

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 15 of 2015 with
CRP No 16 of 2015
CRP No 17 of 2015

Date of Decision: 26.11.2020

Shri Henalsing Marak	Vs.	Shri Thakil A.Sangma
Shri Choka Sangma	Vs.	Shri Thakil A.Sangma
Shri Projing Ch.Sangma	Vs.	Shri Thakil A.Sangma

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. R. Kar, Adv.
For the Respondent(s)	:	Mr. P.T. Sangma, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. These matters have been taken up via video conferencing.
2. Aggrieved by the order dated 30.06.2015 passed by the learned Judge, District Council Court, Shillong in Misc. Civil Appeal No. 10 of 2013 which is an appeal against the order dated 23.08.2010 passed by the learned Presiding Officer, Sub-Ordinate, District Council Court, Shillong in Misc. Case No. 22 of 2009 arising out of Title Suit No. 25 of 2009 dismissing the appeal, the petitioner in CRP No. 15 of 2015 has come before this Court with an application under Clause/Rule 6 of the Meghalaya High Court (Jurisdiction over the District Council Courts) Rules, 2014 with a prayer to set aside and quash the impugned order.

3. A similar application was also filed by the petitioner in CRP No. 16 of 2015, who also being aggrieved by the same impugned order dated 30.06.2015 had approached this Court for redressal of his grievance.
4. Again, another similar application was filed by the petitioner in CRP No. 17 of 2015 against the same impugned order dated 30.06.2015.
5. All the three revision applications mentioned above being similar and preferred against the same impugned order, this Court deemed it expedient to tag them together and to pass a common order herein.
6. In CRP No. 15 of 2015, the petitioner claims that he is the Agent of Damangre clan which is the owner of a plot of land called “Daja Damangre” situated at Shallang, in the West Khasi Hills District of Meghalaya.
7. It is also the averment of the petitioner that the respondent in the year 2009 had instituted Title Suit No. 25 of 2009 along with Misc. Case No 22 of 2009 and has also obtained an ex-parte ad-interim injunction order seeking to restrain the petitioner herein from entering into the land called “Abalgare Dagal” which is a land adjacent to the petitioner’s land. The institution of the said Title Suit was suppressed by the respondent when they approached the Gauhati High Court with a related prayer to restrain the petitioner from entering into the said land called “Abalgare Dagal”. However, the High Court in W.A No. 7 of 2010 had deprecated the action of the respondents and vide order dated 10.02.2010, directed that the parties thereto shall not enter the land called “Abalgare Dagal” until the matter is finally heard by the District Council Court.
8. It is also the averment of the petitioner that a counter Title Suit along with Misc. Case No 12 of 2010 was filed by the petitioner before the District Council Court by way of a title suit.
9. There are other adjacent land owners who were affected by the injunction order of the District Council Court who has filed similar title suits along with related miscellaneous applications for grant of ad-interim

injunction being Title Suit No. 9 of 2010/Misc. Case No 11 of 2010 and Title Suit No. 8 of 2010/Misc. Case No. 10 of 2010.

10. The petitioner has also stated that besides the written argument on his behalf being filed in Misc. Case No. 22 of 2009, an application dated 28.07.2009 was also filed with a prayer that all the connected title suits relating to the common disputed suit land be taken up together for adjudication. However, though no formal order was passed, all these related title suits were fixed together on the same date, that is, 15.07.2010 for hearing.

11. On 02.12.2010, the petitioner attended the Court as the matter was listed but was shocked and surprised to learn that the learned Trial Court had singled out Misc. Case No. 22 of 2009 arising out of Title Suit No. 25 of 2009 and had passed the order dated 23.08.2010 making the ad-interim injunction with respect to the land “Abalgre Dagal” absolute.

12. Being aggrieved by the said order dated 23.08.2009, the petitioner preferred a revision petition before the High Court which was registered as CRP (SH) No. 63 of 2010. Similar petitions were also filed by interested/affected parties which were registered as CRP (SH) No. 62 of 2010 and CRP (SH) No. 64 of 2010 respectively.

13. The High Court vide common order dated 02.05.2013 disposed of all the related revision petitions by directing the parties to approach the Court of the learned Judge, District Council Court with an appropriate appeal under Rule 28 of the United Khasi and Jaintia Hills Autonomous District Council (Administration of Justice) Rules, 1953.

14. Accordingly, the petitioner filed the appeal before the Court of the Judge, District Council Court, Shillong which was registered as Misc. Civil Appeal No. 10 of 2013. Similar and analogous appeals were also filed which were registered as Misc. Civil Appeal No. 11 of 2013 and Misc. Civil Appeal No. 9 of 2013.

15. The petitioner appeared before the Judge, District Council Court along with other appellants on 02.04.2015 and was informed that the judgment was

reserved in Misc. Civil Appeal No. 10 of 2013, however the two related appeals were re-fixed for submission of written argument.

16. The petitioner in his written argument has assailed the impugned order dated 30.06.2015 on the ground that on 02.04.2015 when he had appeared before the court, he was informed by the court that that the judgment in Misc. Civil Appeal No. 10 of 2013 was reserved while in the two analogous appeals, the court is awaiting the filing of the written argument. The petitioner thereafter filed a petition on 07.04.2015 with a prayer for being heard orally after the written arguments are exchanged between the parties, but the court failed to hear or pass order on the said petition.

17. It is also the argument of the petitioner that on 30.06.2015, he had gone to the court to file his hazira, but was informed by the Bench Assistant that the Judge, District Council Court was on leave, however to his surprise, he later came to know that the impugned order dated 30.06.2015 was passed while the learned Judge was on leave. This according to the petitioner has vitiated the entire process of adjudication.

18. Another limb of argument of the petitioner is that the order dated 23.08.2009 was passed on an off date but the learned appellate court failed to take notice of this and instead passed the impugned order dated 30.06.2015.

19. The fact that the learned appellate court has failed to fulfil the requirement of law that suits and counter suits between the same parties involving the same plot of land ought to be amalgamated and tried together in term of the prayer made by the petitioners is also another ground raised by the petitioner to justify setting aside of the impugned order.

20. To support his case, the petitioner has cited the case of ***Westerly Dkhar and Ors v. Sehekaya Lyngdoh.***

21. The respondent in his written submission has stated that the learned Sub-Ordinate, District Council Court after hearing all the parties and having examined the documents produced by the respondent herein and after coming to a finding that the three ingredients required for granting injunction are in

favour of the respondent herein, have passed the order dated 23.08.2009 and as such, there is no infirmity with the said order and the subsequent order dated 30.06.2015 of the learned Judge, District Council Court in affirming the said order dated 23.08.2009 also suffers from no legal infirmity.

22. As to the prayer of the petitioner for amalgamation of all the related cases between the parties herein, it is submitted that the District Council Court will try those case according to due process of law by following the principles of rules, procedure like recording of statement of witnesses, examination of documents and framing of issues and to dispose of the same in accordance with law.

23. What is seen here is that the petitioner has come before this Court with an application invoking the provision of Clause/Rule 6 of the Meghalaya High Court (Jurisdiction over the District Council Courts) Rules, 2014 which reads as follows:

“6. The High Court may on application or otherwise call for the proceedings of any civil or criminal case decided by or pending in any court in the autonomous district constituted under the provision of sub-paragraph (1) and (2) of paragraph 4 of the Sixth Scheduled to the Constitution (hereinafter called the court of the District Council) and pass such orders as it may deem fit.”

24. In the case of ***Ka Drosila Dkhar v. Village Committee of Demthring & Ors: CRP No. 12(SH) of 2005***, the Gauhati High Court (Shillong Bench) (as this Court then was) has come to a finding that the power exercised by the High Court under this provision (Clause 6) must be exercised in conformity with the revisional power under Section 115 of the Code of Civil Procedure and that the High Court while exercising revisional powers under Clause/Rule 6 cannot go into the facts like an appellate Court. A Division Bench of this Court in the case of ***Acting Syiem of Myllem v. Bidington Kharir: CRP No. 19 of 2019***, on a Reference, has upheld the proposition laid down in the case of ***“Ka Drosila Dkhar”***.

25. The case of the petitioners herein must therefore be viewed and examined under the provision of Section 115 CPC which provides as under:-

“115. Revision.-[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and to which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to acted in the exercise of its jurisdiction illegally or with material irregularity,

The High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings]

26. It is to be reminded that the impugned judgment dated 30.06.2015 was passed by the learned Judge, District Council Court, Shillong on consideration of the order dated 23.08.2010 passed by the learned Sub-Ordinate, District Council Court, Shillong while deciding on the prayer for grant of ad-interim injunction under Order 39 Rule 1 & 2 CPC made by the Respondents herein. All orders under Order 39 are also temporary and interlocutory in nature.

27. An order by which an application for granting temporary injunction is disposed of either dismissing it or granting the ad-interim injunction can only be an order made in the course of a suit. That order even if passed favouring or disfavouring one party to the lis, will not have the effect of finally disposing of the suit. Similarly, when the matter is taken up on appeal before the appellate court, whatever decision made by the appellate court will only either be to allow continuance of the ad-interim injunction granted by the Trial

Court, or to vacate the same, which again, will not result in the final disposal of the suit.

28. This being the case, on revision before the High Court, the proviso to sub-section 1 of section 115 CPC will be applicable to the extent that there is a bar for the High Court to entertain any revision against the said impugned order dated 30.06.2015.

29. The resultant effect of the application of the said proviso to sub-section 1 of section 115 CPC to these proceedings is that these instant revision applications are not maintainable and are liable to be rejected.

30. Consequently, it would be futile to go into the merits of these applications for revision at this stage.

31. These revision petitions are therefore not maintainable and are hereby dismissed.

32. Matter disposed of. No cost.

33. Send back the Lower Court case records to the concerned Court.

Judge

Meghalaya
26.11.2020
"D. Nary, PS"