Changki Village Through Tinnunokcha Ao and Others

Vs

Tibungba Ao and Others

Civil Appeal No. 37 of 1974

(S. Natarajan, S. Ranganathan JJ)

04.10.1989

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave has been preferred against the dismissal of Civil Revision No. 10(H)/72 in a common judgment rendered by the Gauhati High Court in Civil Revisions Nos. 9(H)/72 and 10(H)/72. By two separate but concurring judgments, Baharul Islam, J., as he then was, and Bindra, J., dismissed both the civil revision petitions but with differing observations as to the procedure that should be followed by the courts in Nagaland in dealing with cases before them. We are not now concerned with those matters.

2. Before we proceed to set out the details of the case and the decision rendered by the High Court, it is relevant to mention that the Civil Procedure Code and the Criminal Procedure Code do not govern the proceedings before the civil and criminal courts in Nagaland and the proceedings are to be governed by Rule 30 of the Rules for the Administration of Justice and Police in the Nagaland Hills District. The Rules lay down that the spirit of the Civil Procedure Code and the Criminal Procedure Code should be followed in the disposal of civil and criminal cases. It has been held by this Court in Nagaland v. Ratan Singh ((1966) 3 SCR 830 : AIR 1967 SC 212 : 1967 Cri LJ 265) that the Rules of 1937 framed by the Governor of Assam under the powers vested in him by Section 6 of the Scheduled District Act were validly enacted and the Rules were successively preserved by Sections 292 and 293 of the Government of India Act, 1935, Section 18 of the Indian Independence Act, 1947 and Article 372 of the Constitution.

3. Coming now to the proceedings between the parties, they commenced as under. On July 17, 1969, four persons of Japu village, namely, Tibongba Ao, Wabangba Ao, Tinukaba Ao and Chubakumba Ao (hereinafter referred to as 'the plaintiffs') presented a petition to the Deputy Commissioner, Nagaland, complaining about trespass committed by two members of Changki village viz. Subongmedong Ao and Tsungdongkaba Ao (hereinafter referred to as 'the defendants') on an extent of 4 1/2 acres of land in their possession. They averred in their complaint that by an order dated May 16, 1936 the Sub-Divisional Officer had permitted the villagers of Changki, Japu and Chungliemson "to open Panikhetis in the land known as Arjan Subedar Grant" and the said order was later approved by the Deputy Commissioner, Kohima, on March 31, 1939. Before the passing of the order dated May 16, 1936, the people of Aotophomi village had been permitted by the government to occupy the whole of the land given by way of grant by the British Government to one Arjan Subedar but the people of Aotophomi had failed to bring the land under plough. Hence the land was made over to the people of the three villages viz. Changki, Japu and Chungliemson in 1936. The extent of land given to each of the three villages was demarcated by the Sub-Divisional

Officer and thereafter the people of the three villages had been peaceably enjoying the respective extents allotted to them. However, the defendants trespassed on July 11 and 12, 1960, upon an extent of 4 1/2 acres of land in the possession of the plaintiffs and destroyed a large number of plants grown on the land. The plaintiffs therefore sought the recovery of possession of the 4 1/2 acres of land.

4. The complaint was made over to Shri S. B. Chatri, Magistrate First Class, Mokokchung for disposal by the Deputy Commissioner, Mokokchung.

5. The defendants did not file any written statement but nevertheless set up a defence that the plaintiffs were not entitled to the 4 1/2 acres of land claimed by them. In the course of the proceedings, the villages of Japu and Changki intervened in order to support the case of their respective inhabitants. Thus Japu village supported the plaintiffs and Changki village supported the defendants.

6. After examining two witnesses on the side of the plaintiffs, four witnesses on the side of the defendants and three court witnesses, the Magistrate, First class held that the 4 1/2 acres of land had been in the possession of the villages of Japu since 1936, that there was no evidence to show that such enjoyment was on the basis of any agreement between Japu village and Changki village, that the boundaries of the land allotted to the three village had not been demarcated but even so the parties knew the boundaries of their lands, and that Japu village had acquired prescriptive title to the disputed 4 1/2 acres of land. By reason of such findings the Magistrate First Class directed the defendants to surrender possession of the disputed 4 1/2 acres of land to the plaintiffs within seven days time.

7. Changki village filed an appeal in the Court of the Deputy Commissioner, Mokokchung. The Deputy Commissioner dealt with the appeal as if the dispute between the parties had become enlarged and was not confined to the 4 1/2 acres of land said to have been trespassed upon but also extended to 15 Panikhetis comprised in an area of 40 acres. The Deputy Commissioner, after tracing the history of the grant to Subedar Arjan Rai of an extent of 1000 acres (within which extent the 15 Panikhetis and the 4 1/2 acres of land are comprised) found title in favour of Changki and held that Japu village could continue to have possession of the 4 1/2 acres of land in dispute till 1972, that thereafter Japu should make over the land to Changki, that the 15 Panikhetis (40 acres of land) which Japu had been cultivated for some years should continue to be with Japu but Japu should pay a sum of Rs. 10 per year to Changki in recognition of the latter's title to the said land, and that since Changki had pendente lite cultivated the land in the possession of Japu in disobedience of the court's orders Changki must pay a fine of Rs. 100 to Japu. The Deputy Commissioner further held that though the complaint was by four plaintiffs against two defendants, the dispute had come to be carried on by Japu and Changki villages and hence his decision would be binding on the parties as well as on Japu and Changki villages.

8. Both parties preferred revisions to the High Court. By a common judgment the High Court set aside the orders of the Deputy Commissioner and remanded the matter to the Assistance Deputy Commissioner for treating the matter as a civil dispute and adjudicating the rights of the parties. After fresh consideration of the matter, the Assistant Deputy Commissioner, Shri S. Lima Aier, rendered findings to the following effect :

> "(i) Changki is the owner of 4 1/2 acres of land in dispute and this land is restored to it forthwith;

(ii) The claim of Japu over the 15 Panikhetis as government grant to it is disallowed, it being unsustainable;

(iii) The boundary demarcation done between the two villages in the year 1950 is the legal boundary and that Japu is the son of Changki;

(iv) That since Japu severed its relationship with Changki with a view to assert its own independent individuality, Changki's claim over 15 Panikhetis is recognised with the consequence that the 15 Japu persons who are in occupation of those Panikhetis should pay a nominal rental fee of Rs. 3 each annually to Changki in recognition of the latter's ownership of the land;

(v) The court keeps the chapter of revival of mutual understanding between the two villages open to enable restoration of peaceful co-existence on the past per 1950 terms; and

(vi) Changki having committed criminal trespass over Japu's Panikhetis by taking the law into their own hands, they must pay a fine of Rs. 200."

9. The judgment of Shri Lima Aier was challenged by the plaintiffs by means of an appeal to Shri R. Ezung, Additional Deputy Commissioner. The Deputy Commissioner rendered judgment in the appeal on August 4, 1972 holding that the dispute between the parties which led to the filing of the complaint was confined only to the alleged trespass on 4 1/2 acres of land, and hence the order of Shri Lima Aier regarding the 15 Panikhetis in an area of 40 acres was uncalled for and should therefore be set aside. As regards the 4 1/2 acres of land he held that the plaintiffs have failed to prove their possession of the said extent of land; that as such the land should be handled over to the two defendants of Changki village. In addition, the Deputy Commissioner held that since the four plaintiffs "had committed affrontery" to Changki village by dragging them to the "underground Government Organisation's Court" they must pay a fine of Rs. 50 each.

10. Both parties felt dissatisfied with the judgment of Shri Ezung, Additional Deputy Commissioner and hence they filed two revision petitions to the High Court viz. Civil Revision No. 9(H)/72 by the plaintiffs and Civil Revision No. 10(H)/72 by the defendants. The two revisions were clubbed together and were heard by a bench consisting of Baharul Islam and Bindra, JJ. In Civil Revision No. 9(H)/72 it has been held by both the judges that the "plaintiffs have failed to establish that the 4 1/2 acres of land in dispute formed part of any land granted by Changki village to Japu village and that the plaintiffs were in possession of the land and their possession had been interfered with by the defendants". Consequently, both the judges were agree that Civil Revision No. 9(H)/72 should be dismissed except insofar as payment of fine of Rs. 50 by each of the four plaintiffs is concerned and that order has now become final.

11. Insofar as Civil Revision No. 10(H)/72 filed by the defendants is concerned, both the judges were agreed that the 15 Panikhetis in 40 acres of land was not the subject matter of dispute in the complaint and that even though Japu and Changki villages had participated in the proceedings from a subsequent stage, as if the dispute was between the two villages, the order of Shri Lima Aier that the 15 Panikhetis belong to Changki and hence Japu cultivators should each pay Rs. 3 to Changki in recognition of its title was not called for. The learned judges, therefore, held that Civil Revision No. 10(H)/72 too should be dismissed. Against that order the appellants viz. Changki village represented by four members have filed this appeal.

12. When the appeal was taken up for hearing Dr. Shanker Ghosh, learned senior advocate appearing for the respondents raised an objection that the appeal has abated because respondents 1 and 4 were dead and their legal representatives have not been brought on record. Mr. J. P. Bhattacharjee, learned counsel for the appellants refuted the plea and contended that the appeal has not abated and it survived for consideration on merits. He said that the time for impleading the legal representatives of the deceased respondent 1 has not elapsed; secondly one of the legal representatives of respondent 4 was already on record and he effectively represents the estate of respondent 4; thirdly though the complaint had been preferred by four villagers against two individuals, the Japu and Changki villages had taken over the dispute and conducted the proceedings as a dispute between two villages and hence there cannot be any question of abatement due to the death of respondents 1 and 4; and fourthly in any case the Civil Procedure Code was not applicable in all its vigour to proceedings in the courts of Nagaland.

13. Taking up first the question whether the appeal has abated, we are unable to sustain the objection raised by Dr. Shankar Ghosh to the hearing of the appeal. Apart from the fact that one of the heirs of respondent 4 is already on record and the time to bring the legal representatives of respondent 1 has not elapsed, it has to be borne in mind that the provisions of the Civil Procedure Code are not applicable in all their force and vigour to civil disputes in Nagaland. The proceedings have to be conducted as per the Nagaland rules to which reference has been made even at the outset of the judgment. Those Rules do not provide for stringent observance of the provisions of the Civil Procedure Code. We shall therefore examine the merits of the grievances of the appellants that the High Court ought to have allowed Civil Revision Petition No. 10(H)/72 and set aside the order of the Deputy Commissioner and restored the order of Shri S. Lima Aier wherein Changki's claim to 15 Panikhetis has been recognised. Before that we may refer to the fact that the plaintiff's claim to possession of 4 1/2 acres of land alleged to have been trespassed upon by the defendants has been rejected by the Assistant Deputy Commissioner as well as the Deputy Commissioner and the concurrent findings rendered by them have been accepted by the High Court resulting in the dismissal of Revision Petition No. 9(H)/72 filed by the plaintiffs. As against the dismissal of Revision Petition No. 9(H)/72, the plaintiffs have not preferred any appeal to this Court, and hence the dismissal of the plaintiffs case has become final.

14. In this appeal preferred against the dismissal of Revision Petition No. 10(H)/72, the appellants contend that in addition to the rejection of the plaintiff's claim to 4 1/2 acres of land there should also have been a declaration of Changki's title to 40 acres of land (15 Panikhetis) as the proceedings between the parties had comprehended this controversy also. It was therefore argued that Shri S. Lima Aier, had rightly held that not only the 4 1/2 acres of land claimed by the plaintiffs but also the 15 Panikhetis belong to Changki and as such any further cultivation of the 15 Panikhetis by the people of Japu can be done only in recognition of Changki's title to the land, and as such the Deputy Commissioner and the High Court ought not to have set aside the finding of Shri Lima Aier on Changki's title to 15 Panikhetis on the ground the 15 Panikhetis was not the subject matter of dispute between the parties. Mr. Bhattacharjee, in support of his contentions, urged the following factors.

> (1) Even though the original petition had been filed by four individuals of Japu against two individuals of Changki, the two villages viz. Japu and Changki had taken over the dispute and contested it at the village level as per custom in Nagaland for the villages to protect the rights of its inhabitants. It is by reason of it the names of the two villages had also come to be mentioned in the cause title in some of the proceedings.

(2) Though the proceedings originated with a claim to possession of 4 1/2 acres of land, the ambit of the dispute was enlarged so as to include the question of title to the 15 Panikhetis under the cultivation of persons of Japu Village. Consequently, the subject matter of litigation was not confined to the 4 1/2 acres of land claimed by the plaintiffs but also comprehended the title and right to possession of the 15 Panikhetis.

(3) The two villages had participated in the proceedings almost from the very beginning and had conducted the proceedings as if the dispute pertained to both the items of land viz. 4 1/2 acres as well as 40 acres and had accordingly led evidence, oral and documentary to establish their respective claims to the two items of land.

(4) It would be highly inequitable to the parties after having litigated for all these years, to be asked to enter into another round of litigation to determine the question of title to the 40 acres of land.

(5) The evidence clearly warrants the acceptance of the finding rendered by Shri S. Lima Aier that title to the 40 acres of land vested in Changki and as such Japu can continue to have possession of the land only in recognition of the title of Changki. In advancing this contention, Mr. Bhattacharjee said that the appellants would be satisfied if the title of Changki to the 40 acres of land is declared and they do not insist upon any conditions being imposed on the 15 persons of Japu cultivating the Panikhetis that they should pay a sum of Rs. 3 each per year to Changki in recognition of its title.

15. It was lastly urged by the learned counsel that the judgment of Baharul Islam, J. contains a serious flaw in that the learned Judge, after holding "that the dispute therefore cannot be allowed to escalate and cover the entire area of 44 1/2 acres of land", has gone on to observe in para 15 of the judgment that "even if originally Changki village had any right to the land in question, that right was lost in course of time as they themselves were out of possession and Japu village acquired right by prescription by their possession since 1936 over the 15 Panikhetis in their possession".

16. Opposing the contentions of Mr. Bhattacharjee, Dr. Shanker Ghosh, appearing for the respondents argued that it was not correct to say that the proceedings initiated by four persons of Japu village against two persons of Changki village had been converted into a dispute between the two villages themselves and that the subject matter of dispute was enlarged and what was put in issue in the proceedings was the right and title to a total extent of 44 1/2 acres as between Japu and Changki villages. The learned counsel stated that even if the name of the villages had appeared in the cause title in the proceedings before some of the authorities, it only indicated that the respective villages had lent their support to the contentions of the plaintiffs and defendants as the case may be, insofar as the dispute relating to 4 1/2 acres of land was concerned. It was pointed out that the High Court while allowing C.R. Nos. 14(H) and 16(H) of 1971 on the first occasion and ordering a remand of the case had directed the authorities to treat the matter as of a civil nature and to proceed in accordance with Rule 35 of the Rules and conform to the spirit and not the letter, of the Code of Civil Procedure. It was also urged that the Deputy Commissioner, who constituted the final court of facts, and the High Court had found that the actual controversy in the case pertains to the dispute over 4 1/2 acres of land and as such the further claim to title of 40 acres of land between Japu and Changki was really not germane for consideration because the plaintiffs case was capable of decision without reference to the ownership of the 40 acres by Japu or Changki and whether the land was given by Changki to Japu as from 'father to son' according to local custom. It was

submitted that in any event, no decision can be rendered in favour of Changki village regarding the 40 acres of land without all the 15 cultivators (respondents 1 to 4 being only four of the 15 cultivators) being parties to the appeal. Dr. Shanker Ghosh therefore urged that there was absolutely no need or justification for this Court to interfere, in exercise of its powers under Article 136 of the Constitution, with the view concurrently taken by the Deputy Commissioner and the High Court that no declaration was called for or need be made regarding the ownership of the 40 acres of land under the cultivation of 15 persons of Japu village.

17. On a consideration of the differing contentions of the parties, we do not find merit in the plea of the appellants that the Deputy Commissioner and the High Court should have sustained the findings of Shri S. Lima Aier and held that an extent of 40 acres of land, besides the 4 1/2 acres of land which formed the subject matter of the original complaint, also belongs to Changki village and as such the villagers of Japu can continue their cultivation of the said land only in recognition of the rights of Changki village. It may be that in the course of the proceedings the two villages may have identified themselves with the respective parties and backed their claim to the disputed 4 1/2 acres of land and in that exercise the parties had traversed beyond the limits of the dispute and tried to make an issue of the title to 15 Panikhetis also. Such indulgence cannot however change the nature and scope of the original dispute or make the court feel called upon to treat the dispute as one between two villages and render findings on matters not connected with the subject matter of dispute. It may also be that the proceedings had dragged on for a number of years but that cannot be a ground to hold the findings needlessly rendered by the trial court, which have been rightly vacated by the Appellate Authority and the High Court, should be restored in order to prevent the two villages from starting another round of litigation. The appellate order of the Deputy Commissioner vacating the findings of Shri S. Lima Aier on Changki's title to 40 acres was made on July 31, 1972 and since then more than 15 years have elapsed. During the long interval, there does not appear to have been further conflicts between the two villages. It may therefore well be that the people of the two villages have stopped fighting over the 15 Panikhetis and started living in peace and amity. In any event, we are unable to sustain the plea that from the manner in which the parties had conducted the proceedings, there is warrant for a declaration of title in Changki's favour of not only the 4 1/2 acres of land in dispute but also of an additional extent of 40 acres even though it was not a subject matter of complaint in the original petition.

18. We are, therefore of the view that the judgment of the High Court under appeal does not call for an interference. We however accept the contention of the appellants counsel that the observation of Baharul Islam, J. that whatever rights Changki village may have had over the land in question were lost in course of time due to adverse possession of Japu village was not warranted or called for especially when the judge had held that the dispute between the parties cannot be allowed to escalate beyond the question of title of 4 1/2 acres of land. Hence we vacate the said observation and finding. With this modification, we affirm the judgment of the High Court and dismiss the appeal. There will, however, be no order as to costs.

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