

GAHC030001202021



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

Case No. : RFA/12/2021

Archan Chakma and Anr.
Kamalanagar - I, Chawngte C, Lawngtlai District

VERSUS

Lokhi Maya Chakma
Kamalanagar - I, Chawngte C, Lawngtlai District

Advocate for the Petitioner : Mr. C Lalfakzuala
Advocate for the Respondent : Mr. Samuel L Pachuau

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 12-05-2023

Heard Mr. C. Lalfakzuala, learned counsel for the appellants along with Mr. Samuel L. Pachuau, learned counsel for the respondent.

[2.] This is an appeal filed under Section 3 of the Assam High Court (Jurisdiction over District Council Courts) Order 1954 r/w Section 96 CPC in filing an appeal against the impugned Judgment & Order dated 06.01.2021 in Case No. 15/2020 passed by the learned District Council Court, Chakma Autonomous

District Council, Kamalanagar, Mizoram.

[3.] Brief facts of the appellants' case is that the appellant No. 2 was issued a landed property in the year 1980 covered by LSC No. 28/1980 and while she was in peaceful possession of the said land, the respondent constructed a house on the said plot of land, for which the appellant No. 2 had asked her son/Appellant No. 1, to dismantle the construction made by the respondent No. 1, stating that she was encroaching upon her land which was issued in the year 2018, within her Pass No. 28/2018 dated 23.10.2018. The respondent, on the other hand claimed that she had purchased the house site Pass No. 131/2018 from Bimal Chakma, the then VCP of Kamalanagar-III located at Kamalanagar-II near ICDS complex. She had constructed a house on the said plot of land which was forcibly dismantled by the appellant No. 1. The respondent then reported the matter to the Land Revenue & Settlement Department, CADDC, wherein the Senior Revenue Officer had issued a notice directing the appellant No. 1 to dismantle the constructed house, but till date the appellant No. 1 neither dismantled the house nor vacated the plot. Thereafter, the respondent approached the Court of Chakma Autonomous District Council, Case No. 15/2020 was registered on 26.06.2020.

[4.] The learned District Council Court heard both the parties by taking

evidence of both the parties on 14.07.2020 and a joint statement/spot verification was conducted by the Court along with a joint statement of the Mistiri and Jawalis as plaintiff (respondent in the instant appeal) witnesses.

[5.] The learned Court also mentions that the disputed plot of land was physically visited on 06.08.2020 and observed that no such land area to the tune of 5000 sq. meters was available under pass No.28/80 dt.23/10/1980, thereafter, directed the Land revenue and Settlement department for re-measurement of both the passes a report of which was received on 19/02/2018 and on 21/10/2020. Thereafter the learned trial court decided the matter in favour of the plaintiff/respondent, stating that from the measurement of the land of the defendant/appellant, there is no enough area to the tune of 5000 sq.mtrs as described in the LSC Certificate No. 28/80, which is WRC land of the appellant No. 2, Milani Chakma. The learned Court observed that it appears that the pass of the defendant/appellant No. 2 was whimsically issued without proper measurement. The learned Court also observed that the pass of the appellant No. 2 was issued on 23.10.1980 and was never re-measured during the last 40 years as required under the terms and conditions of Temporary Passes of CADC. Further, Section 5 (c) of the CADC (Land & Revenue) Act, 2002 extended boundary of 20 meters is not provided for WRC land in the town area observing that the Revenue & Settlement Department should have checked and

re-measured the plot of land of the appellant No. 2/defendant No. 2. That the land of the respondent No. 2 had not brought under regular cultivation as required under Sub-section 3 of Section 4 of the Chakma Autonomous District (Agricultural Land) Act, 1982. Similar to the pass of the petitioner some other passes have also been issued by the concerned authority adjacent to the pass of the respondent No. 2 but the respondent No. 2 have no issues with those passes.

[6.] Aggrieved by this Judgment & Order dated 06.01.2021, the instant appeal has been filed.

[7.] The learned counsel for the appellant mentions that the learned Court had accepted the verification report without verifying and examining the concerned Officer, who had submitted the verification report and therefore, the verification report itself has not been proved in the Court. The learned Trial Court erred in relying on this verification report which has not been proved.

[8.] The learned counsel for the appellant also submits that there is no issue framed by the learned Trial Court and therefore, the issue whether the respondent was encroaching upon the land of the appellant No. 2 has not been decided and no evidence taken thereof. He further points out that on perusal of the deposition of the witnesses, no oath has been administered upon the

witnesses as per Section 4 & 5 of the Oaths Act, 1969 and that there was also no confirmation as required under Section 5 of the Act. The learned counsel further submits that since the Revenue Department is the Issuing Department concerned, the issuance of the LSC and the WRC, they should be made a necessary party. He also submits that there is a maxim, i.e. *qui prior est tempore potior est jure* : he who is earlier in time is stronger in law.

[9.] The learned counsel for the respondent, on the other hand submits that there are no grounds to interfere with the judgment and order of the learned Lower Court, who has given the reason judgment mentioning the grounds as to why the Judgment & Order dated 06.01.2021 was not decreed in favour of the plaintiff. The learned counsel has led this Court to the deposition of the Ex-VCP namely, Mr. Bimal Chakma, who has explained in detail as to how the landed property of the plaintiff/respondent was initially issued to his daughter namely, Smt. Ratna Devi Chakma in 2015 and thereafter, it was purchased by the instant plaintiff/respondent. He also submits that nowhere in the statement of the witness does the land allegedly belonged to the defendant/appellant is mentioned. Nowhere in the verification report or the statement of the witness for the plaintiff/respondent is it mentioned that the land of the appellant/defendant is occupied or developed and it is not possible for the appellant/defendant to have land within the said area. He further

submits that the land of the appellant is only a WRC and therefore, the appellant cannot construct a house over the land which was issued to her for the purpose of cultivation. That, the appellant has no right to construct the building or house over the property of the plaintiff/respondent and this has been rightly observed by the learned Lower Court.

[10.] Mr. C. Lalfakzuala, learned counsel for the appellants, on the other hand rebuts this points stating that nowhere in the CADC Agriculture Land Act, 1982 had mentioned that there can be no construction over the land which is issued under the WRC. He further submits that it is nowhere mentioned that the land of the appellant was issued under the Agriculture Land Act, 1982. In support of his submission, the learned counsel has cited the case of *Union of India & 3 Ors. Vs. Sh. Lalawmpuia & 3 Ors.*, passed the Judgment & Order dated 18.08.2016 in RFA No. 29/2011.

[11.] I have heard the submissions made by both the parties and have also perused the judgment and order passed by the learned Judicial Officers in the Court of the District Council Court, Chakma Autonomous District Council, Kamalanagar, Mizoram in Case No. 15/2020 and the connected documents on record.

[12.] It is noticed that the learned Court had come to the conclusion

that “*the land of the respondent No. 2 had not brought under regular cultivation as required under Sub-section 3 of Section 4 of the Chakma Autonomous District (Agricultural Land) Act, 1982. Similar to the pass of the petitioner some other passes have also been issued by the concerned authority adjacent to the pass of the respondent no.2 but the respondent no.2 have no issues with those passes.*” However, on perusal of the evidence adduced by the parties, none of the witnesses have stated anything as mentioned above. It is also seen that the evidence of the witnesses is taken without administering oath or making any affirmation under sections 4 & 5 of the Oaths Act, 1969. Instead it is seen that a common deposition of the Mistiri and 2 nos. of Jawalis was recorded was the learned Trial Court. This Court also finds that the learned Trial Court has not dealt with certain issues like whether the appellant was having peaceful possession of the land till the respondent claimed the suit land as claimed or whether the passes of the rival parties overlapped each other or whether the WRC pass of the appellant is liable to be cancelled thereof while upholding the respondent’s LSC No. 131/2018 dated 19.02.2018.

[13.] It is noted that though the learned Court had recorded the statements made by both the parties, no issues were framed as per the provisions of Order 14 of the Civil Procedure Code.

[14.] The Code of Civil Procedure, 1908 of Order XIV states that:

"

(3) Each material proposition affirmed by one-party and denied by the other shall form the subject of distinct Issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend....."

[15.] The Apex court in **Makhan Lal Bangal v. Manas Bhunia,**

(2001) 2 SCC 652 : at page 662 held that

"19. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues, the disputes on which the two sides differ. The correct decision of civil is largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order 14 of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the court to

read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided."

[16.] The Bombay High Court in **Siddhi Chunilal vs. Suresh Gopkishan (2009 (6) BCR 855)** held that framing of issues is probably the most important part of the trail of a civil suit. For a correct and accurate decision in the shortest possible time in a case, it is necessary to frame the correct and accurate issues. Inaccurate and incorrect issues may kill the valuable time of the court. Only on laying down the foundation of the case with

proper issues, is it possible for the court to determine the path on which a trial should proceed and also guide the parties in adducing their evidence.

[17.] This Court, in view of the above observations, finds that, the framing of issues is the crucial part of the trial and thus it would be in the interest of justice, if the matter is remanded back to the learned Trial Court for framing of the appropriate issues from the pleadings/submissions made by both the parties, thereafter give the parties the opportunity to adduce their evidence as provided in sections 3 or 4 of the Oaths Act, 1969 and also give a fair opportunity to both the parties to cross examine the witnesses.

[18.] Accordingly, RFA No. 12/2021 stands disposed with the above directions.

LCR to be sent back forthwith.

JUDGE

Comparing Assistant