

GAHC020000482018



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

Case No. : RSA/1/2018

1. The State of Nagaland,
Rep. by the Secretary to the Government of Nagaland, Land
Revenue, Kohima, Nagaland
2. The Deputy Commissioner, Dimapur, Nagaland
3. The Additional Deputy Commissioner, Dimapur, Nagaland
4. The Medical Superintendent, Civil Hospital, Dimapur,
Nagaland

Appellants

VERSUS

1. Sri Chenio Lotha,
R/o Civil Hospital Colony, Dimapur, Nagaland
2. Sri Vantan Lotha,
R/o Overbridge Colony, Dimapur, Nagaland

Respondents

Before

Hon'ble Mr. Justice Mridul Kumar kalita

For Appellant (s) : Ms. V. Suokhrie, learned Additional
Advocate General

For respondent(s) : None appears

Date of hearing : 16.05.2023

Date of judgment : 30.05.2023

JUDGMENT AND ORDER (CAV)

(Mridul Kumar Kalita, J)

1. By order dated 16.05.2023, this appeal was directed to be heard *ex-parte*, under Order 41 Rule 17 (2) of the Code of Civil Procedure, 1908, as the learned counsel for the respondents failed to appear on consecutive dates, when this appeal was listed for hearing. Heard Ms. V. Suokhrie, learned Additional Advocate General, Nagaland for the appellants. None has appeared for the respondents.

2. This second appeal under Section 100 of the Code of Civil Procedure, 1908, has been filed by the State of Nagaland and three other appellants, impugning the decree and judgment dated 18.10.2017, passed by learned Principal District Judge, Dimapur in Civil Appeal No. 1/2015, whereby the judgment and decree dated 02.03.2015 passed by learned Civil Judge (Senior Division), Dimapur in Title Suit No. 1/2007 was set

aside.

3. At the time of admission of this regular second appeal (RSA), following substantial questions of law were formulated.

***a)** Whether the First Appellate court can reverse and set aside the judgment and decree of the trial court without discussing the issues and the evidences on the basis of which the reasoning and findings of trial court is based?*

***b)** Whether the wrong legal approach was adopted by the lower appellate court in deciding the Civil Appeal 01/2015 by referring only to the decision of the high court and discarding the entire evidence on which the finding of the trial court was based?*

***c)** Whether the impugned judgment and order dated 18.10.2017 which is not based on re-appreciation/discussion of evidence is a valid judgment in the eye of law?*

4. The case of the appellants, in brief, is as follows:

(i) That the present respondents, as plaintiffs, instituted a title suit bearing T.S. No. 1/2017 in Court of Civil Judge (Senior Division), Dimapur, Nagaland for declaration of title over suit land and for permanent injunction. The plaintiffs' case, in brief, is as follows:

a. That, by an order no. REV-28/89-D/1041-43 A/ dated 27.04.1992 issued by the Additional Deputy Commissioner, Dimapur, a plot of land measuring 0 Bigha 0 Katha 4 Lecha covered by Dag No. 415 and a plot of land measuring 0 Bigha 3 Katha 9 Lecha covered by Dag No. 416 in Block No. 6 (*total land measuring 0 Bigha 3 Katha 13 Lecha, hereinafter referred to as suit land*), was regularized/allotted in favour plaintiff no. 1 (*respondent no.1 of the present appeal*). It was contended that the

Plaintiff no.1 was in possession of suit land for about six years prior to said allotment.

b. Thereafter, the Plaintiff no. 1 was issued the jamabandi/patta no. 609, Dag no. 868 and 869 in Block no. 6, Mouza no. 1 of Dimapur town. Dag no. 868 covered an area of 0 Bigha 0 Katha and 4 Lecha while Dag no. 869 covered an area of 0 Bigha 3 Katha 9 Lecha.

c. The Plaintiff No. 1 gifted, to the Plaintiff No. 2 a portion of suit land measuring 0 Bigha 1 Katha 17 Lecha by a gift deed dated 15.11.1994. Later on by order dated 30.07.1995, said land was mutated in favour of Plaintiff No. 2 and the jamabandi/patta no. 619, Dag No. 881 in block no. 6, Mouza No. 1 of Dimapur Town was issued to the Plaintiff No. 2.

d. The Plaintiff No. 2 was in peaceful possession of the said land allotted to him, however, on 30.04.1997, the Medical Superintendent, Civil Hospital, Dimapur (*Appellant no. 4 in the instant appeal and Defendant no. 4 in the Title Suit No. 1/2007*) lodged a complaint against the plaintiffs to the Additional Deputy Commissioner, Dimapur against unauthorized allotment of land inside Civil Hospital compound.

e. The complaint filed by the Defendant no. 4 was examined by revenue authorities and the Defendant no. 4 was informed by letter dated 31.05.1997 that the land allotted to plaintiff under part of Dag No. 415 and 416

does not fall within the purview of the Civil Hospital, Dimapur which falls under Dag No. 418. However, the revenue authorities issued the order dated 03.06.1997 restraining the plaintiffs from undertaken any development activities on the land covered by Dag no. 415 and 416 till completion of spot verification.

f. Thereafter, at the behest of Plaintiff No. 2, the spot verification of the land was done on 23.03.2004 and by order dated 15.04.2004, issued by Additional Deputy Commissioner, the allotment of land under part of Dag No. 416 was affirmed and one Sri Chuba Ao, an employee of Defendant No. 4 was restrained from occupying the land lawfully allotted to Plaintiff No. 4.

g. Thereafter, the Plaintiff No. 2 gave one month time to Sri Chuba Ao to vacate the suit premises. He also filed an eviction petition before Deputy Commissioner, Dimapur on 15.04.2004.

h. Against the said eviction petition, the Defendant No. 4 submitted the representation to the Additional Deputy Commissioner, Dimapur (*Appellant no. 3 in the present appeal and Defendant no. 3 in the Title Suit*), who forwarded the said representations to the Secretary, Land Revenue Department, Government of Nagaland (*Appellant No. 1 in the present appeal and the Defendant no. 1 in the Title Suit*).

i. Thereafter, on 07.07.2004, the Defendant no. 1

conveyed to the Defendant no. 2 that the allotment made to the plaintiff is in violation of the Government's instructions, i.e., OM No. FIN-B/16-6/89(pt) dated 22.12.1973 and directed cancellation of the allotment. Pursuant thereto, the Defendant No. 2 issued order dated 06.09.2004 cancelling the allotment made to the Plaintiff No. 1 and subsequent mutation granted to Plaintiff No. 2.

j. The Plaintiffs challenged the order dated 06.09.2004 by preferring a writ petition, i.e., WP (C) 206 (K) of 2004 wherein by order dated 22.09.2005, this Court set aside the order dated 06.09.2004 passed by the Deputy Commissioner, Dimapur.

k. Thereafter, by order dated 13.04.2006, issued by Defendant no. 2, the allotment/regularization of land made to the Plaintiff No. 1 and subsequent mutation granted to the Plaintiff No.2 was cancelled. The plaintiff again preferred a writ petition, i.e., WP (C) No. 73 of 2006, which was disposed of by order dated 03.04.2007, directing the plaintiffs to approach competent Civil Court within a period of 30 days. Accordingly, the plaintiffs filed the Title Suit No. 1/2007.

(ii) The present appellants, as defendants contested the suit filed by the respondents, by filing written statement, wherein their main defence which was taken by them was that the Government of Nagaland by OM No. FIN-B/16-6/89(pt) dated 22.12.1973 has

imposed a ban on allotment of Government land without prior approval of the Government and therefore, the Additional Deputy Commissioner, Dimapur was not the competent authority to regularize/allot the government land to any individual including the Plaintiff No.1 without such approval. It was further contended that the land covered by Dag No. 416 and 418 reflected in *chitha* records/registers maintained by the office of the Defendant No. 2 shows the said land as hospital land. It was also contended that before regularizing/allotting the suit land in the name of the Plaintiff No.1, no notice inviting claims and objections was issued. It was also contended that the spot verification carried out by surveyor on 23.03.2004 was done without notice and at the back of Defendant No. 4. It was also contended that in terms of the order dated 29.02.2005 passed in WP(C) 206 (k) of 2004, Defendant no. 3 issued the summons to both the plaintiffs and thereafter, passed the order dated 13.04.2006 for cancellation of regularization/allotment of land made to Plaintiff No. 1 and subsequent mutation granted to plaintiff No.2.

5. The Court of learned Civil Judge (Senior Division) Dimapur framed following issues in Title Suit No. 1/2007:

- a)** Whether the present suit is maintainable in the present form?
- b)** Whether the land patta regularized by the plaintiffs falls under the present disputed land?
(Rephrased as "Whether the patta of the suit land regularized in favour of the plaintiffs falls within the land of Dimapur civil hospital"?)
- c)** Whether the plaintiffs are legally claiming the defendants' land and quarter?
- d)** Whether the defendants have abused the due process of law and violated the plaintiffs' right to natural justice in the suit?

e) Whether the plaintiffs are entitled to the relief(s) as prayed for?

6. It is contended by the appellants that the Court of learned Civil Judge (Senior Division), Dimapur, on the basis of evidence adduced by the parties decided all the above issues except the first one against the plaintiffs and dismissed the suit of plaintiffs. Being aggrieved by the judgment and order dated 02.03.2015 passed by the trial Court i.e., the Court of learned Civil Judge (Senior Division), Dimapur, the plaintiffs (respondents herein) preferred Civil Appeal No. 1/2015 before the Court of learned Principal District Judge, Dimapur, Nagaland. By judgment dated 18.10.2017 passed in Civil Appeal No. 01/2015, the Court of learned Principal District Judge, Dimapur, Nagaland set aside and reversed the judgment dated 02.03.2015 passed by the trial Court and being aggrieved by the said judgment of the first appellate court, this second appeal has been preferred by the present appellants.

7. Ms. V. Suokhrie, learned Additional Advocate General, Nagaland has submitted that first appellate court of learned Principal District Judge, Dimapur, Nagaland has failed to discuss any of the issues framed by the trial court in the title suit and also failed to discuss the evidence on record and based his judgment in appeal merely on wrong and erroneous understanding of the decision rendered by this Court in WP (C) 206 (K) of 2004 and WP (C) 73 (K) of 2006. Ms. V. Suokhrie, learned Additional Advocate General has further submitted that in the writ petitions, namely, WP (C) 206 (K) of 2004 and WP (C) 73 (K) of 2006, the High Court was called upon to decide as to whether the Notifications/Office Memorandum issued by the Government of Nagaland stipulating prohibition on allotment of government land without prior approval of state government was

sustainable or not and by the judgment and order dated 19.11.2010, it was held, *inter-alia*, that under Assam Land and Revenue Regulation, 1886 and rules made there under, the authority of Deputy Commissioner to make settlement and mutation of land cannot be divested by the state government by issuing Notification/Office Memorandum. Learned Additional Advocate General has submitted that the subject matter before the High Court in the afore-mentioned writ petitions and in the first appeal before the first appellate court were totally different. It is submitted that in the first appeal, the first appellate court was called upon to decide the correctness of the findings of the trial court in the suit which was decided on the basis of the evidence adduced by the parties against the issues framed by the trial court. It is submitted that the Court of learned Principal District Judge, Dimapur, Nagaland without referring to and without discussing the reasoning of the trial court has set aside the judgment of the trial court, solely on the basis of wrong understanding of the judgment dated 19.11.2010 passed by this Court in WP (C) 206 (K) of 2004 and WP (C) 73 (K) of 2006. Ms. V. Suokhrie, learned Additional Advocate General has also pointed out that recently this Court by judgment dated 13.05.2022, passed in Writ Appeal No. 06/2011 as observed that the power of Deputy Commissioner in granting allotment of land in terms of rules is subject to general or special order issued by the State Government and the OM No. FIN-B/16-6/89(pt) dated 22.12.1973 which has imposed a ban on allotment of Government land without prior approval of the Government also comes within purview of such a general or special order.

8. Ms. V. Suokhrie, learned Additional Advocate General has submitted

that the first appellate court was wrong in reversing and setting aside the judgment dated 02.03.2015 of the learned trial court without discussing the issues and the evidences on which the reasoning and findings of trial court was based. She has further submitted that the first appellate court was wrong in referring only to the decision of High Court in the writ petitions referred herein above and discarding the entire evidence on which the decision of learned trial court was based. Learned Additional Advocate General, Nagaland has also submitted that as the first appeal is a continuation of the suit, the first appellate court ought to have appreciated the evidence on record to arrive at a finding as to whether the judgment of trial court was correct or not, however, without doing so learned Principal District Judge, Dimapur, Nagaland passed the impugned judgment, hence, the same is liable to be set aside and interfered with in this second appeal.

9. I have considered the submissions made by learned Additional Advocate General, Nagaland as well as perused the materials available on record thoroughly.

10. On perusal of the judgment dated 02.03.2015, passed by learned Civil Judge (Senior Division), Dimapur, it appears that learned trial court had framed five issues for adjudicating the disputes between the parties, as discussed hereinbefore. It also appears that, during the trial, both the plaintiffs examined themselves as plaintiffs' witnesses and the defendants also adduced the evidence of three witnesses on their behalf. It also appears, while discussing issue no.2, learned trial court came to the finding, on the basis of evidence on record, that the suit land falls within the land of Dimapur Civil Hospital. Similarly, while deciding issue No. 3,

learned trial court made elaborate discussion of the oral as well as documentary evidence available on record, and thereafter, it came to the finding that before allotment/regularization of the suit land in favour of the plaintiff no. 1, prior approval of government was not obtained as mandated by Office Memorandum and accordingly, learned trial court upheld the impugned cancellation order dated 13.04.2006. Thus, it appears that the findings of the learned trial court on main issues, i.e., issue No. 2 & 3, were based on the evidence available on record and same were considered and discussed in the judgment delivered by the trial court.

However, if go through the impugned judgment dated 18.10.2017 of the first appellate court, it appears that the first appellate court, i.e., the Court of learned Principal District Judge, Dimapur has not appreciated the oral as well as documentary evidence, which was available on record, which was relied upon by the learned trial court for arriving at its findings on the issues framed by it.

As rightly stated by learned Additional Advocate General, Nagaland, the first appellate court, namely, the Court of learned Principal District Judge, Dimapur, relied mainly on the judgment of this Court passed in WP (C) No. 60(K)/2006 and WP (C) No. 31(K)/2006. However, learned Additional Advocate General has produced a copy of the common judgment dated 13.05.2022 passed in WA No. 6/2011, WA No. 34/2010, WA No. 35/2010 & WA No. 7/2011 whereby the judgment dated 19.11.2010 passed in WP (C) No. 60(K)/2006 and the judgment dated 01.10.2015 passed in WP (C) No. 31(K)/2006 has been set aside by this Court.

11. The powers of the first appellate court in appreciation of evidence and interference with the findings of the fact recorded by the trial court has been laid down by Hon'ble Supreme Court of India in "**Prasad Singh v. Gajadhar Singh**" reported in "**AIR 1960 SC 115**" wherein it was observed as follows:-

"14. The position in law, in our opinion, is that when an appeal lies on facts it is the right and the duty of the Appeal Court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the Trial Judge's conclusion that the evidence of a particular witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanour of the witness in Court. But, this does not mean that merely because an appeal court has not heard or seen the witness it will in no case reverse the findings of a Trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the Appeal Court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the Trial Judge and such considerations including the question of probability of the story given by the witnesses

clearly indicate that the view taken by the Trial Judge is wrong, the Appeal Court should have no hesitation in reversing the findings of the Trial Judge on such questions. Where the question is not of credibility based entirely on the demeanour of witnesses observed in Court but a question of inference of one fact from proved primary facts the Court of Appeal is in as good a position as the Trial Judge and is free to reverse the findings if it thinks that the inference made by the Trial Judge is not justified".

Thus, the first appellate court has to consider as to on what evidence the trial court came to its finding and for the said purpose, the first appellate court can re-appreciate the entire evidence oral and documentary, however, said power have to be exercised with proper care, caution and circumspection. Hon'ble Apex Court has observed in many of its rulings that when a finding of fact has been arrived at by the trial court by mainly by appreciating oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is materially erroneous, contrary to well established principles or perverse. In the instant case, the first appellate court, i.e., the Court of learned Principal District Judge has not appreciated the evidence which was available on record and on which the decision of trial court was based.

12. In view of what has been discussed herein above, this court is of the considered opinion that the first appellate court was not right in setting aside and reversing the judgment and decree of the trial court without discussing the issues and evidences on the basis of which the findings of

trial court were arrived at. This court is also of the opinion that the approach of the first appellate court in relying only on the judgment of this court in WP(C) No. 60(K)/2006 and WP(C) No. 31(K)/2006 [*which has been set aside and quashed by the common judgment of this court dated 13.05.2022 passed in WA No. 6/2011, WA No. 34/2010, WA No. 35/2010 & WA No. 7/2011*] was not correct. This court of the considered opinion that for the aforesaid reasons, the impugned judgment dated 18.10.2017 passed by the Court of learned Principal District Judge, Dimapur is erroneous and is liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered.

However, as this court is also of the opinion that it may not be appropriate to appreciate the evidence, adduced during trial stage which is available on record, by this court at the second appellate stage, the impugned judgment dated 18.07.2017 passed by the Court of learned Principal District Judge, Dimapur is hereby set aside and the matter is remanded back to the Court of learned Principal District Judge, Dimapur for rendering a fresh decision in Civil Appeal No. 1/2015 after appreciating the evidence available on record against each issue framed by learned trial court.

13. With the above observation, this Regular Second Appeal is accordingly disposed of.

14. Let the case record of Civil Appeal No. 1/2015, Title Suit No. 1/2007 and other connected files be sent back to the Court of learned Principal District Judge, Dimapur for doing the needful as directed herein above.

15. The parties are left to bear their own cost.

JUDGE

Comparing Assistant