

GAHC040012962022



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

SAO No. 01(AP)/2022

Shri Nyato Dabu Mengnia,
aged about 52 years,
S/o- Lt. Tako Dabu Mengnia,
Vill- Dabu, P.O/P.S- Daporijo,
Upper Subansiri district,
Arunachal Pradesh- 791122.

..... **Appellant**

VERSUS

1. Shri Gyodik Pute Tikli,
S/o- Lt. Ligio Pute,
village- Giba, P.O/P.S- Daporijo,
Upper Subansiri district,
Arunachal Pradesh- 791122.

2. Shri Taba Pigia Badi,
S/o- Lt. GIoji Pigia,
village- Giba, P.O/P.S- Daporijo,
Upper Subansiri district,
Arunachal Pradesh- 791122.

3. Shri Tasar Siyorbe Badi,
S/o- Lt. Badi SIyorbe,
village- Giba,
P.O/P.S- Daporijo,
Upper-Subansiri district,
Arunachal Pradesh- 791122.

..... **Respondents**

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the appellant : Mr. Duge Soki, Advocate
Advocate for the Respondents : Mr. Domo Boje, learned Addl. P.P.
Date of Hearing : **20.07.2023**
Date of Judgment : **29.11.2023**

JUDGMENT & ORDER (CAV)

1. Heard Mr. Duge Soki, learned counsel for the appellant and also heard Mr. Domo Boje, learned counsel for the respondents.

2. The substantial questions of law formulated in this appeal are:

“1) Whether the Limitation Act is applicable in its letter and spirit in filing the appeal from the Customary Court to the Appellate Court, in view of the provisions of Section 18 of the Arunachal Pradesh Civil Courts Act, 2021.

2) Whether the amended provisions of Section 15 of the Arunachal Pradesh Civil Courts Act, 2021 has an application in the present case.”

3. The aforementioned substantial questions of law were formulated as it was observed vide order dated 01.05.2023 by this Court that the issues involved in

this appeal are purely on questions of law.

4. The order dated 30.09.2022 passed by the learned Addl. District Judge, Basar in case no. BSR/IA-09/22 in BSR/CA-08/22 is under challenge in this appeal. Sri Nyato Dabu Mengnia is the appellant in this case whereas, Sri Gyodik Pute Tikli, Shri Taba Pigia Badi and Shri Tasar Siyorbe Badi are the respondent nos. 1, 2 and 3 respectively. The appellant is the plaintiff of the original Title Suit No. 01/2021 and the respondents are the defendants.

5. The brief facts leading to this appeal are that the appellant is the owner of the ancestral property referred to as Mindi Modi and this property, within the vicinity of Mindi Modi belongs to the Mengnia Clan and is a community land. As the community property is a vast area, the Mengnia Clan endorsed the son-in-law late Gioji Pigia and late Badi Siyorbe (father of respondent nos. 2 and 3 respectively) to take care of the area during their lifetime. There was no dispute relating to the property during the lifetime of father-in-law of the respondent nos. 2 and 3 but undue advantage was taken by the respondent nos. 2 and 3.

6. Some time in the year, 2000, some disputes arose regarding illegal cane business, allegedly carried out from the land of the appellant. A Kebang was held to settle the issue and cutting of cane was prohibited. However, in a clandestine manner, the Kebang divided the ancestral property of the appellant in favour of the respondents. Thereafter, the respondents started claiming

ownership of the disputed land and then, the appellant learnt that the Kebang divided land between the appellants and the respondents on 06.05.2000 as the chairman of the Kebang acted in a partisan manner because he was related to the respondents.

7. Appellant lodged a complaint with the Circle Officer on 19.08.2021, and the Extra Assistant Commissioner, Giba issued an order vide No. GB/DEV-32/2010-11 dated 26.08.2021, directing to conduct a Kebang on 11.09.2021. The Kebang was rescheduled to be held on 28.09.2021, and it was observed that the respondents had proposed settlement of the dispute in such a manner which was not acceptable to the appellant and his family/clan members. The appellant and his family members did not participate in the Kebang. The appellant and his clan members submitted a representation to the Circle Officer, GIBA ventilating their grievance over the Kebang but the irony is that the appellant and his clan members being laymen did not draft the representation in a proper manner. There was no response from the Office of the Circle Officer and the appellant and his clan members did not receive any order from the Kebang. The appellant then brought the Title Suit No. 01/2021, before the learned Civil Judge (Junior Division), Upper Subansiri District, Daporijo.

8. Pursuant thereto, the respondents appeared before the learned Civil Judge (Jr. Division) and filed an objection and Misc. Case No. 02/2021 was registered

on the basis of the objection on the ground of *res-judicata*. It is averred that the copy of the Misc. Case was furnished to them for the first time on 24.08.2022. In the same Misc. Case a document has been annexed projecting acceptance of the Kebang decision. The appellant, however, categorically denies accepting the document and has contended that the village authorities forced one of the clan members of the appellant's clan to sign one undertaking and the appellant and his family members were made to deposit Rs. 10,000/- as security before proceeding with the Kebang. The respondents were also in a similar manner forced to submit an undertaking and deposit of Rs. 10,000/-. The acceptance of the Kebang decision was supposed to be an undertaking that the parties have accepted the decision of the Kebang. On 28.03.2022, the Misc. Case was heard and the appellant's plaint was dismissed with liberty to approach the proper forum for appeal (Annexure-7). Situated thus, the appellant file an appeal along with the application for condonation of delay on 04.05.2022, but the same was withdrawn, as the appellant was granted liberty to file afresh due to some inadvertent mistake. Thereafter, an appeal against the purported Kebang decision dated 28.09.2021, was filed before the Additional District Judge, Basar, which was registered as BSR/CA No. 08/2022 with an application for condonation of delay being BSR/IA-09/2022 (Annexures-8 and 9).

9. It is submitted by the appellant that since the appellant was pursuing the

issue before some other Court under the bona fide belief that no order had been passed on 28.09.2021, a delay of 27 days was prayed to be condoned. It is submitted that there was a delay of 80 days considering the period of limitation of appeal to the Addl. District Judge to be of 30 days. The respondents appeared and filed their objection and the application for condonation of delay was heard on 30.09.2022 and the learned Additional District Judge, Basar rejected the application with prayer for condonation of delay on the ground that the appellant had sufficient knowledge about the order dated 28.09.2021, against which, the appeal was preferred. It was observed by the learned Additional District Judge that the appellant and his clan members had submitted a representation against the Kebang decision on 20.09.2021.

10. It is contended that the learned Additional District Judge committed a grave error in law as well as in facts in passing the order dated 30.09.2022 by holding that the appellant was in knowledge of the order dated 28.09.2021, even without calling for the records from the Office of the Circle Officer, GIBA of the concerned GB. It is contended that the learned Addl. District Judge failed to appreciate that the copy of the order dated 28.09.2021 was never furnished to the appellant and this impelled the appellant to file Title Suit before the learned Civil Judge. It is submitted that the learned Additional District Judge failed to appreciate that since the Customary Court of Gaon Burah (village authorities) is

unique to the state, and no procedure of CPC is applied, the full vigour of the Limitation Act could not have been applied in the instant case. As the appeal is a continuation of suit, the rigour of the procedure of CPC is not applicable and the rejection of condonation of delay had resulted in miscarriage of justice.

11. It is also submitted that the fact that the appellant was a simple villager in another district and the Court of the Additional District Judge, was situated in another district and the appellant was unable to approach the Court at the earliest due to the un-motorable road conditions was totally ignored by the learned Additional District Judge. The appellant has prayed to set aside the impugned order dated 30.09.2020 passed by learned Additional District Judge, Basar in connection with BSR/IA-09/2022 in BSR/CA-08/2022.

12. Per contra, the defendants/respondents have submitted that the Mindi Modi land located at Giba village belongs to the Tikli families and their ancestors. The mountain referred to as Mindi Modi belongs to the Tikli families and hence, the Tikli families have orally authorised late Bingio Pigia Badi, father of Lt. Gioji Pigia Badi, to look after the said mountain referred to as Mindi Modi, because, Lt. Bingio Pigia Badi, was a brother-in-law of the Tikli families. The land was supervised and maintained by Lt. Gioji Pigia Badi, and his father Lt. Bingia Pigia Badi for 30 years and the Mindi Modi land will thus be the property of the family members referred to as Badi families. There was a dispute relating

to the forest produce between the Tikli and the Badi families and Sri Tona Mengnia Jari, (GB) was the mediator and arranged the local Kebang dated 06th May, 2020 to amicably resolve the dispute between the Tikli and the Badi clans for the land referred to as Mindi Modi.

13. Three years after the decision on 06.05.2000, i.e. on 12.12.2003, Shri Kenia Mengnia on behalf of Mengnia families filed a complaint before the EAC (Extra Assistant Commissioner) Giba Circle, that the Mindi Modi mountain belongs to their ancestors, whereas, his brother Sri Tona Mengnia Jari had already settled the dispute between the Badi and the Tikli families and the Keba decision dated 06.05.2000, was taken. On 19 August, 2021, The Mengnia families namely, (1) Sri Tona Jari @ Mengnia, (2) Sri Tasa Pigia @ Mengnia and on 25.08.2021, Sri Kenia Mengnia, Sri Kema Mengnia and Sri Tabe Leya filed a complaint letter to EAC, Giba, against the Badi families and Tikli families for the land of Mindi Modi (Mountain). The Circle Officer had issued an order copy on 26.08.2021, to all the H/GB and GB of Giba Circle to resolve the dispute. A Keba was arranged on 11.09.2021 at Daporijo Kebang house, but the Mengnia families were not present and denied to participate in the Keba and the Keba was re-scheduled to be held on 28.11.2021. After receiving a copy of the order from EAC, Sri Pakyu Natam (H/GB) and all the H/GB's, GB's alongwith intellectual youths and public

of Giba village had arranged and held the Keba dated 28.11.2021 and the member of Mengia families, Sri Kenia Mengia was present and actively participated in the Keba and also signed and accepted the letter as guarantor from the complainant. The statement of the witnesses were also recorded and thereafter, the order dated 28.11.2021 was passed. A settlement was made between both the parties. It was held that all the witnesses deposed that the Mindi (Mountain) belongs to Badi and the Tikli families. It is evident from their ancestors for generations there was no dispute over the Mindi Mountain before the plaint was filed and registered as Title Suit No.01/2021. After due deliberations and observations, the Kebang was held and the Kebang decision was given in favour of the Badi and the Tikli parties and it was held vide order dated 28.11.2021 that the Mindi (Mountain) shall not be further claimed by Mengnia families or by any other party. The Circle Officer of Giba issued the certified order in favour of the Tikli and the Badi party and the Mindi Modi (Mountain) was divided between the Tikli and the Badi clan.

14. The defendants/respondents have vehemently and fervently submitted that the Title Suit No. 1/ 2021 was filed by the plaintiff Sri Nyato Dabu Mengia on behalf of the Mengnia party is null and void and is thereby not maintainable. The plaintiff does not reside at Giba village and he is employed under the department of Health. The plaintiff has filed false and fabricated case and the

case of the plaintiff is barred by *res-judicata* under Section 11 of the Code of Civil Procedure, 1908 (CPC for short) read with Order-VII Rule 11 (a) CPC. A petition to that effect was submitted by the defendants, which was registered as Misc Case No. 02/2021. Vide order dated 28.03.2022, in connection with Misc Case No. 02/2022, arising out of Title Suit No. 1/2021, the learned Civil Judge, Junior Division, Daporijo, dismissed both the Misc Case and the Title Suit being Misc Case No. 2/22 and T. S. No. 1/2021.

15. It was held by the learned Civil Judge that in the year 2000, the Kebang decision was on issue of who was the owner of the suit land between Tikli and Badi families, whereas vide Kebang decision of the year 2021, it was observed that the Tikli and the Badi families are the owners of the suit land and not the Mengnia family. It was also observed that the benefit of preponderance of probability cannot be given to the plaintiffs in the instant case, wherein from the year 2000 to 2021, the plaintiff-appellant herein (appellant's clan in the instant case), from the year 2000 to 2021, have not shown any probable ground, whereby they behaved as the owner of the suit land. It was held that simple ignorance cannot be casted upon the Mengnia family and on benefit of doubt, their stake for ownership cannot be declared. It was observed that the complaint/representation dated 18.08.2021 was settled vide Kebang decision dated 29.11.2021, a fact that was brought to the knowledge of the learned Civil

Judge by the defendants, meaning thereby, that the plaintiff (appellant) have not come to the Court with clean hands. The appellant is at liberty to challenge the Kebang decision dated 29.11.2021, before the appropriate forum, if not barred by limitation or any other statute. The plaintiff then preferred an appeal against the Kebang decision dated 28.09.2021, before the Additional District Judge, Basar, which was registered as BSR/CA-08/2022, with an application for condonation of delay, which was registered as BSR/IA-09/2022. The appeal was dismissed on the ground of limitation.

16. I have given my thoughtful consideration to the submissions at the Bar.

17. The substantial question of law is:-

i) Whether the Limitation Act is applicable in its letter and spirit in filing the appeal from the Customary Court to the Appellate Court, in view of the provisions of Section 18 of the Arunachal Pradesh Civil Courts Act, 2021 ?

18. The impugned order dated 30.09.2022, is reproduced herein below verbatim:-

“This condonation petition has been filed by the applicant/appellant Sh. Nyato Dabu Mengnia on his behalf and on behalf of Mengnia family praying for condonation of delay of 27 days from the date of receipt of copy of impugned Kebang decision dated 28.09.2021 on 24.03.2022 followed by the limitation period of one month from aforesaid date of receipt of copy of impugned Kebang decision in filing an appeal against the said impugned decision of the village authority.

I have heard the Id. counsels for both the parities and perused the condonation

application and written reply including intimation cum report on Kebang held on 28.09.2021 submitted to the Circle Officer, Giba Circle, U/Subansiri District, AP on 29.09.2021 by the applicant/appellant himself in his name which is annexed with the application as annexure-III.

Upon careful examination of aforesaid intimation cum report on Kebong dated 28.09.2021, it clearly transpires that the applicant/appellant had not only participated in the Kebang proceeding held on 28.09.2021 at Giba headquarter under the Chairmanship of Sh. Pakyu Natam, Head GB, Natam village and deposed his statement/evidence but also submitted the above representation (Intimation cum Report on Kebang held on 28.09.2021) to the Circle Officer, Giba Circle, Upper Subansiri District, A.P objecting the impugned Keba decision of 28.09.2021.

From the above, it is not difficult to understand that the applicant appellant was very much aware of unfavourable impugned Keba decision passed by the Giba Circle Gaon Burah Association against him if not on the very day of 28.09.2021 but on immediate next day of 29.09.2021. As such, applicant/appellant ought to have resorted to the remedy available to him under law i.e. by filing an appeal before appropriate forum within permissible period of limitation but he has not availed the remedy available to him.

Further, from the condonation application, this court has also not come across any reason(s)/circumstances which might have prevented the applicant/appellant from filing an appeal against the aforesaid impugned Keba decision within appealable period.

In the given situation, this court has no option than to reject the condonation application. Accordingly, this BSR/IA-09/22 (condonation) filed in the BSR/CA-08/2022 is hereby dismissed and disposed of. "

19. In this case, as the substantial question of law has been framed, this Court is reluctant to get into the details of the merit of the appeal. The question before this Court is only relating to the period of limitation of the admission of appeal. It is trite law that the facts and circumstances of each case has to be considered while condoning the delay under Section 5 of the Limitation Act.

There ought to be sufficient cause for condoning the delay. Section 18 of the Arunachal Pradesh Civil Courts Act, 2021 (the Act of 2021, for short) reads:-
“The procedure prescribed in the Code shall, save in so far as is otherwise provided by this Act, be the procedure followed in all civil courts except the Customary Courts.

20. A bare reading of Section 18 of the Act of 2021 indicates that a Civil Court has to follow the procedure prescribed by the Code of Civil Procedure, 1908, whilst a customary Court is not required to follow the procedure of the Code. Thus, it can be deciphered that the spirit of the Limitation Act can be followed by a customary Court, but a Civil Court has to follow the procedure laid down by the Limitation Act.

21. The appeal, BSR/CA-08/2022 was filed before the Additional District Judge, Basar, Western Zone, Leparada District, Arunachal Pradesh, who is obligated to follow the proper procedure of law. This appeal filed was filed under Section 15 of Sub-Section (3) of the Act of 2021, against the impugned Kebang order dated 28.09.2021, passed by the Gaon Bura Association, Giba Circle, Upper Subansiri District of Arunachal Pradesh and the appeal was registered as BSR/CA-08/2022. It was observed by the learned Additional District Judge, Basar, that the appellant, instead of preferring an appeal before the appropriate forum, within the permissible period of limitation, has preferred an appeal at a belated stage, without sufficient ground. Although the substantial question of law No. 1, relating to the Limitation Act is in the affirmative, as the appeal was preferred before the learned Civil Judge, yet the second substantial question of law relating to the appeal is decided in favour of the appellant.

22. The substantial question of law No.2 is-

- ii) *Whether the amended provisions of Section 15 of the Arunachal Pradesh Civil Courts Act, 2021, has an application in the present case?*

23. Section 15 of the Act of 2021, reads as under-

15. Appeals etc.:

(1) Appeals from the decree or order passed by a Court of District Judge and Courts of an Additional District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.

(2) Appeals from the decrees and orders passed by a Court of Civil Judge (Senior Division) in original suits and proceedings of civil nature, shall when such appeals are allowed by law, lie to the Court of the District Judge of that district or in the Court of Additional District Judge where such Court exists or the High Court as the case may be.

(3) Appeals from the decree or order passed by a Court of Civil Judge (Junior Division) in original suits or proceedings of a civil nature shall, when such appeals are allowed by law, lie to the Court of Civil Judge (Senior Division) of the district.

Provided that, any appeal on civil suits pending in the Courts of Deputy Commissioner shall be disposed of by the concerned Deputy Commissioner(s) under the provisions of the Assam Frontier (Administration of Justice) Regulation, 1945 as expeditiously as possible but, not later than one year from the date of coming into force of this Act.

Provided further that, from the date of commencement of this Act, in case an appeal is preferred against the judgement of Customary Court in the Court of District Judge or in the Court of Additional District Judge as the case may be, the Court of District Judge or the Court of Additional District Judge, may dispose of the same or proceed with the case de novo.

24. A bare reading of the Act of 2021 clearly indicates that the present appeal lies in this Court and was thus, admitted for hearing. The order dated 30.09.2022 has been impugned by the appellant as delay was not condoned. The order was passed by the learned Additional District Judge, without even calling for the records from the Office of the Circle Officer. The learned Additional District Judge failed to appreciate that the copy of the order dated 28.09.2021 was never furnished to the appellant. The appellant who is representing his clan has submitted that the members of his family/clan are laymen and they were not privy to the order dated 28.09.2021 and they were induced into receiving a copy of the order and were thus, not privy to the Keba decision which was passed against them.

25. It was submitted by the respondents that, as an appeal is a continuation of the original proceeding and the procedure of CPC is not applicable and so, the Limitation Act is not applicable in letter and spirit. At this juncture, I am not inclined to go into the merits of the appeal. The core question is whether the

appellant has sufficient grounds for condonation of delay.

26. The learned counsel for the respondents laid stress in his argument that the first Keba decision against the Mengnia clan was on 06.05.2001 and after three years, i.e., in the year 2003, the members of the Mengnia clan filed a complaint before the EAC. The second Keba decision and order on 28.09.2021 was passed and the appellant's clan were well aware of the decision. They have participated in the meeting. Instead of preferring an appeal against the order dated 28.09.2021 before the competent authority, the appellant's clan submitted a representation. Without exhausting the remedies. Thereafter, the appellant's clan filed a fresh title suit, which was dismissed on the grounds of *res judicata*.

27. The respondents have prayed to dismiss the petition and it has been stressed and emphasized by the learned counsel for the respondents that as the appeal is pending before the Additional District Judge, the procedure under the CPC as well as under the Limitation Act, has to be meticulously followed.

28. Reverting back to this case, I would like to reiterate that the intention of the Limitation Act is to promote substantial justice, which is paramount and pivotal and technical consideration should not be given undue emphasis. If there is gross negligence or lack of bonafides, an application for condonation of delay can be rejected. It has been held in ***Collector Land Acquisition v. Mst.***

Katiji & Ors.; reported in **(1987) 2 SCC 107**, that-

“3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.”

29. In this instant case, at this juncture, I would not like to comment on the merits or demerits of the appeal registered as BSR/CA-08/2022.

30. In the light of the decision of Hon'ble the Supreme Court in ***Collector Land Acquisition's case (supra)***, the impugned order dated 30.09.2022, passed by the learned Additional District Judge, Basar, in Case No. BSR/IA-09/2022, so far as the prayer for condonation of delay was rejected, is hereby set aside. This order will be limited only relating to the condonation of delay in preferring the appeal.

31. No order as to cost(s).

32. Send back the LCR.

JUDGE

Comparing Assistant