

CRP No. 36 of 2016

... Petitioner

3. Shri. Kenes Singh Khongwar,
S/o (L) N. Kshiar.
R/o Nongthymmai, Sirdar Mawsmmai
Nongthymmai Elaka, Mawsmmai Sirdarship,
East Khasi Hills District, Meghalaya.

... Respondents

Date of Order ... 15.12.2016

JUDGEMENT AND ORDER

BY HON'BLE MR. JUSTICE V.P. VAISH (ORAL)

By way of the present revision petition the petitioner assails order dated 19.08.2016 passed by Presiding Officer, Subordinate District Council Court, Shillong in Misc. Case No. 1 (T) 2015 whereby the application under Section 151 C.P.C. filed by the respondents herein was allowed. The petitioner has also challenged order dated 08.11.2016 passed by learned Judge, District Council Court, Shillong in Misc. Civil Appeal No. 8 of 2016 whereby the appeal filed by the petitioner was dismissed.

2. Brief facts of the case as born out from the petition are that the respondents herein (respondents in the original suit) filed a suit for declaration bearing T.S. No. 1 (T) of 2014 seeking declaration, with respect to the suit land described in the Schedule-B of the Plaint, that the suit land is community land and that the petitioner (defendant in the original suit) has no right to occupy the same. The respondents herein also prayed for cancellation of the deed of declaration dated 05.07.2010.

3. Alongwith the suit, the respondents herein also moved an application under Order 39 Rule 1 and 2 C.P.C. bearing Misc. Case No. 2 (T) 2014 and an order of ex-parte ad-interim injunction was passed on 13.10.2014. The said application under Order 39 Rule 1 and 2 C.P.C. was disposed of vide order dated 21.11.2014 and the order of interim injunction dated 13.10.2014 was modified to the extent that the petitioner herein was allowed to run his business in the land described as Schedule-A without making any changes or altering the nature and character of the suit land, he may beautify his shop within the boundary of the shop premises for the purpose of attracting the tourist. It was also directed that the

petitioner shall not erect any boundary or make any concrete constructions which may alter the nature and character of the suit land. The petitioner was restrained from entering into and interfering with the possession of the applicants (respondents herein) over the suit land described in Schedule-B and from transferring or alienating the suit land.

4. It is also stated that thereafter, the respondents moved an application under Section 151 C.P.C bearing Misc. Case No. 1 (T) 2015 seeking permission to start developmental works in the Schedule-B land and construct a tourist view point.

5. Thereafter, the Title Suit bearing No. 1 (T) 2015 and M.C. No. 1 (T) 2015 were transferred before the District Council Court, Shillong as both the parties are tribal.

6. It is further stated that the respondents (plaintiffs in the original suit) moved an application for amendment/correction of the plaint bearing application No. 508/2016 and another application analogous to Order-6 Rule-17 C.P.C. for correction/amendment of Misc. Case No. 1 (T) 2015 which was registered as application No. 509/2016. Both the applications were taken up for hearing on 19.08.2016 and the case was adjourned to 23.09.2016. By separate order, on the same day i.e. 19.08.2016, application under Section-151 C.P.C. bearing Misc. Case No. 1 (T) 2015 was allowed by the Presiding Officer, Subordinate District Council Court, Shillong vide impugned order dated 19.08.2016.

7. Being aggrieved by the said order dated 19.08.2016, the petitioner filed an appeal bearing Misc. Civil appeal No. 8 of 2016 which was dismissed by learned Judge, District Council Court, Shillong vide impugned order 08.11.2016.

8. Feeling aggrieved by the aforesaid orders, the petitioner has preferred the present revision petition.

9. The revision petition was taken up for hearing on 07.12.2016 and the same was adjourned for today.

10. Mr. H.S. Thangkhiew, learned senior counsel assisted by Mr. P. Nongbri enters appearance on behalf of all the respondents.

11. Mr. S.P. Mahanta, learned senior counsel assisted by Ms. S. Pde submits that the application under Order 39 Rule 1 and 2 of the C.P.C. was disposed of on 21.11.2014. Thereafter, the respondents moved an application under Section-151 C.P.C. bearing No. 1 (T) 2015 and during the pendency of the said application the respondents moved another application analogous to Order-6 Rule-17 C.P.C. for correction/amendment of the said application. The application under Section-151 C.P.C. bearing Misc. Case No. 1 (T) 2015 was allowed on 19.08.2016 without considering the application for amendment of the said application.

12. I have carefully considered the submissions made by learned counsel for both the parties and perused the material on record.

13. In this instant case, the application under Order 39 Rule 1 and 2 C.P.C., bearing Misc. Case No. 2 (T) 2014, filed by the respondents was disposed of vide order dated 21.11.2014. Thereafter, the respondents moved another application under Section-151 C.P.C. bearing Misc. Case No. 1 (T) 2015 seeking permission to restart developmental works and construction at Mot Palong, Mawsmmai, Nongthymmai, Elaka. During the pendency of the said application, the respondents moved an application for amendment of the said application under Section 151 C.P.C.

bearing Misc. Case No. 1 (T) 2015 which was taken up for hearing on 19.08.2016 and the case was adjourned to 23.09.2016. However, on the same day i.e. 19.08.2016 the application under Section-151 C.P.C. bearing Misc. Case No. 1 (T) 2015 was allowed by Presiding Officer, Subordinate District Council Court, Shillong without deciding the application for amendment of the said application. Moreover, it is not clear when the matter was adjourned to 23.09.2016 as to how the application under Section-151 C.P.C. was decided.

14. On being queried with regard to the procedure adopted by learned Presiding Officer, Subordinate District Council Court, Shillong, learned senior counsel for both the parties submit that the matter may be remanded back and both the impugned orders may be set aside.

15. Having considered the facts and circumstances of the case and submissions made by learned counsel for both the parties, it is deemed appropriate to dispose of the present petition at this stage itself. Accordingly, the impugned order 08.11.2016 passed by learned Judge, District Council Court, Shillong in Misc. Civil Appeal No. 8 of 2016 and order dated 19.08.2016 passed by Presiding Officer, Subordinate District Council Court, Shillong in Misc. Case No. 1 (T) 2015 are set aside and the matter is remanded back to the Subordinate District Council Court with the directions that the application for amendment bearing No. 509/2016 be decided first and thereafter, pass a fresh order on application under Section-151 C.P.C. bearing Misc. Case No. 1 (T) 2015 seeking permission to restart developmental works for the construction of a view point, after hearing both the parties, in accordance with law.

16. With the aforesaid observations the present revision petition stands disposed of.

MC(CRP) No. 23 of 2016

The application has been rendered infructuous and the same is disposed of accordingly.

JUDGE

Dated, the 15th December, 2016

V. Lyndem