



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CRP/10/2021

Tobuk Dai
S/O LARKIN DAI, RESIDENT OF BOYING VILLAGE, PO/PS PASIGHAT, EAST
SIANG DISTRICT, A P.

VERSUS

Otem Dai
S/O LARKIN DAI, RESIDENT OF MIRBUK VILLAGE, PO/PS PASIGHAT, EAST
SIANG DISTRICT, A P.

Advocate for the Petitioner : Dicky Panging, D. Tamuk, M. Gibi, Marge Doji, B. Padung,
T. Tayeng

Advocate for the Respondent : C Perme, T. Taggu

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 18-12-2023

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. O. Dai, learned counsel for the sole respondent.

2. By filing this Revision Petition, the petitioner has challenged the order dated 12.02.2021, passed by the learned Deputy Commissioner, East Siang District, Pasighat, in Civil Appeal No. 01/2013, filed by the sole respondent,

whereby, the appeal has been admitted on the ground that an opportunity of trial to be given to the appellant.

3. The case of the petitioner, shorn of unnecessary details, is that the petitioner and the sole respondent are brothers and sons of late Larkin Dai. Due to differences having been cropped up between the petitioner and the respondent as regards to the distribution of ancestral properties, a Kebang was conducted by the village authorities on 09.07.2000. Thereafter, on the objection of the sole respondent, another Kebang was directed to be conducted. Accordingly, on 12.07.2000 another Kebang was conducted whereby the ancestral properties were distributed between the petitioner and the respondent. Not satisfied with the Kebang decision dated 09.07.2000 and 12.07.2000, the sole respondent filed an appeal on 03.09.2013, being Civil Appeal No. 01/2013 assailing the said two Kebang decisions. Thereafter, the petitioner had filed a preliminary objection regarding the maintainability of the Civil Appeal filed by the sole respondent on the ground that the appeal is not accompanied by the application for condonation of delay of 13 (thirteen) years 1 (one) month 24 (twenty-four) days i.e. more than 4800 (four thousand eight hundred) days as it is no longer *res integra* that the Indian Limitation Act applies to such appeal.

4. Mr. D. Panging, learned counsel for the petitioner submits that the Deputy Commissioner, vide the impugned order dated 12.02.2021 has failed to consider the objection raised by the petitioner that the Civil appeal is hopelessly barred and the same is not accompanied by the application for condonation of delay of more than 13 years as required under the provisions of the Limitation Act which applies in the present case. He submits that the only ground of admitting the

civil appeal is that the appellant i.e. sole respondent, should be given an opportunity of trial. He submits that without considering the objection raised by the petitioner, the civil appeal was admitted and as such same is not sustainable.

5. Mr. D. Panging, learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of **Kobe Ete vs. the State of Arunachal Pradesh**, reported in **(2005) Suppl. GLT 626**, which is reproduced hereinbelow:

7. Since the question regarding the maintainability of the petition, as raised by Mr. Tagia, goes to the very root of the case and the matter is of importance, I do not like to throw out the objection on the aforesaid ground raised by the petitioner. The utility of the state of limitation has not been the matter of any dispute. It is stated that the Act of Limitation is a set of repose, peace and justice. It is stated to be repose because it extinguishes state demand and quits title. In other words, controversies are restricted to a fixed period of time otherwise they would become immortal and ever lasting. Limitation secures peace as it ensures security of rights and secures justice as by lapse of time evidence in support of right may destroy. Limitation is thus rests on sound public policy. On the expiry of the period of limitation a valuable right accrues upon the other party. The provisions of applicability of the limitation act are also enshrined in the Assam Frontier (Administration of Justice) Regulation, 1945. Going through the various provisions of the said regulations it cannot be said that the scheme of the Act altogether excludes the law of limitation rather, in the various clauses of the aforesaid regulations, it recognises the need of applicability of the law of limitation. Limitation as provided by various statutes, not only prescribes the period of limitation within which period the party must approached the authority, it also provides, in certain circumstances, under which a period may be excused for not approaching the authority within the period of limitation. Under the Limitation Act, 1908 (since repealed) and the Limitation Act, 1963 also vide Section 5 provides such a power upon the Court to extend the prescribed period of limitation in certain cases, when the appellant or the applicant satisfies the court that, he has sufficient cause for not preferring

the appeal or petition within the specific period of limitation. Turning to Section 29 of the Limitation Act 1963, the said section is a saving section incorporated in the 1963 Act. Section 29 of the Limitation Act 1963 is quoted herein below:

“ Section 29(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872(9) of 1872. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law. (4) Section 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easement Act, 1882 (5 of 1882), may for the time being extend.”

8. Section 51 of the Assam Frontier (Administration of Justice) Regulation, 1945 provides that "every petition of appeal under Section 47 or Section 48 and every application under Section 50 shall be accompanied by a copy of the order against which the appeal or application is made, and shall be filed within thirty days of the date of such order, excluding the time taken in procuring a copy of the order". Under Section 50 of The Assam Frontier (Administration of Justice) Regulation, 1945, the High Court may, "on application or otherwise, call for the proceedings of any original case or appeal decided by the Deputy Commissioner and not appealable under this Regulation and may pass such orders as it may deem fit". Here the High Court can exercise revisional power on two counts : (1) by suo moto, and (2) by application of a party. If the High Court, in a given case, thinks it prudent to exercise revisional power suo moto, in that event no question arises as to the applicability of the period of limitation of 30 days as provided in Section 51. The period of 30 days as provided in Section 51 appears to be applicable only in cases when the revisional power is exercised on the application of the private party.

9. Again Section 52 of the Regulation provides as follows:

"The High Court, the Court of Deputy Commissioner, Assistant Commissioner shall be guided by the spirit, but shall not be bound by the letter, of the Code of Civil Procedure, 1908 and shall follow subject to any express provisions of these rules, in principles of the Indian Limitation Act, 1908 in disputes between persons who are not indigenous to the Union Territory of Arunachal Pradesh".

Section 52 expressly provides that the High Court shall follow, subject to the expressed provisions of these rules, the principles of Indian Limitation Act, 1908, in disputes between persons who are not indigenous to the Union Territory of Arunachal Pradesh. Section 52 does not speak of anything specifically regarding applicability of the Limitation Act so far the indigenous persons are concerned.

10. The preamble of the Assam Frontier (Administration of Justice) Regulation, 1945 provides as follows: "a Regulation to consolidate and amend the law governing the administration of justice in the Frontier Tracts of Assam. Whereas it is expedient to consolidate and amend the law governing the administration of justice in the Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts of Assam.

Now, therefore, the Governor of Assam, in exercise of the powers conferred by the Sub-section (2) of Section 92 of the Government of Indian Act, 1935, is pleased to make the following Regulation."

11. The aforesaid regulation having been erected for governing the administration of justice in the Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts of Assam is a local law within the meaning of Section 29 of the Limitation Act, The Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter referred to as 1945 Regulation) to some extent ameliorate the other substantive provisions of laws such as the Code of Civil Procedure, Code of Criminal Procedure and the like. The said 1945 Regulation had to be enacted to suit the need of the people of the aforesaid tract.

12. Now having satisfied the requirement of Section 29(2) of the Limitation Act so far the provisions regarding the local law or special law is concerned, we are to see at this stage whether Section 52 of the 1945 Regulation can be interpreted to exclude the provisions of Sections 4 to 24 of the Limitation Act, 1963 in the context of the said 1945 Regulation. On a bare reading of Section 29(2) shows that such exclusion is permissible so far as and to the extent to which they are not expressly excluded by the special or local law. Section 52 of the 1945 Regulation incorporates specific provisions regarding applicability of the principles of the Limitation Act so for the persons who are not indigenous to the present State of Arunachal Pradesh. It has not provided expressly about the applicability or non-applicability of the provisions of the Limitation Act so for the indigenous persons are concerned and Section 52 is silent about it. On the other hand, as discussed hereinabove, the scheme of the 1945 Regulation do not excluded the applicability of the provisions of the limitation altogether. Section 29(2) of the Limitation Act clearly indicates that such special or local law must provided the period for limitation under such laws and for computing the period of limitation under such special or local law, the provisions as contained in Sections 4 to 24 (inclusive) as found in the Limitation Act shall apply. Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down therein are satisfied and once they get satisfied, the provisions contained in Sections 4 to 24 of the Limitation Act shall apply to such proceedings which obviously means that the procedural scheme contemplated by these sections of the Limitation Act would be applicable in case of filing appeal/revision under the provisions of special or local law.

13. Turning to expression "expressly excluded" in Section 29(2) of the Limitation Act, the said expression is clearly demonstrative. It signifies exclusion by wants. It will not mean exclusion by a process of construction or by reasoning. If we are to exclude the provisions of applicability of the principles of the Indian Limitation Act, then we are to go for reasoning to the extent that as the said Section 52 makes a provision of applicability of the Limitation Act so far the persons who are not indigenous to the State of Arunachal Pradesh, therefore, the persons who are indigenous to the State of Arunachal Pradesh, are excluded. Such a construction will go against the provisions of the expression "expressly excluded"..."

6. Mr. D. Panging, learned counsel for the petitioner submits that in view of the settled position of law, the impugned order dated 12.02.2021, passed by the learned Deputy Commissioner, East Siang District, Pasighat, in Civil Appeal No. 01/2013 is illegal and the same may be set aside.

7. On the other hand, Mr. O. Dai, learned counsel for the sole respondent submits that there is no question of filing of application for condonation of delay as the sole respondent has filed an objection against the Kebang decision dated 12.07.2000 on 24.07.2000 and the appeal dated 03.09.2013 is a continuation of the said objection which is to be treated as the appeal against the Kebang decisions. He fairly conceded that the Limitation Act indeed applies to the proceeding. However, he submits that having filed the objection on 24.07.2000 against the Kebang decision dated 12.07.2000, same may be treated as an appeal. Therefore, there is no delay in filing the appeal.

8. I have considered the rival submissions of the parties.

9. On bare perusal of the impugned order dated 12.02.2021, passed by the learned Deputy Commissioner, East Siang District, Pasighat, the ground of admitting the appeal is to give an opportunity of trial to the sole respondent. In the opinion of this Court, on the face of it, the impugned order dated 12.02.2021 is unsustainable inasmuch as the Deputy Commissioner ought to have considered the objection filed by the petitioner and on consideration, appropriate order, admitting or otherwise of the appeal could have been passed.

10. It is no longer *res integra* that the provision of Indian Limitation Act applies to the proceedings relating to the Civil appeal instituted under relevant

provisions of the Section 46 of the Assam Frontier (Administration of Justice) Regulation, 1945 (since repealed).

11. In view of the above, the impugned order dated 12.02.2021, passed by the learned Deputy Commissioner, East Siang District, Pasighat, in Civil Appeal No. 01/2013 is hereby set aside and quashed.

12. Though Mr. Panging, learned counsel for the petitioner has vehemently objected to the remanding back the matter to the learned appellate Court, in view of the fact that the impugned order is held to be illegal by this Court and accordingly, same has been set aside. However, in the considered view of this Court, since the Deputy Commissioner, East Siang District, Pasighat has not considered the objection while passing the impugned order dated 12.02.2021, the matter needs to be remanded back to the appropriate appellate Court. Accordingly, the matter is remanded back to the Deputy Commissioner, East Siang District, Pasighat and the learned Deputy Commissioner shall transmit the records of the civil appeal filed by the sole respondent and the objection filed by the petitioner to the appropriate appellate Court in terms of the Arunachal Pradesh Civil Courts Act, 2021 and on receipt of the said Civil Appeal No. 01/2013 and the objection, the appellate court shall hear the parties on the question of delay in filing the Civil Appeal, in accordance with law.

13. This Civil Revision Petition stands disposed of.

JUDGE

Comparing Assistant