

CRP No. 33 of 2022 with
MC(CRP) No. 29 of 2022

Date of order: 15.02.2023

Niandro Syiemiong vs Colonel Syiemlieh

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Appearance:

For the Petitioner : Mr H.L. Shangreiso, Sr Adv. with
Mrs P. Biswakarma, Adv.

For the Respondent : Mr K. Ch Gautam, Adv.
Ms C.B. Sawian, Adv.

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

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The civil revision petition is directed against an order dated October 25, 2022 by which an application for substitution of the plaintiff in a suit in which title in respect of an immovable property is in dispute has been allowed after a delay of 3039 days.

2. It appears that title suit No. 20 (T) of 1987 was decreed in favour of the plaintiff. In appeal, the matter was remanded for reconsideration and certain specific issues were indicated.

3. The suit remained pending before the court of the Assistant Deputy Commissioner. The original plaintiff died in the year 2011 and it was only in June, 2020 that an application for substitution was made.

4. At the outset, it needs to be recorded that there is no dispute that the provisions of the Code of Civil Procedure, 1908 apply to the suit and the suit is not pending before any District Council Court.

5. The suit was instituted in a representative capacity. Ordinarily, suits instituted in a representative capacity are not permitted to even be withdrawn without the consent of the others whose cause is originally espoused by the *eo nomine* plaintiff.

6. Though the reasons for delay proffered in the substitution application appear to be specious, it cannot be lost sight of that the matter pertains to the rights asserted by the particular clan and the head of the clan had instituted the suit in his name for the benefit of the entire clan. It is equally true that it is admitted in the relevant application that internecine disputes within the clan and fights prevented a decision being taken as to who should head the clan after the demise of the original *eo nomine* plaintiff.

7. There are several other excuses which have been indicated by the now substituted plaintiff to explain away the delay and matters which

could not have been taken into account by the trial court may have weighed with this Court. However, what is of significance is that the ultimate basis for the trial court's condonation of the delay was that the suit had been instituted in a representative capacity in respect of a land claimed by the clan originally headed by the named plaintiff. The satisfaction recorded in the order impugned and the discretion exercised do not appear to be erroneous or perverse.

8. Accordingly, CRP No. 33 of 2022 is dismissed with a request to the trial court to expedite the hearing of the suit and dispose of the same in accordance with law as expeditiously as the business of that court would permit and, preferably, within three months of the receipt of a copy of this order.

9. MC (CRP) No. 29 of 2022 is disposed of.

10. There will be no order as to costs.

(Sanjib Banerjee)
Chief Justice

Meghalaya
15.02.2023
"Sylvana PS"