

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)
ITANAGAR BENCH.

CIVIL REVISION PETITION NO. 08 (AP) 2012

Shri Michi Tayang,
S/o Late Michi Pai,
Village-Michi, PO-Ziro,
District-Lower Subansiri (A.P),
Representing Michi Ati Uru of Michi Village
under Ziro-I of
Lower Subansiri District (A.P).
.....Revision **Petitioner.**

By Advocates:
Mr. S. Koyang,
Mr. T. Tamang,
Mr. S. Tapin.

-Versus-

Shri Dulley Tajo,
S/o Shri Dulley Uja,
Village-Michi, PO -Ziro,
District-Lower Subansiri,
Arunachal Pradesh.

.....**Respondent.**

By Advocate:
Mr. K. Tama

BEFORE
THE HON'BLE JUSTICE Dr. (Mrs.) I. SHAH

Date of hearing : 11.03.2014

Date of Judgment & Order : 19-03-2014

JUDGMENT & ORDER (CAV)

Heard Mr. S. Koyang, learned counsel for the revision petitioner and also heard Mr. K. Tama, learned counsel appearing on behalf of the sole respondent.

2]. Aggrieved by the judgment and order dated 01-05-2012, passed by the learned District & Session Judge, West Sessions Division, Yupia, Arunachal Pradesh in Title Suit No. 60 of 2011 (YPA), the petitioner has preferred this revision petition. The suit filed by the petitioner was dismissed on preliminary issues.

3]. The petitioner as plaintiff filed the suit representing his clan "**Michi Ati Uru**" praying for declaration of right, title and interest of his clan over the plot of land called "**Lengkhu**". The plaintiff claimed the suit land is their ancestral property of their clan and the defendant's clan namely, "**Ato Millo Uru**" of Michi Village represented by defendant had encroached the said land. While the dispute was going on between the two clans, the family members of the petitioner were summoned by one Shri Bamin Siri, Zila Parishad member (ZPM) and when the petitioner went to his resident, he was informed that the family members of respondent have lodged the oral complaint against the family members of the petitioner. Shri Bamin Siri, ZPM was requested to mediate and settle the matter amicably. Thereafter, both the parties were summoned and their signatures were obtained on a deed of agreement prepared in advance on an amicable settlement of the case.

4]. According to the petitioner, the settlement letter in pursuance to deed of agreement was prepared in advance on a printed form. The agreement was for amicable settlement of the dispute by a mediator; there is no mention of arbitration under the provision of Arbitration and Conciliation Act, 1996. In the mediation proceeding, no scope was given to the parties to adduce their evidence or to prove their case. The mediator kept the case pending for about 17 months. Thereafter, the petitioner received the judgment and decision of the mediator on 20-06-2011. According to the petitioner, the mediator has arbitrarily decided their case without relying on the factual matrix of the case and without arriving on amicable settlement of the dispute. The respondent also initiated a proceeding under Section 145 Cr.P.C., which was, however, dismissed. Thereafter, the petitioner filed the Title Suit. The respondent raised the preliminary objections as regard the

maintainability of the suit as according to the respondent, the suit was barred by principle of *res judicata*.

5]. After hearing both the parties, the learned District and Sessions Judge held that as the ZPM is not the competent authority, the principle of *res judicata* is not applicable and the trial of suit will proceed. On the date fixed for settlement of issues, the respondent again raised another preliminary objection on the maintainability of the suit.

6]. The contention of the respondent is that the appointment of Shri Bamin Siri, vide deed of agreement dated 11-01-2009, was in pursuant of arbitration agreement within the meaning of sub-section 2(1)(b) of Section 7 of the Arbitration and Conciliation Act, 1996 and the decision as per the arbitration agreement is an award, which has already attained its finality and therefore, the suit is barred under Section 5 of the Arbitration and Conciliation Act, 1996 .

7]. It is submitted by the learned counsel for the petitioner that the deed of agreement dated 11-01-2009 was entered between the parties for amicable settlement of the dispute through mediation with the help of Shri Bamin Siri, ZPM, as mediator and not as arbitrator, the learned District and Sessions Judge misconstrued the terms and conditions of the agreement and erroneously held the agreement as initiation of proceeding of under Arbitration and Conciliation Act, 1996 for arbitration. Nowhere in the agreement, the word 'arbitration' has been used, the agreement contained that the dispute may be settled amicably. Moreover, while once the preliminary issue was decided in favour of the petitioner, the learned trial court could not have allowed to raise further preliminary objection and to dispose of the suit on preliminary issue. In fact, Shri Bamin Siri, ZPM neither had tired the case as village authority under Section 38 & 40 of the Assam Frontier (Administration of Justice) Regulation, 1945 nor as arbitrator under Arbitration and Conciliation Act, 1996. He was simply appointed as mediator to settle the dispute amicably. The learned Trial Court also failed to appreciate that the respondent filed a petition in the Court of Deputy Commissioner, Ziro, claiming the land in dispute on the basis

of judgment and order passed by Shri Bamin Siri, ZPM, which was dismissed and the order so passed by the Judicial Magistrate, First Class has remained unchallenged.

8]. For better appreciation of the fact, the deed of agreement entered between the parties is reproduced as under:-

“DEED OF AGREEMENT

The deed of agreement was today on 11/01/2009 at the residence of Shri. Bamin Siri, Hon’ble Zila Parishad Member of Diibo Panchayat Constituency, to discussed the Land/ Forest Dispute in between Dulley Clan and the Michi Akang ATI Uru of Michi Village regarding the “ FOREST, Called RACHI MORE/LANGKHU MORE under the following points:-

- 1) *That We from both side the Forest Owner i.e. Dulley and Ati Uru both from Michi Village fully Authorized to Mediator Shri. Bamin Siri, Hon’ble ZPM along with Boundary owners of Rachi or Langkhu forest, like, Kime Clan of Hija Village, Tage Nami of Mudang Tage Village and Absiibo Uru of Michi Village to solve the case in amicable way,*
- 2) *That we from both parties fully Empower the Mediator with boundaries owners to identified/check/and to judge the side wise boundaries owners whether the Ati Uru or Duley Clan, of Michi Village, the Plot boundary with Kime Clan, Tage Nami , and Absiibo Uru, Forest, and to declared the dispute Forest land after spot verification that actually belong to whom.*
- 3) *We both the parties i.e. Duley and ATI Uru agreed to follow and Accept the last decision given by the Mediator for settlement of the case*

<i>Sl.No</i>	<i>Represent form Dulley Clan:-</i>	<i>SL.No.</i>	<i>Represent from ATI URU Michi</i>
<i>1.</i>	<i>Shri. Duley Uja</i>	<i>1.</i>	<i>Shri. Michi Taker</i>
<i>2.</i>	<i>Shri. Duley Tallo</i>	<i>2.</i>	<i>Shri. Michi Nibo</i>
<i>3.</i>	<i>Shri Dulley Millo</i>	<i>3.</i>	<i>Shri. Michi Buga</i>
<i>4.</i>	<i>Shri Duley Chobin</i>	<i>4.</i>	<i>Shri. Michi Tari</i>
<i>5.</i>	<i>Shri. Duley Kani</i>	<i>5.</i>	<i>Shri. Michi Ranka</i>
<i>6.</i>	<i>Shri. Duley Gambo</i>	<i>6.</i>	<i>Shri. Michi Tayang</i>

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**Sd/-(BAMIN SIRI) ZPM
Witness."**

9]. In pursuance to the said deed of agreement, a settlement letter, dated 20-06-2010, was also signed, which is reproduced as under:-

Settlement Letter

The dispute forest land i.e. Rachi Called by Duley Clan and Langkhu called by Michi ATI URU, and reference to Discussion/Agreement made on 11th January, 2009, at the Residence of Shri. Bamin Siri, Hon'ble ZPM, in between Duley Clan and the ATI Uru of both Michi Village were amicably solved with Physical verification conducted by Convener Shri. Bamin Siri, Shri. Toto Tago, ASM, Shri. Hano Tago, ASM, and Shri. Tamo Gumbo ASM along with representative from Tage Nami, Kime and Michi Absiibo Uru the Actual Boundaries Owners of that particular Forest as Mediators.

1) As per our enquiry the forest plot of land was actually under dispute is belong to Dulley Clan of Michi Village.

2) We the mediator for both parties to-day on 20th June, 2010 (Sunday) declared that the LANGKHU Forest upto Tallo Siigang which was being claimed by Michi Ati Uru/Rachi Forest upto Langkhu Pudu which was being calimed by Michi Duley Uru is Actually belong to Duley Clan Forest.

3) Our decision will remain as Evidence of Settlement in future what ever the situation may become, either in court or in village level.

List of Mediators-

- 1) Shri. Bamin Siri, ZPM, 2) Shri. Kime Dogin,
3) Shri. Tage Appa, 4) Shri. Tage Tade,
5) Shri. Michi Apa Taker, 6) Shri. Kime Randa,
7) Shri. Michi Dolley Tadu.

ACCEPT BY

1.	Shri. Duley Uja	1.	Shri. Michi Taker
2.	Shri. Duley Tallo	2.	Shri. Michi Nibo

3.	Shri Duley Millo	3.	Shri. Michi Buga
4.	Shri Duley Chobin	4.	Shri. Michi Tari
5.	Shri. Duley Kani	5.	Shri. Michi Ranka
6.	Shri. Duley Gambo	6.	Shri. Michi Tayang
1.	Shri. Duley Uja	1.	Shri. Michi Taker

*Sd/- (BAMIN SIRI) ZPM
Witness”*

10]. Under Assam Frontier (Administration of Justice) Regulation, 1945, a dispute may be referred to arbitration by the Deputy Commissioner under Section 38 of the Regulation, 1945. Section 38 of the said Regulation reads as under:-

“ S.38 (1) The Deputy Commissioner and Assistant Commissioner shall in every case in which both parties are indigenous to the Union Territory of Arunachal Pradesh endeavour to persuade them to submit to arbitration by a Panchayat.

(2) If the parties agree, each party shall nominate an equal number of members of the Panchayat, and the Deputy Commissioner or Assistant Commissioner shall either choose or direct the panchayat to choose, a further person as umpire.

(3) The name and addresses of the members of the panchayat and umpire and a statement of the matter in dispute shall be recorded, and the Deputy Commissioner or Assistant Commissioner shall direct the village authority or some other person to assemble the panchayat and witnesses within such time as he may specify, and also fix a date on which the decision of the panchayat shall be announced before him.

(4) The umpire shall have no vote as a member of the panchayat, but shall enter on and decide the matter in dispute if the panchayat or a majority of its members, are unable to agree on their decision before the date fixed under sub-section(3)

(5) On the date fixed for the announcement of the decision, the umpire and the parties shall appear before the Court which directed the arbitration, and the court shall record the decision together with any order which it considers reasonable for the payment, or apportionment of the costs of the panchayat's proceedings.

(6) The decision so recorded shall be enforceable as if it was a decision of the Court recording it and shall be final."

11]. Here in this case, the so called dispute was not referred by Deputy Commissioner in terms of rule 38 of the Regulation. In fact, no complaint was lodged prior to the arbitral proceeding before the Deputy Commissioner. There was no nomination of equal number of members of the Panchayat as per requirement under sub-section 2 of Section 38 of the Regulation, 1945.

12]. Since the dispute between the parties was not referred by the Deputy Commissioner for arbitration in terms of Section 38 of the Regulation, 1945, the decision held by Shri Bamin Siri, ZPM cannot be termed as award. That apart, the simple reading of the deed of agreement shows that Shri Bamin Siri, ZPM was appointed as mediator by the parties to resolve the case in an amicable way. The judgment and decision passed by the ZPM member also contained that the statement of all witnesses referred to by the parties were not considered. Only on the basis of witnesses available at the time of spot verification was considered. It also appears that both the parties signed the settlement letter and agreement on 11-01-2009, at the time of spot verification and subsequent thereto, the judgment was delivered by the mediator.

13]. Although, in the deed of agreement, it has been averred that both the parties agreed to follow and accept the last decision given by the mediator for settlement of the dispute, it is also averred, that the dispute is to be settled in an amicable way. The learned trial Court failed to differentiate between the mediator and arbitrator. In a mediation proceeding, a mediator is not empowered to pass any

award and if any such decision is given by a mediator that cannot be treated as an award under Arbitration and Conciliation Act, 1996. The decision of a mediator is not a decree of a court. In a mediation proceeding, if the parties fail to arrive at an amicable settlement, the mediator cannot pass any judgment or award. There is no averment that the judgment and decision passed by the mediator was an amicable settlement of dispute. It appears from the aforesaid judgment that as the parties agreed to abide by the decision of the mediator the judgment was passed in favour of one of the clans.

14]. In view of the above, the judgment and order passed by the learned trial Court dismissing the suit on preliminary issue is hereby set aside and the matter is remanded back with the direction to frame and settle all the issues in accordance with law and after giving opportunity of hearing to both the parties to adduce their evidence, dispose of the matter as per law. The parties are directed to appear before the learned trial Court within a month.

JUDGE

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