further, the defendant/ respondent, herein, alleged that the plaintiff/ appellant filed the translated copy of the Kebang decisions of 1992 and 1996. It has been further alleged that the aforesaid translations are misleading, interpolated and the versions contained therein are inconsistent with the contents/ gists of the original documents and that the Kebang decision of 1992 seems to be completely fabricated,

wherein the date, contents and name of the suit land are completely changed from that of the original documents. It is also contended that the thumb impressions/ signatures of Jambo Ete in the documents vide Annexures-A-2 and A-13 are false and as such, the said documents are fabricated. Therefore, in the opinion of this Court, it would be convenient if the disputed/ questioned documents are subjected to scientific investigation as provided under Order XXVI Rule 10 A of the Code of Civil Procedure in aid of appreciation of the oral testimony of the witnesses of both the parties.

18. For the reasons, set forth above, the **appeal is partly allowed** setting aside the impugned judgment and decree, dated 20.01.2014, passed by the learned Additional District Judge, Basar, in Title Suit No. 1 (WS) 2013.

19. The suit is remanded back to the learned trial Court, with directions, to issue appropriate commission under **Order XXVI Rule 9**, for local investigation in respect of the suit land to elucidate its exact location and boundary thereof and further, another commission under **Order XXVI Rule 10 A** of the Code of Civil Procedure for scientific investigation into the questioned documents (disputed documents) including signatures/ thumb impression etc., thereon by the Forensic Science Laboratory (FSL) after hearing the learned counsel of both the sides on procedure to be followed and terms of references for investigations and thereafter, to dispose of the suit afresh in accordance with law. No order as to cost.

Send down the LCR along with a copy of this judgment and order.

JUDGE