



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

Case No. : RSA/5/2022

1: Tago Kochung and 2 Ors.
S/o - Late Lingdung Kochung
R/o - Yorko Village, P/O-P/S - Mechuka, District Shi-Yomi, Arunachal Pradesh.
Ph 8798116535

2: Tumdung Kochung
S/o Late Tatum Kochung
R/o - Yorko Village P/O-P/S - Mechuka District Shi-Yomi Arunachal Pradesh.

3: Tagin Kochung
S/o Late Tachuk Kochung
R/o - Yorko Village P/O-P/S - Mechuka District Shi-Yomi Arunachal Pradesh

VERSUS

1: Shri Bojen Kochung and 4 Ors.
S/o Late Lera Kochung,
R/o Yorko Village, P/O-P/S Mechuka, District Shi-Yomi, Arunachal Pradesh.

2: Pasang Kochung
S/o Late Dawa Kochung
R/o - Yorko Village P/O-P/S - Mechuka District Shi-Yomi Arunachal Pradesh.

3: Dajen Kochung
S/o Late Daw Kochung
R/o - Yorko Village P/O-P/S - Mechuka District Shi-Yomi Arunachal Pradesh.

4: Gebu Onge
S/o Sri Norsang Onge
R/o - Dechentheng Village P/O-P/S - Mechuka District Shi-Yomi Arunachal Pradesh.

5: Dawa Onge

S/o Sri Norsang Onge

R/o -Dechentheng Village P/O-P/S - Mechuka District Shi-Yomi Arunachal Pradesh

Advocate for the Petitioner : T T Tara, Mr.J.Jini

Advocate for the Respondent : Rintu Saikia

**BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of Hearing : 29.05.2023

Date of Judgment : 26.09.2023

JUDGMENT & ORDER (CAV)

- 1.** Heard Mr. J. Jini, learned counsel for the petitioners. Also heard Mr. R. Saikia, learned counsel for the respondents.
- 2.** This second appal is preferred u/s 15 of the Arunachal Pradesh Civil Courts Act, 2021 (the Act of 2021 for short) read with Section 100 and Order XLII of the Code of Civil Procedure, 1908 (CPC for short) against the impugned Keba Decision dated 29.10.2021 passed by the village level Keba Mechuka and impugned order passed by the Additional Deputy Commissioner, Menchuka dated 22.12.2021 and finally the impugned judgment and decree dated 27.09.2022 passed by the District Judge, Aalo in Civil Appeal No. 1/2022.
- 3.** Both the appellants and the respondents are parties in fray,

despite the fact that they belong to the same clan. The land in dispute is named after Ato Yorko the great grand-father of the litigants. The appellants assert that this Yorko land is divided into two parts and the old part is referred to as Kumrung/Yorko-I and the new Yorko land is known as Yorko-II. Kochung was the son of Ato Yorko and both the parties are descendents of Kochung. The four brothers [1] Chungpe [2] Chungyi [3] Chungjen and [4] Chungyor, sons of Kochung were living together at old Yorko-I/Kamrung land earlier. One fine day it was alleged by Chungyi, Chungjen and Chungyor that Chungpe, the great grand-father of the appellants had a relationship beyond marriage, with a woman. After such allegations, traditional oath performance was carried out by challenging the relationship. On account of the dispute, Chungpe – the great grand-father of the appellants could not stay together at Old Yorko/Kumrung/Yorko-I and he had to stay separately from his brothers and he left the ancestral land and property of Ato Yorko and shifted from Old Yorko/Kumrung/Yorko-I land to the present land in dispute i.e. the new Yorko/Yorko-II village. The Yorko-II land is the self acquired property of Chungpe i.e. the great grand-father of the appellants and the entire descendants of the Chungpe clan are the owners of the Yorko-II land. The respondent No. 1 is the descendant of another brother Chungyi who was the great grand-father of respondent No. 1 and who settled down at Mangang area. The respondent No. 1's father Late Lera Kochung became the Gaon Bura of Yorko-II land by staying at Mangang for 30 years. In the year 1984, Late Lera Kochung, respondent No. 1's father during his lifetime requested Late Tatum Kochung for adjustment of some residential plot of land as he was directed to leave Mangang i.e. Mangang village by Chukla and Goum clan of Memba tribe. The respondent No. 1 was adjusted in the land of Late Pudung Kochung at Yorko-II and thus the respondents now

cannot stake claim over land of New Yorko/Yorko-II village.

4. It is averred that the respondents have falsely claimed that the Yorko-II land is the land of their ancestors as they are descendents of the same ancestor. It is averred that the appellants have been in possession of the land for more than 50 to 60 years without any disturbance. A dispute suddenly erupted between appellant No. 3 Tagin Kochung and the respondent No. 1, Bojen Kochung over a plot of land admeasuring 3000 square meters (also referred to as the disputed land) at Yorko village and Bojen Kochung (respondent No. 1) filed a complaint dated 25.02.2021 before the learned Addl. Deputy Commissioner (ADC for short), Menchuka alleging that the Chungpe Clans (Appellants) have encroached into the undivided property of Kochung Ao Clan. On receipt of the complaint the ADC, Menchuka appointed:-

[1] Sri Babuk Rinya Advocate;

[2] Sri Tashi Philley, HGB of Dorjeeling village Mechuka;

[3] Sri Phurba TS Naksang GB Secy;

[4] Raju Diru, Ex-ASM

[5] Sri Penjor Rai, Ex-ASM;

on behalf of the respondent Nos. 1, 2 and 3; and

(i) Sri Renjen Tapir, HGB Karo Village,

- (ii) Sri Tagam Ruichi , GB Secy Tato,
- (iii) Sri Tachuk Ragyor, Ex-Chairman, Tagur Aao Society,
- (iv) Sri Tajen Diru, Ex-ASM Tato,
- (v) Sri Nehru Padu of Padusa village were nominated on behalf of appellants party as per the Assam Frontier (Administration of Justice) Regulation, 1945 (AFR 1945 for short).

5. It is pertinent to note that without any dispute between the appellants and the respondent Nos. 4 & 5, the respondent Nos. 4 & 5 had also joined in the dispute from the Memba clans, namely, Onge Clan and Ongbu Clan. The appellants then submitted a representation dated 17.04.2021 before the Kebang members, requesting not to include Onge Clan and Ongbu clan in the fray, as the dispute between the appellants and the respondent Nos. 1, 2 and 3 are regarding residential area at New Yorko/Yorko-II, whilst the dispute raised by respondent Nos. 4 and 5 was regarding the Yorko-II forest area/Gagi forest area. The respondent Nos. 4 and 5 were however made parties to the dispute.

6. On 17.04.2021 a Keba was fixed for hearing and on behalf of the respondents, only three members viz, Sri Tashi Philley, Sri Penjor Rai and Sri Raju Diru were present and on behalf of the appellants five members were present. The preliminary statements of both the parties were recorded and the board members directed the parties to submit supporting documents and thereafter the proceeding was adjourned *sine die*.

7. In the proceeding the respondent No. 1 deposed that the entire Yorko land belongs to the descendants of Ato Kochung's sons. He also submitted the documents written in Tibetan language in 1968 and 1988, and these documents are agreements supporting claim over the land in

dispute, but the aforesaid agreement was made in connection with the Old Yorko area. Their agreement was drafted and translated from Tibetan language to English language by Sri Tachuk Ragyor of Tagur village. The respondents further claimed that from Sorang Sokong to Jerung Sokong, the entire land belongs to Kochung clans. The Kochung clans have been in possession of the land with their dwelling houses thereon from the time of their great grand-father and the respondent Nos. 2 and 3 have asserted that they are also descendents of Ato Kochung clan being descendents of Chungyor and Chungjen and they too have rights over the Yorko land in question.

8. On the contrary, the appellants have deposed that the documents of agreement produced by Sri Bojen Kochung, Respondent No. 1 was executed during the time of land dispute between Kochung clans versus Sona and Chukla clans in connection with Kamrung/Yorko- I land in the year 1988. The appellants have further stated that the Old Yorko land is common ancestral land of the Kochung clans but the New Yorko/Yorko-II land is self-acquired land by their great grand-father. It was stated that the Yorko land was inherited landed property occupied by great grand-father of the appellants of Chungpe clans. It was not disputed that the respondent No. 1 was allowed to stay in the land at Yorko-II in the year 1984 and the appellants have not claimed the respondent Nos. 1's land. The respondent Nos. 1, 2 and 3's claim over Yorko land is not genuine as the appellants have been in occupation and possession of the land for eleven generations. No dwelling house or agricultural land or graveyard belonging to the respondent's ancestors is to be found in the Yorko-II village land.

9. On 07.06.2021 the appellants submitted a representation stating *inter alia* that the preliminary trial of the case through Arbitration process

u/s 38 of AFR, 1945 was initiated on the prayer of the respondents. After the enactment of the Act of 2021, Section 38 has been deleted and the appellants had prayed for recalling the earlier order. On receipt of the representation dated 07.06.2021, ADC, Mechuka dropped the arbitration proceeding vide Memo No. MK/JUD- 194/2021 dated 08.06.2021 and the ADC forwarded all the relevant documents submitted by the complainant and the respondents in connection with the land dispute of Yorko-II land for trial and disposal at village level. After the matter was remanded, several adjournments were made. Meanwhile, the Chairman of Kebang Sri Tashi Philley and the ADC, Mechuka have issued several restrain orders to the innocent villagers of the Yorko-II village against construction of any house in the village. On being prejudiced with the restrain order, the appellants through their learned counsel on 27.09.2021 served legal notice on the ADC, Mechukha stating inter alia that the ADC, Mechuka cannot take up new case as per the notification of 2014 issued by the government of Arunachal Pradesh, after the enactment of the Act of 2021.

10. It is contended that the ADC has no jurisdiction to take up new cases and the Chairman Sri Tashi Philley, who is the HGB of Dorjeeling village cannot take up any case of another village as per the Civil Court Act, 2021. Despite the legal notice, the ADC of Mechukha in connivance with Sri Tashi Philley passed the Kebang decision on 29.10.2021 without any authority of law and in absence of the parties.

11. It is contended that no Kebang was conducted under the Chairmanship of Sri Tashi Philley and the other Kebang members. The case of the parties was not heard since the last date fixed on 10.10.2021. On 27.12.2021, to their utter dismay, the appellants learnt about the impugned Kebang decision which was passed in favour of the respondents. The four

Kebang members without any authority of law divided the ancestral inherited land of the appellants according to their whims and fancies and arbitrarily apportioned and separated 30% of the land of the appellants in favour of the respondent Nos. 1, 2 and 3 and 40% of the land of the appellants in favour of the respondent Nos. 4 and 5 without hearing the parties. In the preliminary hearing on 17.04.2021, Sri Taka Tapo and Sri Kunsang Naksang were not present and they were not aware of the facts of the case but they have drafted the Kebang decision and pronounced the decision on 29.10.2021 without hearing the parties. They affixed their signatures on 10.11.2021. The impugned Kebang decision is liable to be set aside and quashed. Moreover, the impugned order No. MK/JUD-104(KKO)/2021 dated 22.12.2021 passed by the ADC, Menchukha was without any authority of law and is liable to be quashed and set aside as the order was passed in violation of Section 44 of the AFR, 1945. It is submitted that the appellants have land possession certificate (LPC) of the Yorko- II village recognized by the government. The appellant's livelihood depends on the jhum cultivation and kitchen gardening over the respective plot of land. The appellants have prayed to set aside the Kebang decision dated 29.10.2021 and the impugned order dated 22.12.2021 passed by the ADC, Menchukha. It is contended that the respondents have misinterpreted the agreement made in the year 1998 and the circular of the year 1996. The agreement and the Circular are relating to the land dispute with the Sona, Chukla and the Kochung clans in the year 1998 relating to Yorko-I land and not Yorko-II land.

12. Against the afore-mentioned Kebang decision and the order of the ADC, Menchuka the appellants preferred the Civil Appeal No. 1/2022 before the Court of the District Judge, Alo with prayers for quashing and setting aside the impugned decision and the order and with prayer for de

novo proceedings of the case. The respondents filed written objection in the Civil Court. The respondent Nos. 1, 2 and 3 filed written objection and additional documents by stating that the Yorko-II land is an ancestral property of all the Kochung descendants. The respondent Nos. 4 and 5 through a written statement contended that the appeal was hit by law of limitation and the appeal was not maintainable as the order dated 22.12.2021 was passed by the ADC, Mechukha is an administrative order and is appealable in the High Court. It was also submitted that this appeal is hit by the principle of res judiceta and estoppel as the matter has been settled between the parties vide agreement dated 04.09.1996. It is contended that the District Judge has not arbitrarily and mechanically passed the impugned judgment and order dated 27.09.2022 upholding the irregular Kebang decision dated 29.10.2021 and the order of the ADC, Menchuka dated 22.12.2021.

13. It has been averred by the respondents that the Kebang decision dated 29.10.2021 and the order of the ADC, Menchuka dated 22.12.2021 was appositely passed and so the District Judge did not interject into the order impugned by the appellants.

14. The following substantial questions of law were framed to decide this appeal:-

(a) *Whether a village authority of one village can adjudicate upon the dispute of another village as per Section 5 (1) and 40 Assam Frontier (Administration of Justice) Regulation, 1945?*

(b) *Whether Political Interpreter, Ex-Anchal Samity Member and Public Leader is a village authority as per Section 5(1) Assam Frontier (Administration of Justice) Regulation, 1945?*

(c) *Whether the statement given in the Arbitration proceedings can be relied in coming to conclusion to the*

proceedings of village authority as per Assam Frontier (Administration of Justice) Regulation 1945? Without recording the statement of witnesses by the village authority.

(d) Whether without any dispute, the respondent Nos. 4 and 5 was entitled to be impleaded in the Keba Proceedings?

SUBMISSIONS

15. It is averred by the learned counsel for the appellants that the impugned order dated 29.10.2021 was tentatively passed without hearing the parties and the signatures were affixed on a back date on 10.11.2021. The Kebang members never recorded any evidence in connection with the proceedings. On 10.10.2021 the case was fixed and the appellants and the other parties appeared before the Kebang members, but the Kebang members advised them to be present 11.10.2021, but even on that day, the Kebang members were not present. The appellants and the respondents submitted a joint petition for an opportunity to resolve the matter as per "Boka Ramos custom" rule. Since then no hearing was held and the impugned decision was taken in violation of the principles of natural justice. As per the Civil Court Act, 2021 the lowest Court is the customary court but in the present case the Kebang decision was made by a person without authority of law. Before the appellate court in Civil Appeal No. 1/2022 the appellant submitted additional documents indicating that the respondent Nos. 1, 2 and 3 are from Yorko-1 village and the respondent Nos. 4 and 5 are local inhabitants of Dechenthang village as per the official documents such as PRC, Election I-Card, BPL Ration Card etc. The District Judge arbitrarily and mechanically passed the impugned judgment and order dated 27.09.2022, despite acknowledging the issue raised by the appellant that Sri Tashi Philley, HGB of Dorjeeling village cannot take cognizance of the land dispute of Yorko-II village. This appeal

has been filed to quash and set aside the impugned Kebang decision, the order of the ADC as well as the judgment & order of the District Judge as the orders were passed ignoring Section 4 and 5 of the AFR 1945 which stipulates that only village authority of the same village can adjudicate and decide any dispute. In this case Sri Tashi Philley is the HGB of Dorjeeling village which is 11 kms away from Yorko-II village. The second Kebang member Sri Taka Tapo, the third member Sri Kunsang Naksang as well as the fourth member Sri Penjor Rai also did not have any authority of law to preside over the Kebang. Sri Penjor Rai is from Menchuka.

16. It was erroneously observed by the learned District Judge that proper hearing was conducted during the proceedings and the statements of the parties were recorded during the arbitration proceedings. It is also contended that the District Judge ignored the fact that Section 44(1) of the AFR was violated as the village authority did not conduct the proceedings in the open Darbar in presence of the parties and at least three independent witnesses. The District Judge had also ignored the fact about the land dispute between Kochung Versus Kochung. It is averred that the learned District Judge had arbitrarily applied the ratio of the decision in Shri Taken Pakam Lobom and Others Vs. State of Arunachal Pradesh and Others, which has no relevance to this present case.

17. The learned counsel for the respondents emphasised through his argument that no appeal lies against an administrative order passed by a DC in Court of the district Judge. An appeal against the order of the DC Menchuka dated 22.12.2021 lies in the High Court.

18. It is further contended by the respondents that the apportionment of the parcel of land in favour of the respondents has not been questioned by the appellants. It is further submitted that the Head Gaon

Burah Sri Tashi Philley was appointed as a member of the Kebang under the nod of approval of the appellants and now at this belated stage the appellants cannot raise objection regarding the presence of Sri Tashi Philley on the ground that he has no jurisdiction over the appellant's village. It is submitted that the appellant cannot blow hot and cold at the same time. No substantial question of law arises and the appellants cannot approbate and reprobate when the facts are not disputed, there can be no substantial question of law.

19. It has been vehemently denied by the respondents that the Kebang decision and the order of the ADC were passed in a clandestine manner without hearing the parties. The respondents have asserted that statements were recorded on 17.04.2021. The first complaint was made before the ADC on 25.02.2021 and the appellants have thus given their choice and preference relating to the members of the Kebang. The respondents have prayed to dismiss the appeal as admitted facts do not lead to substantial questions of law and a settled law cannot be a substantial question of law.

20. The respondents have relied on the decision of the Hon'ble Supreme Court in *Santosh Hazari Vs Purushottam Tiwari (Dead) by Lrs*, reported in *2001 AIR SCW 723* wherein it has been observed that:

".....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."

21. The respondents have relied on the decision of the Hon'ble Supreme Court in *Illoth Valappil Ambunhi (D) by Lrs Vs. Kunhambu Karanavan*, reported in *AIR Online 2019 SC 1237*, wherein it has been observed that:-

"10. What constitutes substantial question of law has been settled by innumerable decisions of this Court. Reference may be made to the Constitution Bench decision in [Sir Chunilal V. Mehta and Sons VS. The Century Spinning and Manufacturing Co. Ltd. Reported in AIR 1962 SC 1314.](#)

11. In Chunilal (Supra), a Constitution Bench of this Court held that the proper test for determining whether a question of law raised in the case is substantial would 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 an open question in the sense that it has not finally been settled by this Court or the Privy Council or 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 principle to be applied in

determining the question are well settled and there is mere question of applying those principles, or that the plea raised is palpably absurd, the question would not be a substantial question of law. In the aforesaid case, the construction of the Managing agency agreement was not only found to be a question of law, but also neither simple, nor free from doubt and accordingly the High Court was held to be in error in refusing to grant the appellant a certificate that the appeal involved a substantial question of law."

Kebang Decision

22. The Kebang decision dated 29.10.2021 marked as Annexure-1 of the petition clearly reveals that at the time of hearing, statements of witnesses of all the parties were recorded and the disputed land was verified. The inclusion of the Onge party was also noted down in the decision. It is true that the Kebang decision has notably relied on the claims and counter-claims regarding several disputes between both the parties which were finally withdrawn after a negotiation in the year 1996 and a Deed of Agreement was signed on 04.09.1996 by representatives of both the parties. It was held that the Yorko-II land cannot be held to be the land of the appellants based on the verbal/oral story of inheritance of the appellants. It was observed that the appellants and the respondents Nos. 1, 2 and 3 are descendants of a common ancestor. Thereafter 40% of the parcel of land out of the Yorko-II land was apportioned and carved out and awarded to the Ongbu/Onge party and thereafter 30% of the parcel of land was awarded to three sub clans, namely, Chungyi, Chungyor, Chungjen group. The document reflects that Sri Tashi Philley, HGB, Sri Taka Tapo, Sri Kunsang Naksang and Sri Penjor

Rai have affixed their signatures on 10.11.2021.

23. Pursuant to this impugned Kebang order, the ADC on 22.12.2021 passed the impugned order (Annexure-2), that:-

“The land dispute case of tri partite namely, Kochung, Kochung and Onge. The Kebang hearing was conducted by the village council at village level. After a detailed and prolonged hearings based on all relevant documents and witnesses, the village level Keba body have settled the dispute and subsequently submitted a decision of case to the undersigned for further action.”

24. On perusal of the case record it was found that the Keba body had followed all the procedures of the case hearings and the decision finalised by the village level Keba body seems justified to the nature of the case. Thereafter copies of the decision were endorsed to all the contesting parties for compliance and the case was disposed of with a relief of 30 days to prefer an appeal if the parties so desired.

Decision of the District Judge

25. Immediately after this order dated 22.12.2021 was passed, an appeal was filed by the appellants, which was registered as Civil Appeal No. 1 of 2002 and decided on 27.09.2022.

26. The learned District Judge spelt out sound reasonings while deciding the issues. It was held by the learned appellate Court that the issue is not barred by res judicata. It has surfaced from the documents and evidence on record that there were several disputes between the parties, but these disputes were settled between the parties. There were no earlier litigations in connection to these disputes. The settlements and declarations

between the parties have never been challenged and thereby the same shall be covered by the doctrine of estoppel at the appellate forum. It was also held that the appeal was not barred by the law of limitation as the Keba decision dated 29.10.2021 was endorsed by the ADC, Menchuka on 22.12.2021, whilst the appeal was filed on 13.01.2022, well within the period of limitation. It was also held by the learned District Judge that both the parties participated in the Keba proceedings and it cannot be held that the Keba Judgment was clandestinely passed without hearing the parties. It was also held that the Keba decision had not violated any mandatory provisions of law. The learned District Judge had endorsed the decision of the Keba, apportioning 60% of the disputed land in favour of the appellants and respondent Nos. 1, 2 and 3 and carving out 40 % of the parcel of land in favour of the respondent Nos. 4 and 5.

Consideration of submissions

27. The initial controversy whirls around the question of existence of any substantial questions of law. It has been vehemently and fervently argued by the learned counsel for the respondents that there exists no substantial question of law as suggested by the appellants. The learned District Judge has correctly upheld the Keba decision endorsed by the ADC. The Hon'ble Supreme Court has time and again held that when no arbitrariness or violation of any fundamental rights is discernible in the concurrent decisions of two forums, interference and interjection of the concurrent decisions in second appeal is not warranted. In the second appeal without dwelling into all the disputes relating to the lis, the first and second substantial questions of law already framed are taken up as follows:-

a) *Whether a village authority of one village can*

adjudicate upon the dispute of another village as per Section 5 (1) and Section 40 of AFR, 1945.

b) Whether Political Interpreter, Ex-Anchal Samity Member and Public Leader is a village authority as per Section 5(1) Assam Frontier (Administration of Justice) Regulation, 1945?

28. It has been held by the Hon'ble Supreme Court in *Sneh Lata Goel vs. Pushplata and Ors.*, reported in AIR Online 2019 SC 55, that-

"9. In assessing the merits of the rival submissions, it would, at the outset, be necessary to advert to the provisions of Section 21 of the CPC.

"Section 21(1) postulates that no objection as to the place of suing shall be allowed by any appellate or revisional court unless the objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled on or before such settlement, and unless there has been a consequent failure of justice.

6 AIR 1954 SC 340

7 (2005) 7 SCC 791

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisoinal Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by

any Appellate or revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

Sub-Section(1) of Section 21 provides that before raising an objection to territorial jurisdiction before an appellate or revisional Court, two conditions precedent must be fulfilled:

- i) The objection must be taken in the Court of first instance at the earliest possible opportunity; and*
- ii) There has been a consequent failure of justice.*

This provision which the legislature has designedly adopted would make it abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the Court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied."

29. It has been further held by the Hon'ble Supreme Court in ***Sneh Lata Goel's case (supra)*** that-

"17. The High Court has manifestly acted in excess of jurisdiction in reversing the judgment of the executing Court which had correctly declined to entertain the objection to the execution of the decree on the ground of a want of territorial jurisdiction on the part of the Court which passed the decree.

18. We have also not found merit in the contention that the impugned order of High Court, being an order of remand, is in the nature of an interlocutory order which does not brook any interference. By the impugned order, the High Court has directed the executing Court to entertain an objection to the validity of the decree for want of territorial jurisdiction. Such an objection would not lie before the executing Court. Moreover, the objection that the property at Ranchi did not belong to the common ancestor is a matter of merits, which if at all, has to be raised before the appropriate Court in the first appeal.

30. In the appeal, the arguments of the appellants that a Keba member, Shri Tashi Philley had no jurisdiction to take up the proceedings and hearings, as he was the Head Gaonbura of Dorjeeling Village, cannot be agitated at this juncture. It has emerged from the materials on record that all the Keba members were appointed by the ADC, Mechuka and the appellants have given their nod of approval when all the members were appointed. Then, in the first appeal, the appellants have raised their issue at a belated stage that one of the Keba members Shri Tashi Philley was biased and he has transgressed jurisdiction as he is the Head Gaonbura of a different village, i.e., Dorjeeling Village in Mechuka. It is manifest that when the decision went against the appellants they had raised this issue at the appellate stage. Moreover, the appellants have also contended that two other Keba members, Sri Kunsang Naksang and Sri Penjor Rai are not Gaonburas, but they are public leaders and Ex-ASM and they have no jurisdiction to decide any case of customary court /village authority as per Section 5 of the AFR, 1945.

Section 5 of the AFR reads:-

"5. (1) The Deputy Commissioner shall appoint such persons as he considers to be the members of a village authority for such village or villages as he may specify, and may modify or cancel any such order of appointment, and may dismiss any person so appointed.

(2) In any area for which no village authority has been constituted under the provisions of sub-section (1), the powers and functions of village authority as provided by this Regulation, shall be exerciseable and performed by the [Deputy Commissioner] or by any [Assistant Commissioner] authorized by him in this behalf.

31. A copy of the order of the ADC dated 10.03.2021, marked as Annexure-II in the Civil Appeal No. 1/2022, reveals that the ADC had appointed Shri Tashi Philley, Head Gaonbura and Shri Penjor Rai as Ex-ASM, Mechuka, as mediators to settle the dispute between the appellants and respondent Nos. 1, 2 and 3. Thereafter, vide letter dated 24.03.2021, 5 (five) more Keba members were appointed by the ADC. At that time, no objection was raised by the appellants against the inclusion of any of the Keba members agitating lack of jurisdiction. It is clear from the language of Section 5 of the AFR, 1945, that the ADC may appoint members of a village authority for such village or villages as he may specify, and modify or cancel any other order of appointment and may dismiss any person so appointed. It can, thus, be deduced that the appointment of Shri Tashi Philley was not agitated although he is alleged to be from a different village under Mechuka. There was provision for cancellation of such order of appointment but the appellants did not resort to any such modification or replacement of Tashi Philley or any other members of the Keba. Moreover, the members can preside for a village or villages. Dorjeeling village is only 10 kms away from Yorko village as stated, by the appellants.

It falls within Menchuka. Thus, it is palpably clear that Tashi Philley's appointment as one of the Kebang members is not dehors the statute.

32. I have also relied on the decision of the Hon'ble Supreme Court, quoted by the appellants in ***State of Rajasthan & Ors. Vs. Shiv Dayal & Anr., 2019 0 Supreme (SC) 875***, wherein it has been observed that-

"21. When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

22. In our opinion, if any one or more ground, as mentioned above, is made out in an appropriate case on the basis of the pleading and evidence, such ground will constitute substantial question of law within the meaning of Section 100 of the Code."

33. In the light of the decision of Hon'ble the Supreme Court, it is thereby held that in this instant case there indeed exists substantial questions of law.

34. The first and second substantial questions of law formulated in this appeal are decided in the affirmative. According to Section 40 of the AFR, 1945-

"The village authorities shall try all suits without limit of value, in which both the parties are indigenous to the Union Territory of Arunachal Pradesh and live within their jurisdiction and which are not

submitted to arbitration under the provisions of Section 38. All other suits which are not submitted to arbitration under the provisions of Section 39 shall be tried by the Deputy Commissioner or an Assistant Commissioner."

35. What can be deduced from Section 40 is that the village authorities shall try suits in which both the parties are indigenous to the union territory of Arunachal Pradesh and live within that jurisdiction and which are not submitted to arbitration under the provisions of Section 38. Under Section 40, it is required that the parties are indigenous to the Union Territory of Arunachal Pradesh. No requirement for a member to be a local resident of that particular locality (Yorko II in this case) has been carved out in Section 40 and for that matter, Section 38 of the AFR.

36. It is true that HGB of Dorjeeling village Ex ASM NPR were members of the village authority. Local GB's are the most suitable persons to constitute a village authority but the present village authority was a duly constituted village authority by the Addl. DC. Some villages may also be under the leadership of a single Gaon Burah. Thus the Keba including a Gaon Burah of a neighbouring village which is only 10 kms away, but within the same locality-Mechuka in this case, is not to be considered an irregular body or Keba.

37. In the wake of the foregoing discussions it is thereby held that the substantial questions formulated as questions [a] and [b] are decided in the affirmative.

38. The third substantial question of law is that-

(c) whether the statement given in the arbitration proceedings can be

relied in coming to conclusion to the proceedings of village authority as per the AFR? Without recording the statements of witnesses by the village authority.

39. In the State of Arunachal Pradesh, the Regulations, 1945 has empowered the local tribal councils to act as local Courts in their respective villages. The tribal council was given recognition in the statute book with the enactment of the AFR, 1945 and the newly enacted Act of 2021. Earlier, the hearings were normally conducted verbally and proceedings were not recorded properly. With the passage of time, the Keba proceedings are now recorded. Rule 44 (2) of the AFR, 1945 stipulates:-

44(2) The Deputy Commissioner or an Assistant Commissioner may direct a village authority to report their proceedings in any cases or class of cases in any way, which may appear to him to be suitable. Save as required by such direction, no record of any proceedings shall be maintained.

Thus, it is apparent that Keba proceedings are not required to be mandatorily recorded. Section 52 of the AFR, 1945 provides as under:-

[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, the principles of the Indian Limitation Act, 1908, in disputes between persons who are not indigenous to the [Union Territory of Arunachal Pradesh].

Thus, it is manifest that the Keba proceedings shall be guided by the spirit and shall not be bound by the letter of the CPC and as per rule 59 of the Regulations, 1945, all cases be it civil or criminal, will be guided by

the general principles of the Indian Evidence Act, 1872. Annexure-8 is the order of the ADC, Menchuka dated 16.04.2021, which clearly reveals that some Keba members were replaced as they were absent during the proceedings. Annexure-9 series are the statements of both the parties recorded on 17.04.2021, regarding Kochung versus. Kochung Land Dispute Case of Yorko village under Shi-Yomi District, with Reference No. MK/JUD-10-4/2020-21, which is manifest that it is the Keba proceedings. Perusal of the Annexures-10, 11 and 12 will reveal that the arbitration proceedings were held to resolve the dispute between the appellants and respondent Nos. 1, 2 and 3 and later, the respondent Nos. 4 and 5 were also impleaded as party to the proceedings. Although the proceedings of the Keba are not required to be recorded, the annexures to the Civil Appeal No. 1 of 2022 in the Court of the District Judge clearly reveals that the proceedings were recorded. It is true that there were several adjournments in the proceeding, but it cannot be held that the statements recorded in the proceedings by the village authority could not be relied upon. It cannot be held that the Keba decision was arbitrarily passed due to some procedural lapses on the part of the Keba members, who were appointed by the Deputy Commissioner on the approval of both the parties, have duly signed and sealed on the Keba decision dated 27.09.2021. It was appositely held by the learned District Judge that the Court had scrutinized those lapses in the procedures to cull out whether the procedural irregularities or lapses committed in the present case during the Keba trial had affected in any manner the merits of the case of the parties and had caused any prejudice to the parties, but the learned District Judge had found that no such prejudice or injustice were caused to the parties, because of those procedural lapses. It is also germane to note that a prayer was made to the DC by the complainants/respondent Nos. 1, 2 and

3 to refer the matter to arbitration. The ADC then constituted the village Authority- Keba. The decision dated 29.10.2021 was the decision of the Keba or Village Authority and the proceedings were Keba proceedings.

40. The fourth substantial question of law is:-

d) Whether without any dispute, the respondent Nos. 4 and 5 were entitled to be impleaded in the Keba proceedings.

41. It was submitted on behalf of the respondents that the appellants' claim cannot be accepted at its face value. It has been argued by the learned counsel for the respondents that the dispute between both the parties traces back to 1968. Another spurt of dispute arose in the year 1988 and thereafter in the year 1996, followed by 2014 and 2015 and in the year 2016. As such, at the initial stage, the plea of res judicata was taken up but which was not accepted. It is submitted on behalf of the respondents that the appellants have come up with a tall tale that there are two Yorko villages. There is only one Yorko village and there are no separate Yorko-I and Yorko-II villages. Respondent Nos. 4 and 5 belong to the Onge clan, whereas the appellants and the other respondents belong to the Kochung clan. It is submitted on behalf of respondent Nos. 4 and 5 that the appellants and respondent Nos. 4 and 5 had already settled the Yorko/Gogi land dispute in the year 1996 by executing a deed of agreement dated 04.09.1996, wherein the respondent Nos. 4 and others represented the Onge clan and the appellants' father, Late Lindung Kochung and others represented the Kochung clan. Again in the year 1977, the Philley clan tried to encroach over the Zering Sokong of Gagi/ Yorko Shah area and accordingly, the appellants' clan and the respondent Nos. 4 and 5's clan jointly contested against the Philley party and Keba was conducted and

decision was passed on 21.01.1997 and boundary was erected and the respondents' clan was provided land at Yorko/Gagi area as they are the land owners of the Yorko/Gagi area. Thereafter, in the year 1999, Sona clan and Chukla clan tried to encroach over the Tomzee and Singjong Phuj area of Gagi/Yorko land and at that time also, the appellants jointly with the respondent Nos. 4 and 5 fought together against the Sona and Chukla clans and lastly, agreement deed was executed amongst the parties on 16.09.1999. This deed has not been disputed by the appellants. The appellants have emphasized through their arguments that this land does not belong to the Yorko-II area. The land described by the respondents as their own falls under the Yorko-I area and it has been misconstrued that the respondent Nos. 4 and 5 are the owners of a portion of the Yorko land.

42. A close scrutiny on the materials available on record clearly reveals that the appellants have failed to ascertain and bifurcate the Yorko-I land and the Yorko-II land. The disputed land has always been referred to as the Yorko land and not Yorko-I and Yorko-II land. There was no specific demarcation relating to Yorko-I land and Yorko-II land brought on record. It is thereby held that the respondent Nos. 4 and 5 were indeed entitled to be impleaded in the Keba proceedings.

43. In view of the foregoing discussions it is thereby held that the appeal is devoid of merits. The substantial questions of law taken up in the appeal are all decided against the appellant. This Court is hesitant to refer to intricacies of the evidence. The evidence and the records were examined by the Keba as well as by the appellate Court. The appellate Court meticulously delved into the evidence, both oral and documentary. The Keba also recorded statements of witnesses which were taken into consideration. Scrutinising the concurrent findings of two fora it is held that

the Keba decision dated 29.10.2021 and the judgment dated 27.09.2022 in Civil Appeal 1/2022 does not warrant interference. I have carefully scrutinised the records and considered the arguments submitted on behalf of both the parties. It cannot be held that there was gross violation of any legal statutory mandate.

44. In view of my foregoing decisions relating to each substantial question of law, the appeal is hereby dismissed being bereft of merits.

No order as to costs.

Send back the LCR.

JUDGE

Comparing Assistant