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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

RSA NO.7 OF 2017

Smt. Chingangbam Ongbi Ibetombi Devi, W/O (L) Ch.
Babu Singh of Khurai Thangjam Leikai, now died by her
LRs :-

- A. Shri Chingangbam Doren @ Dorendro
Singh, aged about 63 years, S/O Late Babu
Singh of Khurai Thangjam Leikai, P.O. &
P.S. Porompat, Imphal East District,
Manipur.
- B. Shri Chingangbam Ingobi Singh, aged
about 60 years, S/O Late Babu Singh of
Khurai Thangjam Leikai, P.O. & P.S.
Porompat, Imphal East District, Manipur.
- C. Smt. Chinganbam Ningol Namoiyam Ongbi
Sorojini Devi, aged about 66 years, W/O
Late Yaima Singh of Khurai Soibam Leikai,
P.O. & P.S. Porompat, Imphal East District,
Manipur.

-- -- -- APPELLANTS

- VERSUS -

- 1. Smt. Yumnam Ongbi Maimu Devi, aged
about 77 years, W/O Y. Ningthoubi of
Thoubal at presnt Kongba Uchekon

Khunou, P.O. Porompat, P.S. Irilbung,
Imphal East District, Manipur.

2. Smt. Laishram Randhoni Devi, aged about 74 years, W/O Ibotombi Singh of Khurai Thangjam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.
3. Smt.Meisnam Ongbi Kunjarashi Devi, aged about 81 years, W/O L. Achou Singh of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur now died by her LRs :-
 - A. Meisnam Shantikumar Singh, aged about 58 years, S/O M. Achou Singh.
 - B. Meisnam Sarat Singh, aged about 56 years, S/O M. Achou Singh.
 - C. Meisnam (N) Khoirom (O) Meme @ Memi Devi, aged about 60 years, W/O Kh. Chaoba Singh of Uripok Khumanthem Leikai.
 - D. Meisnam (N) Pukhrambam (O) Jugeshwori Devi, aged about 65 years, W/O P. Ibobi Singh of Sagolband Meino Leirak.

- - - - LRs at Sl. No. a and b are residents of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.

4. Smt. Haobijam Ongbi Pishak Devi, aged about 77 years, W/O Yaima Singh of Khurai Konsam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.
5. Shri Yumnam Budhachandra Singh, aged about 74 years, S/O (Late) Tomba Singh of Khurai Sajor Puthem Leikai, Lamlong, P.O. & P.S. Porompat, Imphal East District, Manipur.

-- -- -- *RESPONDENTS*

6. Smt. Thokchom (O) Rajkumari Romita Devi, aged about 53 years, W/O (L) Thokchom Saratkumar Singh of Brahmapur Nahabam, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur.

-- -- -- PROFORMA RESPONDENT.

RSA NO 8 OF 2017

Smt. Thokchom Ongbi Rajkumari Romita Devi, aged about 52 years, W/O Late Th. Saratkumar

Singh of Brahmapur Nahabam, P.O. Imphal, P.S.
Porompat, Imphal East District, Manipur.

-- -- -- Petitioner/Respondent No.1

- VERSUS -

1. Smt. Chingangbam Ongbi Ibetombi Devi,
W/O (L) Ch. Babu Singh of Khurai
Thangjam Leikai, now died by her LRs :-

- A. Shri Chingangbam Doren @
Dorendro Singh, aged about 63
years, S/O Late Babu Singh of
Khurai Thangjam Leikai, P.O. & P.S.
Porompat, Imphal East District,
Manipur.
- B. Shri Chingangbam Ingobi Singh,
aged about 60 years, S/O Late Babu
Singh of Khurai Thangjam Leikai,
P.O. & P.S. Porompat, Imphal East
District, Manipur.
- C. Smt. Chinganbam Ningol Namoiyam
Ongbi Sorojini Devi, aged about 66
years, W/O Late Yaima Singh of
Khurai Soibam Leikai, P.O. & P.S.
Porompat, Imphal East District,
Manipur.

-- -- -- Respondents/Appellants

2. Smt. Thangjam Ongbi Leirensana Devi, W/O late Gulamjat Singh now died by her LRs. :

I. Yumnam Ongbi Maimu Devi, aged about 77 years, W/O Y. Ningthoubi of Thoubal at presnt Kongba Uchekon Khunou, P.O. Porompat, P.S. Irilbung, Imphal East District, Manipur.

II. Laishram Ongbi Randhoni Devi, aged about 74 years, W/O Ibotombi Singh of Khurai Thangjam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.

III. Smt. Meisnam Ongbi Kunjarashi Devi, W/O L. Achou Singh of Sagolband Meino Leirak, Imphal now died by her LRs :

A. Meisnam Shantikumar Singh, aged about 58 years, S/O M. Achou Singh of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.

B. Meisnam Sarat Singh, aged about 56 years, S/O M. Achou Singh of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.

C. Meisnam Nigol Khoirom Ongbi Meme @ Memi Devi, aged about 60

years, W/O Kh. Chaoba Singh of Uripok Khumanthem Leikai, P.O. 7 P.S. Imphal, Imphal West District, Manipur.

D. Meisnam Ningol Pukhrambam Ongbi Jugeshwori Devi, aged about 65 years, W/O P. Ibobi Singh of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.

IV. Haobijam Ongbi Pishak Devi, aged about 76 years, W/O Yaima Singh of Khurai Konsam Leikai, P.O. & P.S. Porompat, Imphal East District, Manipur.

V. Shri Yumnam Budhachandra Singh, aged about 73 years, S/O (Late) Tomba Singh of Khurai Sajor Puthem Leikai, Lamlong, P.O. & P.S. Porompat, Imphal East District, Manipur.

-- -- -- Proforma Respondents

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Appellants	::	Mr. T. Rajendra, Advocate, <i>Learned counsel for appellants in RSA No. 7 of 2017 and RSA No. 8 of 2017.</i>
For the Respondents	::	Mr. I. Lalitkumar, Sr. Advocate, Mr. I. Denning, Advocate, <i>Learned counsel for the Respondent No.1 in RSA No. 8 of 2017.</i>

Mr. I. Vikramjit, Advocate.
*Learned counsel for the
Respondent Nos. 1 to 5 in
RSA No. 7 of 2017*

Date of Hearing and
Reserving Judgment
& Order :: 01.02.2021

Date of Judgment & Order :: **26.02.2021**

JUDGMENT AND ORDER
(CAV)

1. These second appeals are preferred against the common judgment dated 21.1.2017 passed In RFA Nos.15 and 25 of 2016 on the file of the Learned District Judge, Imphal West, whereby the learned District Judge remanded the matter to the trial Court for considering the matter afresh as per the direction of the High Court by giving ample opportunity to the legal heirs of the second plaintiff and the second defendant and directed the Civil Judge (Senior Division) No.II, Imphal East to dispose of the suit being O.S.No.33 of 1967 within a period of six months.

2. The Original Suit No.23 of 1967 was instituted by Thangjam Ningol Chingangbam Ongbi Ibetombi Devi, daughter of one Thangjam Gulamjat Singh, and her, mother Leirensana Devi against Thangjam Irabot Singh before the Sub-Judge-I, Manipur for declaration.

3. The case of the plaintiffs is that late Gulamjat Singh husband of the second plaintiff and the father of the first plaintiff and the first defendant had four patta lands and during his lifetime, Gulamjat Singh had distributed his properties amongst his wives and children. According to that distribution, the land under patta Nos.25/159 and 25/152 became the share of his first wife, the second plaintiff and her issues and the land under patta Nos.25/42 and 1/39 IW became the share of his second wife i.e., the mother of the first defendant and her issues.

4. The plaintiffs have been occupying their share since the said distribution openly and exclusively as of right. Likewise, the other two patta lands were possessed and enjoyed by the first defendant and his mother, Therefore, the first defendant has no right and title to the patta lands viz., 25/152 IE and 25/159 IE.

5. The further case of the plaintiffs is that in Title Suit No.29 of 1965 filed by the first defendant, the Learned Sub-Judge I, Manipur passed an ex parte decree in favour of the first defendant on 30.7.1966 declaring that the first defendant has right and title to the suit land and eviction of the plaintiffs thereof. The said decree was passed without jurisdiction and without proper notice to the plaintiffs. According to the plaintiffs, even if the above distribution is

not believed by the Court, the second plaintiff is entitled to half of the properties left by Gulamjat Singh under the Women's Right to Properties Act, 1937, which was extended to Manipur in the year 1950.

6. The plaintiffs state that through wrong instruction, they have filed Civil Review Case No.2 of 1966 before the Learned Sub-Judge I, Manipur and the same was dismissed. Thus, the reliefs sought by the plaintiffs in O.S.No.33 of 1967 are as under:

- (i) It be declared that the judgment and decree passed by the learned First Sub Judge in his T.S.No.2 of 66 are void and not actionable as passed without jurisdiction and as also tainted with fraud and collusion and that the said judgment and decree be set aside;
- (ii) It be also declared that the order passed by the First Sub-Judge in his Review Case No.2 of 66 and in the condonation petition have got no legal effect;
- (iii) The suit land described below be declared as property of the above plaintiffs on the basis of their distribution mentioned above or in the alternative it be declared that the plaintiffs have

got their right and title over the suit land of adverse possession;

- (iv) The defendant be restrained by a permanent injunction from proceeding with the said ex-suit No.4 of 67 passed by the Second Sub-Judge, Manipur;
- (v) A decree for Rs.2253/- be allowed to the plaintiffs for the damage caused to the plaintiffs on 13.11.1969.
- (vi) Cost of the suit.

7. The first defendant filed written statement stating that Gulamjat Singh died in the year 1954 and he is the only sole heir of Gulamjat Singh and after the birth of the first plaintiff, Gulamjat Singh divorced the second plaintiff and married his mother Mani Devi and thereafter the second plaintiff resided at her parental house at Nongmeibung. After the death of Gulamjat Singh, the first defendant allowed the plaintiffs to reside in the suit to enjoy the produce thereof out of love and affection. But in the year 1962, the second plaintiff set up hostile title against the first defendant by filing a mutation application in respect of the suit land and in that proceeding, the settlement authorities granted mutation in her favour despite first defendant's objection. Therefore, the first

defendant filed Title Suit No.2 of 1966 and the said suit decreed in favour of the first defendant, against which the plaintiffs have filed an application for reviewing the judgment, but the First Sub-Judge, rejected the same. Hence, the present suit is barred by res judicata and the plaintiffs have no locus to file the present suit.

8. By the judgment dated 30.11.1972, the suit was dismissed, against which an appeal was preferred by the first plaintiff before Gauhati High Court in F.A.No.6 of 1976. By the judgment dated 29.4.1993, the Gauhati High Court set aside the judgment dated 30.11.1972 and remanded the matter to the trial Court.

9. After remand, one Thokchom Saratkumar Singh was impleaded as the second defendant in the suit and pending suit, the second defendant died and his legal representatives were brought on record.

10. Upon considering the pleadings, the following issues were framed in the suit:-

- (1) Whether the land under patta no.25/159 IE, 25/152 IE and 1/39 IW were left by late Gulamjat Singh?

- (2) Did Gulamjat Singh died about 1948 or about 1954?
- (3) Was there any distribution of the properties left by late Gulamjat Singh during his life time some time a few months before his death, patta Nos.25/159 IE (Ingkhol) and 25/152 IE (Lou) being allotted to the plaintiff No.1 (1st wife) and her issues and patta Nos.25/42 IW and 1/39 IW to the second wife and her issues?
- (4) Did the defendant (son of 2nd wife) sold the patta No.25/42 IE to Haobam Paka Singh and patta No.1/39 IW to Salam Galumjat Singh after allotment and after the death of Gulamjat Singh?
- (5) Whether the plaintiff No.2 is entitled to any share of the properties left by late Gulamjat Singh under the Hindu Womens' Right to Property Act, 1937?
- (6) Whether the plaintiffs have been occupying the land under patta No.25/159 IW and 25/152 IW (the suit land) as their own since the death of

late Gulamjat Singh till today openly, exclusively and as of right and without any interruption?

(7) Whether the decree holder Thangjam Irabot Singh of Khurai Thangjam Leikai was a non-existing person?

(8) Whether the decree in the Title Suit No.29 of 1966 in favour of the defendant as against the plaintiff was collusively obtained and as such it is vitiated by fraud? If so, what is its effect?

8(a) Whether the house alleged to have been demolished during the pendency of the suit belongs to the defendant or the plaintiffs?

8(b) Are the plaintiffs entitled to claim Rs.2253/- as damages from the defendant?

(9) Is the suit barred by the principles of Res-judicata?

(10) Is the suit barred by waiver of estoppels?

(11) Have the plaintiffs locus standi to bring the suit?

(12) Are the plaintiffs entitled to the reliefs as claimed?

11. On the side of the plaintiffs, four witnesses were examined and exhibited three documents. On the side of the

defendants, the first defendant examined himself as D.W.1 and the bailiff of the Court was examined as D.W.2. Exs.B1 to B3 were marked.

12. Upon consideration of the oral and documentary evidence, the trial Court answered some of the issues in favour of the plaintiffs and finally, decreed the suit that the plaintiffs are the owners of the properties covered by patta No.25/159 IE and another patta No.25/152 IET on the basis of the distribution against the two wives and their daughter and son of late Thangjam Gulamjat Singh. It was also decreed that the judgment and decree in T.S.Case No.2 of 1966, dated 30.7.1966 has no legal force as the Sub-Judge I, Manipur had not declared the first defendant as owner of the suit land. The trial Court also held that assuming that Thangjam Irabot Singh acquired his right and title over the suit land on the basis of the decree in T.S. Case No.2 of 1966, his right and title has already been extinguished by efflux of time and whatever the transfers made pendent lite on the basis of the decree dated 30.7.1966 made by Thangjam Irabot Singh shall have no legal effect and hence void ab-initio. It is also held that the decision arrived at by the Court shall also binding on the second defendant and his legal heirs.

13. Aggrieved by the judgment dated 18.3.2016, one of the heirs of the second defendant filed RFA No.15 of 2016 before the Learned District Judge, Imphal East and the heirs of the second plaintiff filed cross objection being RFA No.25 of 2016 on the file of the Learned District Judge, Imphal West. RFA No.15 of 2016 is an appeal being RFA No.3 of 2016 transferred from the file of District Judge, Imphal East. By the judgment dated 21.1.2017, the Learned District Judge, Imphal West, allowed the appeals and remanded the matter to the trial Court for considering the matter afresh by giving opportunity to the legal heirs of the second plaintiff and the second defendant. Aggrieved by the same, the legal heirs of the first plaintiff have filed these Regular Second Appeals.

14. The Regular Second Appeal No.7 of 2017 was admitted on the following substantial questions of law:

- (1) Does the Ld. District Judge, Imphal West have jurisdiction to entertain an appeal which lies to the Ld. District Judge, Imphal East by taking it up together with another appeal which has already been transferred to the said Court by the Hon'ble High Court?

- (2) Whether the Ld. District Judge, Imphal East erred in law in entertaining the case of the principal respondent nos.1 to 5 which were never presented before the Ld. trial Court?
- (3) Whether an appeal of a plaintiff against a decree granting his prayers made in the plaint is maintainable?

15. The Regular Second Appeal No.8 of 2017 was admitted on the following substantial questions of law:-

- (1) Whether an appeal of a sole legal heir of the defendant no.2 without his other legal heirs having similar interest with her and also without the original defendant No.1 is maintainable or not?
- (2) Whether there is an error in law when the trial Court hears the suit ex-parte after the defendant No.2 without complying the directions of the Court absented in the proceedings of the case without showing any cause?
- (3) Whether the First Appellate Court erred in law in entertaining the appeal of a legal heir of the defendant No.2 and allowing her to raise issues when the

`defendant No.2 himself does not present his case before the trial Court?

16. When both the appeals are taken up for final hearing at that time, Mr. I. Lalitkumar, learned senior counsel who appear for respondent No. 1 in RSA No. 8 of 2017 has represented that the additional question of law to be framed in this second appeal in RSA No. 8 of 2017 for maintainability of the Second Appeal in RSA No. 8 of 2017. Therefore, I heard Mr. I. Lalitkumar, learned senior counsel for the respondent No. 1 in RSA No. 8 of 2017 and Mr. T. Rajendra, learned counsel for the respondent and on hearing both sides, this Court framed the following additional substantial question of law which is as follows :

“As to whether, the present regular second appeal No. 8 of 2017 which is arising out of the nature of the order dated 21.01.2017 passed in Regular First Appeal No. 15 of 2016, now under challenge, is maintainable or not in the relevant provisions of law.”

17. RSA No.7 of 2017 is filed against the judgment in RFA No.25 of 2016. Similarly, RSA No.8 of 2017 is filed against the judgment in RFA No.15 of 2016.

18. The arguments of the learned counsel for the appellants are summarized as under:

R.S.A.No.8 of 2017:

- The Regular First Appeal No.15 of 2016 was filed by defendant No.2 (i) without impleading defendant Nos. 2 (ii), 2 (iii) and 2 (iv). In fact the appellant of RSA No. 15 of 2016 i.e., defendant No2 (i) is the wife of the impleaded defendant No.2 and the defendant Nos. 2 (ii), 2 (iii) and 2 (iv) are the sons and daughter of the impleaded defendant No.2. Moreover, defendant No.1 (Irabot Singh) was the sole defendant of the original suit and who contested the claims of the plaintiffs. Defendant No.2 was in fact impleaded only on 16.02.2010 in the original suit as a defendant. The original defendant was also not made a party in the said RFA No. 15 of 2016. Therefore, the RFA No.15 of 2016 is not entertainable.
- Respondent No.1 in RSA No.8 of 2017 (Smt.Thokchom Ongbi Rajkumari Romita Devi) did not comply with the direction of the trial Court made in the order dated 26-02-2016 passed in Judl. Misc. Case No. 50 of 2016 for depositing the cost of Rs. 5,000/- (Rupees five thousand) to the Member Secretary, Manipur State Legal Service

Authority, Imphal at the Manipur High Court complex at Imphal within a week without fail and to file the receipt before the Court and absented in the further proceedings of the suit. The said Judi. Misc. Case No. 50 of 2016 was filed by the present Respondent No.1 in RSA No. 8 of 2017 herself claiming that the signatures of appellant No.1(A) himself appearing in the miscellaneous applications are forged by even impleading the counsel of the appellants of the present RSA No. 8 of 2017 as a party. The first appellate Court however failed to see the same and has come to an erroneous conclusion that it would be more proper to issue summons to the legal representatives of defendant No.2. In fact, there is no error or lapses in the manner the trial Court decided the original suit by passing the judgment and decree dated 18.03.2016.

- An appeal is a continuation of the suit. The grounds and reasons raised in the RFA No. 15 of 2016 before the Learned District Judge, Imphal West by the present respondent No.1 of RSA No. 8 of 2017 were never produced before the trial Court. The second defendant after his impleadment in the Original Suit did not file his

pleadings nor produce any evidence. Therefore, apart from the fact that his alleged sale deed dated 01.04.1991 does not have the force of law being hit by Section 52 of the Transfer of Property Act, the second defendant has no case before the trial Court. Therefore the RFA No. 15 of 2016 filed by one of his legal heirs is not permissible. Moreover, allowing defendant No.2 (i) to raise issues before the Learned District Judge, Imphal West when the second defendant himself does not have any case before the trial Court is also not permissible. Hence, the first appellate Court erred in law in entertaining the said RFA No. 15 of 2016 and allowing defendant No.2 (i) to raise such issues not produced before the trial Court in passing the impugned judgment and decree dated 21.01.2017.

- As far as the question of law formulated by the Hon'ble High Court regarding the maintainability of the appeal is concerned, it is submitted that the first appellate Court in the impugned judgment concluded that the trial Court has committed gross error for not issuing summons to the legal heirs of defendant No. 2 and that the legal heirs of the second plaintiff Lairensana Devi who are the cross objectors were also not represented properly as no

summons were issued to them after the suit was remanded from the Hon'ble High Court since they were wrongly transposed as plaintiff. The first appellate Court in the said Judgment and Decree dated 21.01.2017 further concluded that the suit is required to be heard afresh after giving ample opportunities to the legal heirs of the second plaintiff and defendant No 2. Therefore such a finding conclusively determines the rights of the parties as regards the District Judge, Imphal West in the said RFA No. 15 of 2016 and 25 of 2016. The respondent as appellant in the RFA No. 15 of 2016 has specifically urged before the learned District Judge, Imphal West that the trial Court ignoring the subsequent development for the suit without application of judicial mind standing in the way of revival and proceeding of the suit restored the said suit on its own file and proceeded hearing ex parte in clear defiance of the directions and order of the Gauhati High Court, Imphal Bench thereby decreed the suit in favour of the plaintiffs.

- The appellant of RSA No. 15 of 2016 in her grounds of appeal before the first appellate Court specifically alleged that the trial Court has fallen into a great injustice in

passing the said judgment and decree and that the judgment and decree was obtained by fraud, collusively, void-ab-initio and not actionable being non-est and also further alleged that there has been apparent injustice done to the defendants for deprivation of right to hearing of the suit. The first appellate Court conclusively determined such claims of the appellant in RFA No. 15 of 2016 in the impugned judgment and decree. The learned District Judge, Imphal West has also drawn up separate decrees in RFA No. 15 of 2016. In both the said decrees, the first appellate Court concluded that the present grounds of appeal is allowed. In the definition of “decree” under Section 2 (2) of the Code of Civil Procedure, it is mentioned that it is the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and decree does not include any adjudication from which an appeal lies as an appeal from an order. Order 41 of the Code of Civil Procedure speaks about Appeals from Original Decrees. Order 42 of Code of Civil Procedure speaks about Appeals from Appellate

Decrees and Order 43 of Code of Civil Procedure speaks about appeals from Orders. Order 42 Rule 1 says that the rules of Order 41 shall apply, so far as may be, to appeals from appellate decrees. Order 43 Rule 1 speaks about orders from which an appeal lies.

- The judgment and decree dated 18.03.2016 of the trial Court is not decided on a preliminary point and the judgment and decree of the learned District Judge is for considering the matter afresh as per the directions of the Hon'ble High Court by giving ample opportunities to the legal heirs of the second plaintiff and defendant No.2 with the further direction to the trial Court to give an opportunity to the legal heirs of plaintiff No.2 for deciding themselves to contest the suit as plaintiffs or defendants and on that basis reframed the cause title of the suit. The Hon'ble High Court in the judgment and order dated 29.04.1993 passed in First Appeal No. 6 of 1976 directed the Subordinate Judge to re-hear the parties on all the issues on the basis of the evidence which were adduced before the court and after hearing to give fresh findings on all of the rest of the issues. In such circumstances, the present RSA Nos. 7 of 2017 and 8 of 2017 are very much

maintainable and the High Court after hearing the parties also admitted the same on 21.08.2019 by formulating the Substantial Questions of Law. The order dated 21.08.2019 of this Court for admitting the Second Appeals is not challenged by the respondents before any higher court and hence it shall be in the best interest of justice to decide the Second Appeals on their own merit.

RSA No.7 of 2017 :

- The learned counsel then submitted that it is the learned District Judge, Imphal East who has jurisdiction over the matter. The Civil Appeal No.3 of 2016 was therefore presented by the first respondent of RSA No. 8 of 2017 namely Smt. Thokchom Ongbi Rajkumari Romita Devi before the District Judge, Imphal East. The Hon'ble High Court's order for transfer dated 01.07.2016 was only for that Civil Appeal No. 3 of 2016 of the District Judge, Imphal East. The learned District Judge, Imphal West has no jurisdiction to entertain the RFA No. 25 of 2016 only on the ground that the transferred Civil Appeal No. 3 of 2016 is also pending before him as RFA No. 15 of 2016.
- As the present respondents 1 to 5 are impleaded as the legal heirs of the deceased plaintiff No.2, they are on the

sues of plaintiff No.2. Therefore, such pleadings which are altogether contrary to the original pleadings of plaintiff No.2 which could not be entertained. An appeal being a continuation of the suit ought to be based on the records of the trial court. The First Appellate Court therefore committed an error in law while entertaining such altogether different case of respondent Nos. 1 to 5 of RSA No. 7 of 2017.

- As far as the two plaintiffs of the original suit are concerned, the judgment and decree dated 18.03.2016 of the trial court granted their prayers made in the plaint.

19. In support of his submissions, the learned counsel relied upon the following decisions:

- (i) *Rani Kusum v. Kanchan Devi and others*, (2005) 6 SCC 705.
- (ii) *Bibi Zubaida Khatoon v. Nabi Hassan Saheb and another*, AIR 2004 SC 173. (iii) *Shreenath and another v. Rajesh and others*, AIR 1998 SC 1827.
- (iv) *Jutika Paul and others v. Bhubaneswari Sheel and others*, 2007 (4) GLT 26. (v) *Amit Kumar*

Shaw and another v. Farida Khatoon and another, (2005) 11 SCC 403.

(vi) State of Punjab and others v. Bakshish Singh, AIR 1999 SC 2626.

(vii) Dharampal (dead) through Lrs. v. Punjab Wakf Board and others, (2018) 11 SCC 449.

(viii) The Executive Director, Hindustan Paper Corporation Limited and others v. Ramvash Bind and others, 1997 (1) GLT 512.

20. The arguments of the learned Senior Counsel Mr. I. Lalitkumar for the Respondent No. 1 in RSA No. 8 of 2017 are summarized as under :-

R.S.A. No. 8 of 2017 :

- That, initially the respondent No. 1 namely Smt. Thokchom (O) Rajkumari Romita Devi had preferred the Regular First Appeal No. 15 of 2016 before the District Judge, Imphal West, Manipur against the ex-parte order dated 18/03/2016 passed in O.S. No. 33/1967/11/93/27/10/13/2016 of the Court of Civil Judge, Sr. Division, Imphal East and the said Regular First Appeal was allowed by the Ld. District Judge, Imphal

West and remanded to the Trial Court by an order dated 21/01/2017 against the said order above referred Regular Second Appeal was preferred.

- The operative portion of the impugned order dated 21/01/2017 passed in Regular First Appeal No. 15 of 2016/25 of 2016 are reproduced as hereunder:

“In the result of foregoing observation I came to the conclusion that the Trial Court has committed gross error for not serving summon to the L.R of the defendant No. 2 and the LR's of the plaintiff No. 2, Lairesana Devi, who are the Cross objectors were also not represented properly as no summon were issue to them after the Suit was remanded from the Hon'ble High Court since they were wrongly transposed as plaintiff. Therefore, the suit is required to be heard afresh after giving ample opportunities to the LR's of the plaintiff No. 2 for further discussion to the merit of the appeal.”

(available at page No. 137 para No. 17 of the Paper book)

- He further relied upon the order of the Ld. District Judge, Imphal West which is appearing at page 135, para No. 16 which is/are reproduced as hereunder:

“8.3.2016 vide order dated 8.3.16 passed in JM case No. 98/13 the suit is hereby restored Re-Register it as O.S.

Fix 14.3.16 for final Argument.

Order

The 14th March, 2016

The plaintiff by counsel present J.M. Case also filed and also allowed. The defendants are absent without showing any cause. The stage of the suit is final hearing. The Id. Counsel of the plaintiffs also has incorporated the L.Rs of the deceased defendant No. 2 today itself.

Since the defendants are absent and since the suit has been pending since the year 1993, I have to hear the Id. Counsel E. Nando Singh, Advocate for and on behalf of the plaintiff at length.

- Fix 18.3.2016 for Judgment and order.” (which is being challenged before the First Appellate Court)

- In such a way, from the order recorded in the aforesaid Regular First Appeal, it clearly shows that while dealing with the case by the Trial Court, the Ld. Presiding Officer had abruptly passed such impugned order thereby violating the natural justice of being heard. Therefore, gross error, illegalities and irregularities was committed while deciding the matter in issue by the Trial Court.
- Thus, while disposing the above referred Regular First Appeal, the Ld. Judge never entered into the merit of the case. And while examining the case records it was found that the Ld. Trial Judge while dealing with the case he has committed gross misconduct in the matter of not serving necessary summons to the newly impleaded LRs of the defendant No. 2/Respondent No. 2 as well as wrongly transposed as plaintiff from the defendant for which the matter was remanded a fresh.
- That, being aggrieved by the said order dated 21/01/2017 passed in R.F.A. No. 15 of 2016 and 25 of 2016, of the Court of District Judge, Imphal West, the present appellant preferred a Regular Second Appeal before this Hon'ble High Court. In the said R.S.A. the appellant raised many grounds. In due course of the proceedings

this Court framed 3 (three) substantial question of law on 28/01/2019 and later on one additional substantial question of law was added.

- In the situation stated above, he drew the attention of the Hon'ble Court to the newly added propose substantial question of law i.e. "As to whether the present Regular Second Appeal No. 8 of 2017 which is arising out of the nature of the order dated 21/01/2017 passed in Regular First Appeal No. 15 of 2016 now under challenged is maintainable or not under the relevant provision of law."
- Hence, he drew the attention of this Hon'ble Court to the definition of the Decree provided in Sec 2(2) of Civil Procedure Code which as follows:

"(2) "decree" means the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final etc. "

- In such a way, after carefully reading and examining the impugned Judgment and order, there is no doubt that while dealing with RSA Case No. 15 of 2016 and

25 of 2016, the Ld. District Judge never entered into the merit of the Case portion of which is available at Page 137, Paras 17 of the paper book.

21. The learned senior counsel for the Respondent No. 1 in RSA No. 8 of 2017 has cited the following judgments :

- (i) *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and others*, (2003) 6 SCC 659.
- (ii) *Santhini v. Vijaya Venketesh*, (2018) 1 SCC 62.
- (iii) *Afcons Infrastructure Limited and another v. Cherian Varkey Construction Company Private Limited and others*, (2010) 8 SCC 24.
- (iv) *Jegannathan v. Raju Sigamani and another*, (2012) 5 SCC 540.
- (v) *Rajni Rani and another v. Khairati Lal and others*, (2015) 2 SCC 682.
- (vi) *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, (2016) 3 SCC 619.
- (vii) *Laliteshwar Prasad Singh and others v. S.P.Srivastava (dead) through legal representatives*, (2017) 2 SCC 415.

(viii) Sangkungi v. Thantluanga Zadeng and another, 1999 (2) GLT 399.

(ix) Dilip Kumar Sharma v. Ankam Nageswara Rao and others, (2015) 14 SCC 555.

(x) Mangluram Dewangan v. Surendra Singh and others, (2011) 2 SCC 773.

- He further submitted that from the above Judgment as observed by the Hon'ble Apex Court one can come to the conclusion that the order passed by the Ld. District Judge, Imphal West is not attracted the definition of the "Decree" as per the Sec 2(2) of CPC. Therefore, the present Regular Second Appeal preferred by the Appellant in under Sec 100 and 103 of the Code of Civil Procedure is against the Judgment and Decree dated 21/01/2017 passed in R.S.A. No. 15 of 2016 and 25 of 2016.
- He further drew the attention of Sec 100 & 103 of Civil Procedure Code. As such, the language employed under Sec 100 and 103 of the CPC is mostly emphasis on Decree passed in appeal as well as power of High Court to determine issues of Facts. Since, the Ld. Presiding

Officer, of the First Appellate Court never decided the merit of the case and no evidences was examined on the ground that while adjudicating the matter in issues the Ld. Trial Court never afforded an opportunity of being heard to the newly impleaded LRs i.e. defendant No. 2. Hence, the present R.S.A. is deserves to be remanded to the subordinate court so as to determine and examine the issues as per the provisions of the law.

- In this regard, he further drew the attention of the Hon'ble Court to the Judgment reported in (2015) 14 SCC 555 (relevant par 8 to 13) which relates to the hurried disposal of the Suit leading to passing of ex-parte decree against the LRs. Therefore, the present R.S.A. is not maintainable and ought to be remanded back to the Subordinate Court.
- In fact from the records it is seen that even after the LRs of the defendant No. 2 brought in the proceedings, the Trial Court never attempted to serve the necessary summons to the LRs and passed such impugned order ex-parte against the Respondent/defendant No. 2

- In addition to that while dealing with the above referred Original Suit, before the Trial Court as well as in the First Appellate Court the specific provisions provided under the CPC had failed to discharge the duty cast upon the Court for which the relevant provisions are produced as hereunder:

“Order XXXIIA Rule 3 read with Section 89 of CPC:

**SUITS RELATING TO MATTERS CONCERNING
THE FAMILY**

1. Application of the Orders.

(1)

(2)

(a)

(b)

(c)

(d)

(e)

(f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(3).....

2.

3. DUTY OF COURT TO MAKE EFFORTS FOR SETTLEMENT:

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at the settlement in respect of the subject-matter of the suit.

(2) if, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.”

- From the examination and perusal of the Judgment and order passed by the Trial Court as well as the First Appellate Court it is ascertained that nowhere such above referred provision was exercised in order to settle the family disputes. Such provision is a very important provision to solve the prolonged litigations between the parties. The language/word used in the above referred provision Order XXXIIA(3) is/are very much mandatory and the duty has been given to the

Hon'ble Court to bring the settlement and same cannot be ignored at all.

- However, had the Hon'ble Court attempted to exercise such power provided in the provision of the CPC the present proceedings of the Second appeal could have been avoided. Therefore, this Hon'ble Court by applying the relevant provisions of the CPC the matter can be remanded back to the subordinate Court to discharge the duty of the Court to make efforts for settlement of the issues involved in the case for the ends of justice.
- In the fact and circumstances, it is to submit that in the certain nature of the family disputes as per the Judgment and Order reported in 1999(2) GLT 399 those disputes was solved. Mentioned may be made that such settlement was as per the provision of the CPC as directed by the Hon'ble High Court.
- He further stated that the case reported in 2018(1) SCC page 62 relevant para 15 the Hon'ble Supreme Court has attempted to settle the matters by exercising such provision laid down in order XXXIIA Rule 2, 3 and 4 of CPC. Although the nature of the

case reported therein may be different with the present case but at least an attempt ought to have made to bring the settlement. The same spirit of the direction of the Hon'ble High Court is also applicable in the present nature of the case.

- In such a way, taking the spirit of the Section 89 of the CPC as reported in 2010 (8) SCC 24 to the original parties of the dispute the present nature ought to have been made at least to settle amongst the original parties. However, till today such provisions of the CPC laid down in order XXXIIA read together with Section 89 at any stages of the proceedings have not been exercised by the Hon'ble Courts. Here it may be mentioned that the present respondent No. 1 is/are not the original parties but the spirit of the CPC 89 may be applicable to the main family members of the parties.
- Therefore, the learned counsel for the Respondent No. 1 represented that based on the relevant provisions of the CPC as well as the Judgment and Order of the Hon'ble Court reported in (i) (2003) 6 SCC 659 (relevant para 31), (ii)(2011) 12 SCC 773

(relevant Para 14), iii) (2015) 2 SCC 682 (relevant para 11, 12), (iv) (2010) 8 SCC 24, (v) (2018) 1 SCC 62 (relevant para 15) and (vi) (1999) (2) GLT 399; which are above referred, this Court be pleased to dismiss the impugned Common Judgment dated 21/01/2017 passed in Regular First Appeal No. 15 of 2016 and Regular First Appeal No. 25 of 2016 of the Court of District Judge, Imphal West, and be remanded back to the subordinate court to bring a new hope of all concerned to avoid prolong litigation for doing the needful in accordance with application provision of law.

22. The arguments of the learned counsel for the Respondent Nos.1 to 5 in RSA No. 7 of 2017 are summarized as under :-

- Thangjam Gulamjat Singh, the original owner of the suit land, married Leirensana Devi and had three daughters from the wedlock. They are – (i) Ibemhal Devi, (ii) Ibeyaima Devi, and (iii) Ibetombi Devi (appellant). Little is known of Ibemhal Devi except that she died early and left two daughters named (i) Yumnam Ongbi Maimu Devi (respondent No. 1), and (ii) Laishram Ongbi Randhoni Devi (respondent No. 2).

- When Ibeyaima Devi was only about 13/14 years, she was forcibly eloped by one Yumnam Tomba Singh, then of Thangmeiband Yumnam Leikai, I/W and later on of Khurai Sajor Puthem Leikai (Lamlong Bazar), I.E. Yumnam Tomba Singh was then an affluent man who set up a business establishment selling odds and ends at Lamlong Bazar and used to travel frequently to Calcutta and elsewhere in connection with his business. At that relevant point of time, a major portion of the homestead lands lying on the north-western side of the main road of Lamlong was owned by the Puthem *sagei*. The head of the Puthem *sagei* was obsessed with *khunu-tunaba* (a sport of pigeon fighting where people wager in different ways) and used to dispose off his properties piece by piece to replenish his obsession. Yumnam Tomba Singh, then popularly known as Dukan Tomba and quite well established in his business despite his young age of about 25 years, was well acquainted with the head of the Puthem *sagei* as his shop was located at the junction of Lamlong Bazar. Dukan Tomba managed to acquire a big portion of the homestead land of the Puthem *sagei* located just by the junction on the north-western side of the road and started staying there by building his home.
- As Yumnam Tomba Singh is a well-to-do person, Gulamjat Singh was not opposed to him being his son-in-law. However, Ibeyaima Devi, who was a

pampered child, refused to stay at the house of Yumnam Tomba Singh at Lamlong after their marriage. In order to placate her, Gulamjat Singh gifted a portion of the Thangjam homestead measuring 1.63 acres (suit land) to Ibeyaima Devi by constructing a *yumjao* (a typical Meitei house) therein so that both his daughter and her husband could stay. Gulamjat Singh stayed in a separate house situated in the remaining portion of the homestead. Subsequently, all three of their children, namely, (i) Maisnam Ongbi Kunjarashi Devi (respondent No. 3); (ii) Haobijam Ongbi Pishak Devi (respondent No. 4); and (iii) Yumnam Budhachandra Singh (respondent No. 5), were born in the said Thangjam homestead. When Ibetombi Devi (appellant) married Chingangbam Babu Singh of Khurai Chingangbam Leikai, I/E, Yumnam Tomba Singh is said to have arranged and given her dowry being his sister-in-law.

- Shortly after the birth of Yumnam Budhachandra Singh (respondent No. 5), Yumnam Tomba Singh died during one of his travels outside the state. His death took place shortly after the bombing of Imphal during World War II which is believed to be sometime during the year 1942. Thereafter, Ibeyaima Devi also took seriously ill and died within a year of the death of her husband at her residence at Khurai Thangjam Leikai within the suit land. Shortly before she died, apparently having a sense of foreboding about the

fate of her children after she dies, Ibeyaima Devi entrusted the care and custody of her children along with all the properties left behind by her deceased husband to Athokpam (N) Yumnam (O) Leimahai Devi, w/o Yumnam Laxman Singh of Khurai Lamlong Bazar, I/E who is the wife of the elder brother of her husband Yumnam Tomba Singh. Yumnam Budhachandra Singh (respondent No. 5) was then just a toddler at the time of death of his mother Ibeyaima Devi. Then, Yumnam Budhachandra Singh (respondent No. 5) became the bone of contention for the remaining brothers of (L) Yumnam Tomba Singh vying for his wealth and properties and he was taken by his uncles named Dinamani and then Indrakumar to stay together with them for short periods at Thangmeiband Yumnam Leikai, I/W until he was brought back by his grandfather Gulamjat Singh to the suit land at Khurai Thangjam Leikai, I/E. Then Gulamjat Singh finally entrusted the care and custody of Yumnam Budhachandra Singh (respondent No. 5) to Yumnam Laxman Singh who looked after and raised him till adulthood along with his sisters at the present residence at Khurai Sajor Puthem Leikai (Lamlong), I/E. As the respondent No. 1 to 5 were raised and stayed separately at Khurai Sajor Puthem Leikai (Lamlong), I/E, they remained out-of-touch with the suit land for a prolonged gap as they were just children at that relevant point of time.

- After the death of Ibeyaima Devi, Gulamjat Singh continued looking after the house and homestead (suit land) till his death sometime around the year 1948. In the meantime, he took another woman named Mani Devi of Khurai Ahongei as his second wife with whom he had a son named Thangjam Irabot Singh. Though Gulamjat Singh purchased another homestead for them to stay and 5 sangam of agricultural land at Sinam Ishing Thanbi for their livelihood, the said Mani Devi chose to stay together with her son at her parental home at Khurai Ahongei till her death.
- Chingangbam (O) Ibetombi Devi (appellant), in the meantime, had fallen into bad days mostly due to the gambling addiction of her husband Chingangbam Babu Singh. They had then two children from their wedlock – Chingangbam Sorojini Devi (LR No. 3 of appellant) and Chingangbam Doren Singh (LR No. 1 of appellant). After the death of her husband in a controversial manner, she was ill-treated by her in-laws. Gulamjat Singh, during his lifetime, called Ibetombi Devi (appellant) and her two children to come back to Thangjam ingkhol and stay there at the house of her deceased sister Ibeyaima Devi along with Leirensana Devi. Shortly afterwards, another child was born to Ibetombi Devi being Chingangbam Ingobi Singh (LR No. 2 of appellant). This fact that Ibetombi Devi (appellant) stayed at the house of her

sister Ibeyaima Devi along with her mother is supported in the in-chief of Ibetombi Devi (appellant) herself as P.W. No. 4 in O.S. No. 33 of 1967.

- Sometime during the survey operation in the year 1971, the name of Ibetombi Devi (appellant) was entered into the record of rights of the suit land. This fact is again supported by her deposition in her cross-examination as P.W. No. 4 in O.S. No. 33 of 1967. This entry of her name without having any right or title was done stealthily in collusion with the survey officials without informing any of the legal heirs solely because she was then in possession of the suit land at that relevant point of time and by taking undue advantage of the fact that there was no one to object to the same at that relevant point of time.
- Subsequently or at the time of such survey operation, Ibetombi Devi (appellant) bifurcated the land measuring 1.63 acres into two portions measuring 1.15 acres being the present suit land under patta No. 25/152(old)/165(new) covered by C.S. Dag No. 319 I.E.T. and another area measuring 0.48 acres under patta No. 25/159 covered by C.S. Dag No. 323 I.E.T. which is the portion used by the LRs of Ibetombi Devi (appellant) as their homestead land at present. However, the Court below arrived at the erroneous conclusion that the lands under patta No. 25/159 covered by C.S. Dag No. 323 I.E.T. and patta No. 25/152 covered by C.S. Dag No. 319 I.E.T. were amalgamated as patta No. 25/165 covered by C.S.

Dag No. 319 I.E.T. measuring 1.15 acres. Such an erroneous conclusion has resulted from the concealment of facts by the appellant Ibetombi Devi and her LRs during the suit proceedings.

- The erstwhile Subordinate Judge-I, Manipur passed Judgment dated 30.11.1972 in Original Suit No. 33 of 1967 wherein the present respondent No. 1 to 5 were transposed as defendants to the suit filed by the appellant and her mother as plaintiffs (vide Order dated 21.04.1972 in Judl. Misc. Case No. 60 of 1972), in which Issue No. 8(a) - Whether the house alleged to have been demolished during the pendency of the suit belongs to the defendant or to the plaintiffs? - was decided that the house belonged to her sister (Ibeyaima Devi) and not to her (Ibetombi Devi, appellant) and her mother (Leirensana Devi) and that there is nothing on record to show that her said sister (Ibeyaima Devi) had died and as such, she herself (Ibetombi Devi) and her mother (Leirensana Devi) cannot claim the house to have belonged to them. It was also decided that the house did not belong to the defendant (Thangjam Irabot Singh). The issue was decided accordingly in the said Judgment dated 30.11.1972.
- The appellant, Ibetombi Devi, appealed against the said Judgment dated 30.11.1972 before the erstwhile Gauhati High Court, Imphal Bench being registered as First Appeal No. 6 of 1976 on various grounds. On 29.04.1993, the erstwhile Gauhati High Court

disposed the matter by remanding O.S. No. 33 of 1967 back to the court of the Sub-Judge for re-hearing the parties on all issues on the basis of evidence adduced before the court and to give fresh findings on all issues. The matter was re-registered as O.S. No. 33/1967/11/93/27/10/13/2016 in the court of the Ld. Civil Judge Senior Division, Imphal East. Owing to multiplicity of proceedings, the matter could not be adjudicated for a long time. Finally on 18.03.2016, the Ld. Civil Judge Senior Division, Imphal East passed Judgment and Order and issued Decree which was impugned in RFA No. 15 of 2016 and RFA No. 25 of 2016.

- Aggrieved with the said Judgment & Order and Decree dated 18.03.2016 of the Ld. Civil Judge Senior Division, Imphal East, the proforma respondent No. 6 herein (Respondent No. 1 in RSA No. 8 of 2017) preferred an appeal before the Learned District Judge, Imphal East being registered as Civil Appeal Case No. 3 of 2016. However, the appeal was transferred to the court of the Learned District Judge, Imphal West vide Order dated 01.07.2016 passed by the Hon'ble High Court of Manipur in Transfer Petn. (Civil) No. 6 of 2016 upon application by the Learned District Judge, Imphal East. Upon transfer, the appeal was registered as RFA No. 15 of 2016 in the court of the District Judge, Imphal West.

- On 12.07.2016, the District Judge, Imphal West issued summons to the respondent No. 1 to 5 after finding them as parties to the appeal. It is worth mentioning that till then, the respondent No. 1 to 5 have been completely sidelined from the case and even the Judgment & Order and Decree dated 18.03.2016 of the Ld. Civil Judge Senior Division, Imphal East was passed without hearing them. The respondent No. 1 to 5 were somehow recorded in the said O.S. No. 33/1967/11/93/27/10/13/2016 as plaintiffs without any specific order to that effect despite being transposed as defendants earlier vide Order dated 21.04.1972 passed in Judl. Misc. Case No. 60 of 1972 with reference to O.S. No. 33 of 1967 by the erstwhile Subordinate Judge-I, Manipur.
- The respondent No. 1 to 5 appeared before the District Judge, Imphal West on 25.07.2016 upon being summoned and were served with the copies of the appeal petition. On 30.08.2016, they filed their cross-objection before the District Judge, Imphal West which was treated as RFA No. 25 of 2016. The cross-objection of the respondent No. 1 to 5 were confined to the extent of objecting against the decision of the court below wherein it was held that all the plaintiffs are the owners of the suit land when in fact the cross-objectors (respondent No. 1 to 5) are the sole owners of the suit land in exclusion of the appellant and her LRs.

- On 21.01.2017, the District Judge, Imphal West disposed both RFA No. 15 of 2016 and RFA No. 25 of 2016 by a common order after hearing all the parties by allowing the appeals and remanding the case to the trial court for considering the matter afresh as per direction of the Hon'ble High Court (vide Order dated 29.04.1993 in FA No. 6 of 1976) by giving ample opportunity to the LRs of plaintiff No. 2 (respondent No. 1 to 5) and defendant No. 2 (proforma respondent No. 6 herein). The said Order dated 21.01.2017 is impugned herein by the appellant by way of this Regular Second Appeal (RSA No. 7/2017 and 8/2017).
- That, on 21.08.2019, the Hon'ble Court was pleased to frame three Substantial Questions of Law in connection with RSA No. 7 of 2017 which are as follows -
 - (a) *Does the Ld. District Judge, Imphal West have jurisdiction to entertain an appeal which lies to the Ld. District Judge, Imphal East by taking it up together with another appeal which has already been transferred to the said Court by the Hon'ble High Court?*
 - (b) *Whether the Ld. District Judge, Imphal West erred in law in entertaining the case of the principal respondent Nos. 1 to 5 which were never presented before the Ld. Trial Court?*

(c) *Whether an appeal of a plaintiff against a decree granting his prayers made in the plaint is maintainable?*

- That, Order 42 Rule 2 of the Code of Civil Procedure, 1908 specifically states that the Court shall formulate the substantial question of law as required by Section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court. Therefore, the present deliberations shall proceed by tackling the substantial questions of law one after the other and conclude with a brief summation.
- That, the first Substantial Question of Law relates to the territorial jurisdiction of the Ld. District Judge, Imphal West in entertaining an appeal which lies with the Ld. District Judge, Imphal East by taking it up together with another appeal which has already been transferred to the said Court by the Hon'ble High Court.
- It has been illustrated in the foregoing paragraphs at para No. 3.11 to 3.14 as to how the original first appeal was preferred by the proforma respondent No. 6 before the Ld. District Judge, Imphal East and the same being registered as Civil Appeal Case No. 3 of 2016. On the basis of an application requesting

the transfer of the appeal to another competent court by the Ld. District Judge, Imphal East before the Hon'ble High Court, it was transferred to the court of the Ld. District Judge, Imphal West vide Order dated 01.07.2016 passed by the Hon'ble High Court of Manipur in Transfer Petn. (Civil) No. 6 of 2016.

- Upon receiving the case records, the Ld. District Judge, Imphal West registered the appeal as RFA No. 15 of 2016. The present respondent No. 1 to 5 were recorded as the LRs of the plaintiff/respondent No. 2 Thangjam Ongbi Leirensana Devi (though erroneous) on the basis of the impugned order dated 18.03.2016 of the Civil Judge Senior Division, Imphal East in O.S. No. 33/1967/ 11/93/27/10/13/2016. As such, the Ld. District Judge, Imphal West sent summons to the respondent No. 1 to 5 on 12.07.2016 to the respondent No. 1 to 5 for making their appearance before the Court.
- On 25.07.2016, the respondent No. 1 to 5 made their appearance through their counsel and copies of the appeal petition and other miscellaneous applications were furnished to them. Even at the sake of repetition, it is submitted that the respondents have been completely sidelined from the case from the very beginning and this was the first time they are appearing in connection with the case after a long gap.

- On 30.08.2016, the respondent No. 1 to 5 filed their cross-objection before the Ld. District Judge, Imphal West as the appeal, being RFA No. 15 of 2016, on the same subject matter in connection with the same impugned order dated 18.03.2016 of the Civil Judge Senior Division, Imphal East in O.S. No. 33/1967/11/93/27/10/13/2016 was already entertained and pending for disposal before the said Court on being transferred from the Ld. District Judge, Imphal East by the Hon'ble High Court of Manipur. The said transfer was made by the Hon'ble High Court of Manipur from the court of the Ld. District Judge, Imphal East to the court of the Ld. District Judge, Imphal West as the Hon'ble High Court felt that it is competent to try and entertain the appeal. [Cross-Objection filed by the respondent No. 1 to 5 found at page No. 05 of Supplementary Paper Book]
- The cross-objection preferred by the respondent No. 1 to 5 was treated as a separate appeal by the Ld. district Judge, Imphal West and registered as RFA No. 25 of 2016. the two RFA No. 15 of 2016 and RFA No. 25 of 2016 were clubbed together as they were both analogous matters and all the hearings of the two appeals were heard together and a common order passed by the Ld. District Judge, Imphal West on 21.01.2017 by allowing the appeals and

remanding the case to the trial court for considering the matter afresh as mentioned above.

- Therefore, the question of jurisdictional error does not arise at all in entertaining the cross-objection/RFA No. 25 of 2016 by the Ld. District Judge, Imphal West taking into consideration the facts and circumstances mentioned above. The Hon'ble High Court transferred the appeal from the court of the Ld. District Judge, Imphal East to the court of the Ld. District Judge, Imphal West as the latter is competent to entertain the appeal. Being competent to entertain the appeal (RFA No. 15 of 2016), the Ld. District Judge, Imphal West is also competent to entertain all other related or analogous matters such as the present RFA No. 25 of 2016.
- Even assuming but not admitting that the Ld. District Judge, Imphal West was not competent to try and entertain the subsequent cross-objection/appeal being treated as RFA No. 25 of 2016 for want of jurisdiction, it is merely a bad precedent in the eyes of law and not a substantial question of law. The question of territorial jurisdiction is merely a technical point and not a substantial issue which would affect the rights of the parties or merit a serious debate.
- The Hon'ble Supreme Court in *Syeda Rahimunnisa v. Malan Bi (Dead)*, AIR 2016 SC 4653 : (2016) 10 SCC 315, observed at sub-paras of para No. 24 that-

“The phrase ‘Substantial Question of law’, as occurring in the amended Section 100, is not defined in the Code. The word Substantial, as qualifying ‘Question of law’, means - of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with - technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of ‘Substantial Question of law’ by suffixing the words ‘of general importance’ as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The Substantial Question of law on which a Second Appeal shall be heard need not necessarily be a Substantial Question of law of general importance.”

“When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law. and laid down the

following test as proper test, for determining whether a question of law raised in the case is substantial:

The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact

arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.”

- That, the second Substantial Question of Law raises the issue of whether the Ld. District Judge, Imphal West erred in law in entertaining the case of the respondent No. 1 to 5 which were never presented before the Ld. Trial Court.
- Order 41 Rule 27 of the Code of Civil Procedure, 1908 under Clause (1)(b) states to the effect that the Appellate Court may allow the production of additional evidence in the Appellate Court “for any other substantial cause”. The Ld. District Judge, Imphal West had ample reasons as “substantial cause” for allowing or entertaining the case of the respondent No. 1 to 5 which were never presented before the Ld. Trial Court. However, it is submitted

that the Ld. District Judge, Imphal West did not delve exhaustively into the merits of the case while disposing the appeals but merely deliberated upon the procedural lapses of the Trial Court which will become evident upon perusing the impugned order.

- On 21.07.1967, the appellant as plaintiff No. 1 and her mother (Leirensana Devi) as plaintiff No. 2 filed O.S. No. 33 of 1967 in the court of the then Sub-Judge-I, Manipur. After the death of Leirensana Devi, the respondent No. 1 to 5 were impleaded as her LRs vide Order dated 21.04.1972 in Judl. Misc. Case No. 60 of 1972. However, they were transposed as defendants in the suit which is reflected as such in the Judgment dated 30.11.1972 passed by the Sub-Judge-I, Manipur in O.S. No. 33 of 1967 [para No. 13 at page No. 133 of the Original Paper Book of RSA No. 7 of 2017 and RSA No. 8 of 2017 (impugned order dated 21.01.2017 of the Id. District Judge, Imphal West in RFA No. 15 of 2016 and RFA No. 25 of 2016)].
- The appellant challenged the Order dated 30.11.1972 passed by the Sub-Judge-I, Manipur in O.S. No. 33 of 1967 before the then Gauhati High Court, Imphal Bench upon dismissal of her suit and the appeal was registered as FA No. 6 of 1976. On 29.04.1993, the Gauhati High Court, Imphal Bench disposed the matter by directing the Ld. Sub-Judge to “rehear the parties on all the issues on

the basis of evidences which were adduced before the court and after hearing, the learned Sub-Judge shall give fresh findings on all the rest of the issues” [page No. 126 of the Original Paper Book and page 17-25 of the Supplementary Paper Book].

- However, when the matter was taken up again by the Trial Court after receiving the case records from the Hon’ble High Court on 29.05.1993, the present respondent No. 1 to 5/cross-objectors, who were arrayed as defendants as mentioned earlier, were brought in as plaintiff Nos. 2 (a), (b), (c), (d) and (e) without any specific order regarding such transposition from defendants to plaintiffs. Then the Trial Court issued summons to the respondent No. 1 to 5 being transposed as plaintiff Nos. 2 (a), (b), (c), (d) and (e) and it was not clear whether summons were served on all the respondent Nos. 1 to 5. It is seen that the respondent No. 1 to 5 entered their appearance through their counsel on 28.11.1994 in the suit which was then re-registered as O.S. No. 33/1967/11/1993. However, the suit was dismissed on default on 26.09.1996. [pages No. 133-134 of the Original Paper Book]
- Interestingly, the suit was restored vide Order dated 19.03.2008 passed in Judl. Misc. Case No. 183 of 1999, i.e. restored after 12 years on an application made after 3 years from the date of

dismissal, but the respondent No. 1 to 5 were never intimated or summoned during the proceedings of the said restoration. The husband of the proforma respondent No. 6 was also impleaded into the suit as a party in the meantime and the suit was again re-registered as O.S. No. 33/1967/11/93/27/2010. Then on 31.03.2013, the suit was dismissed on default again. Yet again, the suit was restored vide Order dated 08.03.2016 passed in Judl. Misc. Case No. 98 of 2013 and the suit re-registered again as O.S. No. 33/1967/11/93/27/10/13/2016. During the proceedings of this subsequent restoration too, the respondent No. 1 to 5 were never intimated or summoned. It is also in the records that the suit was represented by the appellant only (Ibetombi Devi) as plaintiff No. 1 through her counsel and the respondent No. 1 to 5 - who were recorded as plaintiff No. 2 (a), (b), (c), (d) and (e) - were never represented in the suit. As such, the respondent No. 1 to 5 were never given any opportunity of presenting their case before the Trial Court in connection with the suit. [page No. 134-135 of the Original Paper Book]

- It may be seen from the records of the suit that the Trial Court proceeded in an extremely precipitous and cavalier manner after restoring the suit on 08.03.2016. As stated above, the suit was dismissed on default on 31.03.2013. It was

restored on 08.03.2016 and fixed for final argument on 14.03.2016. The applications for impleading the proforma respondent No. 6 and her children as LR's on the death of her husband and the recast plaint were allowed on the same day on 14.03.2016. On the same day, i.e. 14.03.2016, the suit was proceeded ex-parte against the defendants and the final hearing was conducted by hearing the appellant/plaintiff No. 1 only. Then on 18.03.2016, the Trial Court announced its Judgment & Order. Therefore, the entire proceedings of restoring the suit on 08.03.2016 after three years from being dismissed, to impleading the proforma respondent No. 6 and her children, filing of recast plaint, suit proceeded ex-parte, final hearing and announcement of Judgment & Order on 18.03.2016 took just 10 (ten) days. And all these proceedings were done by completely sidelining the respondent No. 1 to 5 - though they were made as plaintiff as plaintiff No. 2 (a), (b), (c), (d) and (e) in the suit - without intimating or summoning or giving them any opportunity of presenting their case by hearing only the appellant/plaintiff No. 1. [pages 136-137 of the Original Paper Book]

- Therefore, the Ld. District Judge, Imphal West concluded that the Trial Court committed gross error in not summoning the LR's of the proforma respondent No. 6 and the respondent No. 1 to 5

were not represented properly as no summons was issued to them after the suit was remanded from the Hon'ble High Court (nor at the time of the subsequent restorations on two occasions) since they were wrongly transposed as plaintiffs and that the suit was required to be heard afresh after giving ample opportunities to all the parties.

- Owing to the factors mentioned above, there was substantial cause to entertain the case of the respondent No. 1 to 5 at the appellate stage though it was not presented before the Trial Court. The Ld. District Judge, Imphal West merely deliberated upon the procedural lapses committed by the Trial Court in disposing the suit and did not delve exhaustively into the merits of the case. As such, the question of committing any error by the Ld. District Judge, Imphal West in entertaining the case of the respondent No. 1 to 5 which were never presented before the Trial Court does not arise at all. Therefore, this question of law raised by the appellant and formulated by the Hon'ble High Court is not a substantial question of law given the facts and circumstances mentioned above.
- That, the third Substantial Question of Law raised by the appellant is whether an appeal of a plaintiff against a decree granting his prayers made in the plaint is maintainable.

- In this regard, it is submitted that the Judgment & Order and Decree dated 18.03.2016 of the Trial Court never granted the prayers of the respondent No. 1 to 5 who were wrongly transposed as plaintiff No. 2 (a), (b), (c), (d) and (e) in the suit instead of defendants and they were never given the opportunity of presenting their case before the Trial Court as they were not summoned or intimated despite the suit being proceeded for a prolonged period and dismissed and restored a number of times as mentioned in the foregoing paragraphs. The Trial Court ordered and decreed that the plaintiffs are the owners of the suit land/properties whereas it is the contention of the respondent No. 1 to 5 that they are the sole owners of the suit land/properties in exclusion of the appellant/ plaintiff No. 1.
- The submissions made in the foregoing paragraphs has sufficiently highlighted as to how the respondent No. 1 to 5 were completely sidetracked from participating in the proceedings of the suit before the Trial Court. Though the respondent No. 1 to 5 were necessary parties to the suit being the only surviving legal heirs of the two sisters (Ibemhal Devi and Ibeyaima Devi) of the appellant (Ibetombi Devi) who died sometime in the 1940s, the appellant (Ibetombi Devi) surreptitiously chose to file the O.S. No. 33 of 1967 along with her mother as plaintiff No. 1 and 2

respectively against one Thangjam Irabot Singh (son of the second wife of Thangjam Gulamjat Singh, original owner of the suit land) by concealing the existence of and alienating the respondent No. 1 to 5 completely.

- It was only at the time of death of the plaintiff No. 2 (Leirensana Devi, mother of the appellant) in the year 1972 that the respondent No. 1 to 5 were finally brought in and impleaded as her LRs even though they are her grandchildren born through her two other daughters Ibemhal Devi and Ibeyaima Devi. By that time, it was already on record through the deposition/in-chief of the appellant herself as PW No. 4 in the suit that the suit land belonged to her deceased sister Ibeyaima Devi. It was also deposed that she (appellant) and her mother Leirensana Devi (plaintiff No. 2 in the suit) were staying in the house of her deceased sister after the death of her father Thangjam Gulamjat Singh who was then occupying her sister's house till his death in the year 1948/49. Therefore, the then Ld. Sub-Judge-I, Manipur, apparently observing the conflict of interests involved, transposed the respondent No. 1 to 5 from plaintiffs to defendants in the suit vide Order dated 21.04.1972 in Judl. Misc. Case No. 60 of 1972 and reflected as such in Judgment dated 30.11.1972 passed in O.S. No. 33 of 1967.

- Even at the sake of repetition, it is reiterated once again that the original owner, Thangjam Gulamjat Singh, gifted the suit land to his daughter Ibeyaima Devi so that she and her husband could stay in the said house constructed within the suit land. Ibeyaima Devi gave birth to the respondent No. 3, 4 and 5 and died in the house situated within the suit land sometime in the year 1942/43, shortly after the death of her husband. As the mother of the respondent No. 1 and 2, namely, Ibemhal Devi, died early, they were looked after and raised under the same roof by Ibeyaima Devi during her lifetime. Following the death of Ibeyaima Devi, the respondent No. 1 to 5 were raised by their paternal uncle at Khurai Puthem Leikai (Lamlong), Imphal East. Thangjam Gulamjat Singh stayed the said house on the suit land till he died in the year 1948/49. The appellant and her mother Leirensana Devi were also made to stay in the said house by Thangjam Gulamjat Singh as the husband of the appellant died and she was ill-treated by her in-laws. During the survey operation in the late 1960s, the appellant entered her name in the record of rights by taking advantage of the fact that there was no one to object to the same. Therefore, it is clear from these facts and circumstances that the respondent No. 1 to 5 are the sole owners of the suit land/properties in exclusion of the appellant. The cross-objection preferred before the

Ld. District Judge, Imphal West treated as RFA No. 25 of 2016 was confined to the extent of objecting against the decision of the court below wherein it was held that all the plaintiffs are the owners of the suit land when in fact the cross-objectors (respondent No. 1 to 5) are the sole owners of the suit land in exclusion of the appellant and her LRs.

- Therefore, the contention of the appellant that the decree granted the prayers of the respondent No. 1 to 5 as plaintiffs is entirely erroneous given the facts and circumstances mentioned above. As such, the Substantial Question of Law so formulated in this regard is totally extraneous of the circumstances presented in this second appeal and hence, have no bearing on the issue at hand.
- That, the Substantial Questions of Law raised in the present second appeal are not “substantial” questions of law as they are merely technical issues or questions which does not affect the rights of the parties in any manner whatsoever. As stated in the above quoted citation *in supra* that “*To be ‘substantial’ a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law*

involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter.

- Hence, the Learned Counsel for the Respondent Nos. 1 to 5 in RSA No. 7 of 2017 prayed this Court that all three Substantial Questions of Law so formulated in the present second appeal are rendered obsolete and redundant owing to the submissions made above. Therefore, the Hon'ble Court be pleased to reject the prayers of the appellant and dismiss the second appeal in the interest of justice.

23. This Court considered the submissions raised by the learned counsel for the parties and also perused the materials available on record.

24. Thangjam Ningol Chingangbam Ongbi Ibetombi Devi and her mother Thangjam Ongbi Lairesana Devi have filed O.S.No.33 of 1967 on the file of the Learned Sub-Judge, Manipur at Imphal against Thangjam Irabot Singh praying amongst other for declaring the suit land as their property on the basis of the

distribution mentioned in the plaint or in the alternative it be declared that the plaintiffs have got their right and title over the suit land by right of adverse possession.

25. The plaintiffs are the wife and daughter of one Gulamjat Singh and the original defendant Irabot Singh is the son of Gulamjat Singh through his second wife. Gulamjat Singh had four patta lands namely 25/159, 25/152 and 25/42 at Imphal East and 1/39 at Imphal West. Gulamjat Singh during his life time orally distributed the said patta lands and accordingly, lands under patta Nos.25/159 and 25/152 became the share of the second plaintiff and her issues and the land under patta No.25/42 and 1/39 became the share of the second wife and her issues. On such distribution, the plaintiffs started to occupy physically the said two patta lands allotted to them as their own and have been continuing to occupy the same till date. The said two patta lands subsequently amalgamated into a new patta being patta No.25/165 Imphal East in the survey.

26. The two other patta lands allotted to the second wife and her issues are occupied and enjoyed by the original defendant and his mother. Thus, the case of the plaintiffs is that the original defendant has no right or authority of the lands under patta

Nos.25/159 and 25/152. The revenue records in regard to the above said two patta lands stand in the name of the first plaintiff.

27. It appears that the original defendant filed T.S.No.2 of 1966 against the plaintiffs claiming that the said patta lands as his own by right of inheritance and for ejectment of the plaintiffs. The said suit was decreed ex parte on 30.7.1966. On coming to know the ex parte decree, the plaintiffs have filed Civil Review No.2 of 1966 for reviewing the said judgment with delay condonation application. By an order dated 31.3.1968, both the condonation application and the review application were dismissed. According to the plaintiffs, the dismissal of the review application will have no legal effect as the said judgment and decree were passed by the Court without jurisdiction and also on the basis of fraud committed by the original defendant.

28. The original defendant denied the distribution of the lands by Gulamjat Singh amongst his wife and children. He had also denied that the plaintiffs have been possessing the suit land continuously, adversely as of right since before the death of Gulamjat Singh. According to the original defendant, Gulamjat Singh died in the year 1954 and he himself is the sole legal heir of Gulamjat Singh. He contends that after the birth of the first plaintiff,

Gulamjag Singh divorced the second plaintiff and married his mother. Some seven or eight years after the death of Gulamjat Singh, the original defendant allowed the plaintiffs to reside in the suit land to enjoy the produce thereof out of love and affection and therefore, they have right over the suit land and further, the suit is hit by the principles of res judicata.

29. By the judgment dated 30.11.1972, the suit was dismissed by the learned Sub-Judge I, Manipur. Aggrieved by the same, the first plaintiff preferred an appeal being F.A.No.6 of 1976 before the then Gauhati High Court, Imphal Bench by showing the contesting and proforma respondents as parties. By the judgment dated 29.4.1973, the Gauhati High Court remanded the matter to the trial Court to rehear the parties on all the issues on the basis of the evidence adduced and give fresh findings.

30. After remand, the trial Court has taken up the matter. In the Proceedings of the suit, the present respondents 1, 2, 3 and 5 who were impleaded as legal heirs of the second plaintiff as well as one Pishak Devi who is the fourth respondent herein filed their vakalat appointing their counsel. However, in the suit proceedings, the legal heirs of the second plaintiff and respondent No.4 herein

as well as the original defendant failed to appear without showing any cause.

31. On a perusal of the judgment of the trial Court, it is seen that on the side of the plaintiffs, four witnesses were examined and Exs.A1 to A3 were marked. On the side of the defendants, the first defendant examined himself as D.W.1 and one Waikhom Yaima Singh, who was working as Court bailiff was examined as D.W.2 and marked Exs.B1 to B3.

32. Upon considering the oral and documentary evidence produced by the parties, the trial Court decreed the suit that the plaintiffs are the owners of the properties covered by patta No.25/159 (Ingkhol) and patta No.25/152 IET, which are described in the plaint on the basis of the distribution amongst the two wives and their daughter and son of the deceased Gulamjat Singh. It is to be noted that the plaintiffs as reflected in the judgment of the trial Court dated 18.3.2016 are the present appellant represented by her legal heirs and the second plaintiff represented by the legal heirs, who are the present respondents 1, 2, 3 and 5.

33. One of the legal heirs of the second defendant filed an appeal being Civil Appeal No.3 of 2016 before the District Judge, Imphal East against the judgment dated 18.3.2016. Pursuant to the

order passed in the Transfer Petition No.6 of 2016, the Civil Appeal No.3 of 2016 was transferred from the file of the District Judge, Imphal East to the file of the District Judge, Imphal West and re-numbered as RFA No.15 of 2016. During the pendency of RFA No.15 of 2016, the principal respondent Nos.1 to 5, who are the legal heirs of the second plaintiff have filed cross objection which was numbered as an appeal before the District Judge, Imphal West and the same was numbered as RFA No.25 of 2016. According to the appellants, the original appellate Court of Civil Judge, Senior Division, Imphal East is the District Judge, Imphal East, which has territorial jurisdiction over the matter.

34. In their appeal being RFA No.25 of 2016, the principal respondents 1 to 5 stated that the judgment and decree dated 18.3.2016 of the trial Court is arbitrary and without applying the judicial mind. They have also claimed in their appeal that they are the sole owners to the land to the exclusion of the first plaintiff and her legal heirs. Those facts are never agitated or brought on record by the respondents 1 to 5 before the trial Court and it is not the case of the respondents 1 to 5 before the trial Court that they are the sole owners of the suit land to the exclusion of the first plaintiff. However, the learned first appellate Court, without considering all those

aspects, remanded the matter to the trial Court, which is assailed by the appellants herein.

35. By placing reliance upon the findings recorded by the first appellate Court in RFA Nos.15 and 25 of 2016, the learned counsel for the first respondent submitted that the first appellate Court after finding the fact that no opportunity was granted to the second plaintiff and second defendant and their legal heirs rightly remanded the suit to be heard afresh after giving opportunities to the legal heirs of the second plaintiff and the second defendant.

36. The first appellate Court, while setting aside the judgment of the trial Court and remanded the matter to the trial Court, held as under:

“15. Further, record shows that after remanding the suit from the Hon’ble High Court the plaintiff no.1 was represented by her separate advocate by filing Wakalatnama and that the L.Rs. of plaintiff no.2 Leirensana was represented by separate advocates by filing Wakalatnama. The said Judl. Misc. Case No.98 of 2013 for restoration of the suit was filed by one Advocate, L.Gogo Singh. In this stage, it was not cleared that whether the said

L.Gogo Singh, Advocate represented the plaintiff no.1, Ibetombi Devi and the L.Rs. of plaintiff no.2. As per the application of Judl. Misc. Case No.98 of 2013, it has been referred as “plaintiff only” and “not plaintiffs”, meaning thereby that the said Advocate, L.Gogo Singh filed the said restoration petition for and on behalf of plaintiff no.1, Ibetombi Devi.

Situated thus, I am of the opinion that since the L.Rs. of plaintiff no.2 who were brought as defendant nos.2 to 6 vide order dated 21.4.1972 passed in Judl. Misc. Case No.60 of 1972 were transposed as plaintiff nos.2(a), (b), (c), (d) and (e) after the suit was remanded from the Hon’ble High Court without any specific order and therefore, no summon were issued to them, on being presumption that they are the plaintiffs and thus, they were not represented in the suit at the time of consideration of the restoration of the suit.

16.

On going through the said orders passed on 08.03.2016 and 14.03.2016, it is crystal clear that

the suit which was dismissed on 31.03.2013 was restored vide order dated 8.3.2016 passed in JM Case No.98/13 and re-registered it as O.S.No.13 of 2016 and then fixed 14.03.2016 for final argument. On 14.03.2016 applications being JM Case Nos.110 and 111 were filed for incorporating the L.Rs. of defendant no.2, Th. Saratkumar Singh and filing of Recast plaint and on the same day the prayer of the said two applications were allowed by the Trial Court and accordingly, the name of the legal heirs of late Th. Saratkumar Singh were incorporated as well as filed recast plaint and on the same day, heard the Id. counsel of the plaintiff and fixed 18/03/2016 for order and that the Judgment & Order which is impugned herein was announced on 18/03/2016.

Record shows that the deceased Th. Saratkumar Singh and his L.Rs. after his death contested the suit relating to the Miscellaneous matters upto the Hon'ble High Court, and later on, failed to appear before the Court. Nevertheless, it is very clear from the orders dated 8.3.2016 and 14.3.2016 that

when the main case was put up on 8.3.2016 from 31.3.2013, the names of the L.Rs. of the defendant no.2 were not incorporated in the plaint and their names were incorporated in the plaint only on 14.3.2016 and on the same day heard the Id. counsel of the plaintiff on ex-parte. In such situation, it will be more proper to issue summon to the L.Rs. of the defendant no.2 as they had keenly contesting the suit since the year 2010.

37. In the result of the foregoing observations, he comes to the conclusion that the trial court has committed gross error for not issuing summon to the L.Rs. of defendant no.2 and that the L.Rs. of plaintiff no.2, Leirensana Devi, who are the cross-objectors were also not represented properly as no summon were issued to them after the suit was remanded from the Hon'ble High Court since they were wrongly transposed as plaintiffs. Therefore, the suit is required to be heard afresh after giving ample opportunities to the L.Rs. of plaintiff no.2 and defendant no.2. Accordingly, no need for further discussion to the merit of the appeals."

38. On the other hand, the learned senior counsel for the appellants submitted that the first respondent and the other legal

heirs of the second defendant absented before the trial Court after passing of the order dated 26.02.2016 where a fine of Rs.5000/- was imposed to the first respondent to be deposited to the Member Secretary, Manipur State Legal Services Authority, Imphal. The first respondent failed to comply with the said direction and hence, the finding of the first appellate Court that they were not given proper opportunity is not called for.

39. Thus, it is clear that the second defendant who has not complied with the direction to make payment of Rs.5000/to the Member Secretary, Manipur State Legal Services Authority and also who absented from the proceedings in the trial Court without showing any cause has been given undue advantage by the first appellate Court. It is also clear that the first appellate Court failed to see that it would have been appropriate for the first respondent to file necessary application before the trial Court instead of filing appeal before the appellate Court.

40. The learned counsel for the appellants submitted that both the RFA No. 15 of 2016 and RFA No. 25 of 2016 before the District Judge, Imphal West are not filed in bonafide interest of justice. Both the said appeals before the District Judge, Imphal West are also not with clean hands. He would further submit that

RFA No. 15 of 2016 was filed even without impleading the necessary parties i.e., parties who are there before the trial court and the RFA No. 25 of 2016 was presented to the Court having no jurisdiction. The defect goes to the root of the said appeals and appeals filed in such manner ought to have been rejected by the District Judge, Imphal West. It is also submitted that both the RFA No. 15 of 2016 and RFA No. 25 of 2015 are filed with fraud and by twisting of facts.

41. An appeal presented to the appellate Court with an altogether different case from the one presented before the trial court is not worth consideration. Moreover, the appellate Court is to examine the available records of the lower Court and to see whether the trial Court has come to a correct conclusion and not to entertain an altogether different case which was never presented before the trial court.

42. A party to proceedings has to establish his case and disprove the case of the other side. Thokchom Ongbi Rajkumari Romita Devi is the wife of the impleaded defendant No.2 who died during the pendency of the suit. The second defendant did not present his case before the trial Court nor confront the case of the plaintiffs in the original suit. Therefore, apart from the fact that she

had filed RFA No. 15 of 2016 in her individual capacity and without impleading the other legal heirs of the second defendant and the first defendant, an appeal at her instance who has no case before the trial Court is not maintainable at all.

43. On a perusal of the records, it is seen that after the suit remanded to the trial Court for re-consideration of the suit afresh with some directions, and during the pendency of the suit before the trial Court, the husband of the first respondent Saratkumar Singh was impleaded as defendant no.2, but he did not file his written statement or anything and thus, nothing is on record of the trial Court to consider about the claim of the second defendant. Thus, it is clear that the second defendant who had appeared before the trial Court with his counsel and later on, failed to appear before the Court and accordingly, the suit was proceeded ex parte. It is also clear that during the pendency of the suit, the second defendant expired and thus, the first respondent as well as her son and daughter were impleaded as legal heirs, but in the appeal preferred before the first appellate Court, the first respondent herein has failed to implead her children as party to the proceedings.

44. At this juncture, the learned counsel for the appellants submitted that during the pendency of the suit, the second plaintiff

was expired and the appellants in RFA No.25 of 2016 are the sons and daughters of two daughters of the second plaintiff, who were predeceased her. He would submit that after the suit was dismissed only Ibetombi Devi preferred the appeal as the appellants in RFA No.25 of 2016 were not interested in the case and even after remanding the suit from the High Court, the appellants in RFA No.25 of 2016 had failed to appear before the Court and accordingly, their rights have been waived. This Court finds some force in the submissions of the learned counsel for the appellants herein.

45. This Court finds from the judgment of the trial Court that the trial Court after considering the evidences let in by the parties and pleadings available on record, rightly answered the issues framed by it. The contention of the contesting first respondent that the suit was decreed ex parte by the trial Court cannot be countenanced, as the trial Court has decided the suit based on the oral and documentary evidence adduced by the parties only. It is also seen that at the relevant point of time, the contesting defendants appeared before the trial Court and later on cleverly evaded appearing in the suit after letting in oral evidence on their side. Thus, the act of the said defendants before the trial Court cannot go against the appellants herein.

46. The trial Court, after giving reasoning issues-wise, held that the suit is not barred by the principles of res judicata. While answering issue No.10, the trial Court held as under:

“Since the defendant has not turned up at the time of hearing as well as the defendant also has not led evidence on this point. Thus, this issue is therefore decided against the defendant.”

The trial Court further held as under:

“Issue No.11 and 12: For the foregoing issues and decisions thereof, the plaintiffs have locus standi to file the present suit and also there is cause of action for the present suit. Hence, the plaintiffs shall gets reliefs.”

The most important paragraph is paragraph 5, which is extracted herein under:

“5. The name of the defendant no.2 Shri Thockchom Saratkumar Singh had been impleaded vide orders dated 16.2.2010 passed in Judl. Misc. Case No.189/2005/66/2007 on the application filed by him. The impleadment of the defendant no.2 comes under the sues of the defendant Thangjam Irabot Singh. The decision arrived at by the court in the

*present suit shall be binding to the defendant no.2
(now deceased) by his L.Rs.”*

47. It is to be mentioned that while deciding the first appeals preferred by the appellants therein, the first appellate Court failed to see the reasoning given by the trial Court. On the other hand, the first appellate Court, on its own, came to the conclusion that the legal heirs of the second plaintiff and second defendant were not issued with summons and it will be more proper to issue summons to the legal heirs of the second plaintiff and the second defendant. The said finding arrived at by the first appellate Court may not be appropriate, as the legal heirs of the second plaintiff and the second defendant were contested the suit relating to the miscellaneous matters at one stage and thereafter, wantonly failed to appear before the trial Court. The act of the legal heirs of the second plaintiff and the second defendant wantonly failed to appear before the trial Court cannot go against the appellants herein, as the trial Court after noting down all these facts, has rightly proceeded to decide the suit and it is only the first appellate Court has erred in holding that the legal heirs of the second plaintiff and the second defendant are to be heard and for that purpose, the suit is remanded. Such a finding arrived at by the first appellate Court is

contrary to the factual aspects and there is no point in remanding the suit to the trial Court by the first appellate Court.

48. It appears that while filing the RFA No.15 of 2016, the first respondent only as an appellant and also in her individual capacity filed RFA No.25 of 2016 without impleading the other legal heirs of the second defendant. Further, the first respondent and the two sons and daughter of the deceased second defendant are his Class I heirs as being governed by the Hindu Succession Act, 1956. Therefore, as rightly argued by the learned counsel for the appellant, any right to relief, if any available to the second defendant being considered in the absence of his other legal heirs is not permissible in law.

49. Under Section 8 of the Hindu Succession Act, 1956, the property of a male Hindu shall devolve firstly upon the heirs specified in Class I of the Schedule. The defendants 2(ii), 2(iii) and 2(iv) of the suit are also Class I heirs of the second defendant. Therefore, when they are not impleaded as appellants, they ought to be at least impleaded as respondents and they cannot be left out. Moreover, the second defendant is also not made a party in RFA No.15 of 2016. Therefore, as rightly said by the learned senior counsel for the appellant, RFA No.15 of 2016 suffers from non-

joinder of necessary parties and also not filed in accordance with law.

50. Under Section 52 of the Transfer of Property Act, an immovable property directly in question in a suit cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. The first appellate Court in its judgment stated that the second defendant is the fifth purchaser of the suit land during the pendency of the suit. His claim is that he had purchased the suit land from the fourth owner on 1.4.1991. Assuming that RFA No.15 of 2016 was filed by all the legal heirs of the second defendant, the same ought to be rejected as the second defendant himself acquires no right to the suit land as his alleged purchase is during the pendency of the suit. In fact, the five sales were made during the pendency of the suit, which include the transfer in favour of the deceased second defendant. Thus, the aforesaid transfers cannot be a sale within Section 54 of the Transfer of Property Act.

51. It is to be noted that after impleadment of the second defendant in the suit, he has not filed his pleadings nor produced

evidence and the pleadings now urged and/or urged before the first appellate Court by the first respondent are never produced by the second defendant himself before the trial Court. While dealing with the matter, the first appellate Court ought to have rejected the case of the first respondent as she was impleaded in the suit itself as legal heir of the second defendant after his death.

52. Further, the first appellate Court in its judgment held that when the main case was put up on 3.8.2016 from 31.3.2013, the names of the legal heirs of the second defendant were not incorporated and they were incorporated on 14.3.2016 and on the same day the trial Court heard the plaintiff ex parte and in such situation, it will be proper to issue summons to the legal heirs of the second defendant. The said finding arrived at by the first appellate Court may not be correct as the appellant in RFA No.15 of 2016 willfully absented from proceeding with the suit after passing order dated 26.2.2016 in Jud. Misc. Case No.50 of 2016 and has failed to comply with the conditional order. Thus, the first appellate Court erred in holding that adequate chance to the legal heirs of the second defendant was not given. At the cost of repetition, it is reiterated that the legal heir of the second defendant who disobeyed the direction of the trial Court and willfully absented from the proceedings of the suit deserves no pity and sympathy from the

Court and therefore, there is nothing wrong in the manner the trial Court decided the suit.

53. It is apposite to note that the respondents 1 to 5 in RSA No.7 of 2017 ought to be responsible litigants and pursued their case with due diligence. Failure on their part cannot be a bane to the present appellants. That apart, the respondents 1 to 5 in RSA No.7 of 2017 are impleaded as legal heirs of the deceased second plaintiff and they are in the shoes of the second plaintiff. Therefore, the plea now put forth by the respondents 1 to 5 is contrary to the original pleadings of the second plaintiff. Since the appeal being a continuation of the suit ought to be based on the records of the trial Court, the first appellate Court erred in allowing the appeal filed by the respondents 1 to 5. The fact remains that the first appellate Court entertained the appeals filed by the respondents altogether on a different case which was never presented before the trial Court.

54. The trial Court, after analyzing the oral and documentary evidence available on record held that there are evidences that the distribution of the properties left by late Gulamjat Singh amongst the two wives and their son and daughter and the first plaintiff paid revenues for the year 1970 to 1974. In fact, the

trial Court answered some of the issues against the plaintiffs and in favour of the defendants. Finally, the trial Court held that the plaintiffs have locus standi to file the suit and also there is cause of action for the suit and hence, they are entitled to get the reliefs. Further, taking note of the facts and circumstances of the case and relying upon the decision reported in 2015 (4) GLT 627 (*Abdul Haque and others v. Abdul Rashid and others*), the trial Court decreed the suit in the following manner:

“In the result, it is ordered and decreed that the plaintiffs are the owners of the properties covered by patta No.25/159 IE (Ingkhol) and another patta No.25/152 IET which are morefully described in the plaint schedule on the basis of the distribution amongst the two wives and their daughter and son of the deceased Thangjam Gulamjat Singh. It is also further ordered and decreed that the judgment and decree dated 30th July 1966 passed in T.S. Case Nok.2 of 1966 of the erstwhile 1st Subordinate Judge, Manipur has no legal force as the 1st Subordinate Judge, Manipur had not declared the present defendant No.1 as owner of the present suit land. It is further ordered and decreed that assuming the defendant Thangjam

Irabot Singh acquired his right and title over the suit land on the basis of the decree passed in T.S. Case No.2 of 1966, his right and title has already been extinguished by efflux of time. It is further ordered that and decreed that the whatever transfers made pendent lite on the basis of the Decree dt. 30.7.1966 in T.S. Case NO.2 of 1966 made by the defendant Thangjam Irabot Singh shail have no legal effect and hence void ab-initio. It is also further ordered and decreed that the decisions arrived at by this court shall also be binding to the newly added defendant no.2 Thokchom Saratkumar Singh (now dead) by his L.Rs. his picture comes to the sues of the defendant no.1 Thangjam Irabot Singh.”

55. This Court considered all the substantial questions of law framed on 21.08.2019 and the additional question of law framed on 18.01.2021 and accordingly, this Court considered that both the second appeals in RSA No. 7 of 2017 and RSA No. 8 of 2017 are maintainable.

56. This Court finds no infirmity in the judgment and decree passed by the trial Court in the suit. On the other hand, the

trial Court, based on the oral and documentary evidence produced by the parties at the relevant point of time, has rightly decreed the suit. However, the first appellate Court, without appreciating the factual matrix of the matter, set aside the judgment of the trial Court. In view of the above discussions, this Court finds that the first appellate Court erred in allowing the appeals namely RFA Nos.15 and 25 of 2016 and set aside the judgment of the trial Court in O.S.No.33 of 1967.

57. The proposition laid down in the decisions referred on either side is not much in dispute. That apart, in view of the threadbare factual and legal analysis made by the trial Court, which, in my considered opinion, has been wrongly interfered with by the first appellate Court, this Court does not find this a fit case for discussing the settled propositions once again.

58. To arrive at this conclusion, one more reason that weighed with this Court is the undisputed fact that since 1967 the legal battle is going on between closely related contestants for petty reasons, without giving a finality to the issue till date. The trial Court, in my considered view, threadbare analysed the facts and the evidence on record and only on thoughtful consideration passed a

detailed order, which does not warrant any reconsideration at this stage.

59. In the result,

- a) *both the appeals in RSA No. 7 of 2017 and RSA No.8 of 2017 are allowed.*
- b) *the judgment and decree dated 21.1.2017 passed in RFA Nos.15 and 25 of 2016 on the file of the District Judge, Imphal West are set aside and the judgment and decree dated 18.3.2016 passed in O.S.No.33 of 1967/11/93/27/10/13/2016 on the file of the learned Civil Judge, Senior Division, Imphal East are restored.*
- c) *There will be no order as to costs.*

60. Registry is directed to issue copy of this order to both the parties through their WhatsApp/e-mail.

JUDGE

FR/NFR

Sushil