

Serial No. 02 & 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MA(S) No. 1 of 2024 with
MA(S) No. 2 of 2024

Date of Decision: 20.05.2024

1.Shri. Amos Dkhar
S/o Shri Edwin Kyndait
R/o Longkaluh Village
East Jaintia Hills District, Meghalaya

2.Smti. Sngewbha Siangshai
W/o Shri. Amos Dkhar
R/o Laitumkhrach (Bhagyalakul), Shillong
East Khasi Hills District, Meghalaya

:::Appellants

-Vs-

Shri. Donush Siangshai
S/o (L) Koren Shyrmang
R/o Lad Rymbai
East Jaintia Hills District, Meghalaya

:::Respondent

1.Shri. Edwin Kyndait
S/o Shan Dkhar
R/o Longkaluh Village,
East Jaintia Hills District, Meghalaya

Additional Address:
Bhagyalakul, Laitumkhrach, Shillong
East Khasi Hills District, Meghalaya

2. Shri. Amos Dkhar
S/o Shri. Edwin Kyndait
R/o Laitumkhrah, Shillong
P.O & P.S: Laitumkhrah, Shillong
East Khasi Hills District, Meghalaya

:::Appellants

-Vs-

Shri. Donush Siangshai
S/o (L) Koren Shyrmang
R/o Madanriting, Shillong
P.S- Nongthymmai
East Khasi Hills District, Meghalaya

:::Respondent

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :	Mr. T.T. Diengdoh, Sr. Adv. with Mr. C.C.T. Sangma, Adv.
For the Respondent(s) :	Ms. B. Goyal, Adv. with Mr. S. Thapa, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. The instant appeals involving similar facts and a common question of law, for the sake of convenience are being disposed of by this common judgment and order.

2. The brief facts leading upto the present miscellaneous appeals are that the Respondent as Plaintiff had instituted two suits against the appellants herein, being T.S. No. 52 of 2017 and T.S. No. 53 of 2017 (since renumbered) in 2015. The appellants during the pendency of the suits had filed applications under Order 7 Rule 11 of the CPC, and the learned Trial Court vide order dated 11.02.2022, rejected the plaints of the Respondent/Plaintiff, on the ground that the Court had no jurisdiction to try the suits. This Court at that point of time, was then approached by the respondent by way of a Revision Application being CRP No. 7 of 2022, which was disposed of by order dated 06.06.2022, with a liberty given to the respondent herein, to file an appeal before the Judge, District Council Court. The respondent then preferred two miscellaneous appeals being MCA No. 10 and 11 respectively of 2022, before the Court of the Judge, District Council Court, who then by order dated 09.05.2023, allowed the appeals and set aside the order of

the Trial Court dated 11.02.2022. Against this order dated 09.05.2023, the appellants are now before this Court.

3. Mr. T.T. Diengdoh, learned Senior counsel assisted by Mr. C.C.T. Sangma, learned counsel for the appellants has submitted that the Judge, District Council Court had erred in law, in going against the law declared by the Supreme Court by holding that the Sub-ordinate District Council Courts, Khasi Hills Autonomous District Council, possessed jurisdiction to try the suits even though both the plaintiff and defendants belong to different districts, notwithstanding the fact that, the property was situated within the jurisdiction of the KHADC. The case of *Kyntiew Akor Suchiang vs. Woston Hynniewta & Anr.* reported in (2017) 13 SCC 488, has been cited to advance his contention that in the interpretation of Para – 4 of the Sixth Schedule to the Constitution of India, the Supreme Court has held that a District Council Court constituted for the purpose of deciding disputes, has jurisdiction in respect of tribals who belong to the Scheduled Tribe, within such area for which the District Council is constituted and would have no jurisdiction, where one of the parties belong to another area, which is under the jurisdiction of another District Council. The learned Senior counsel has further submitted that in the said judgment, it has

also been held that the Khasi Hills District Council Court, would have no jurisdiction to determine the dispute, which was between the wife, who belongs to a tribe of Jaintia Hills and the husband, who belonged to East Khasi Hills. He asserts that in this decision, *Kyntiew Akor Suchiang(supra)*, the Supreme Court had laid stress on the word ‘belongs’ and as such, even if a person resides within the jurisdiction of the KHADC, but belongs to another tribe of a different district, the said District Council would have no jurisdiction to try the suit.

4. The learned Senior counsel then submits that, the Lower Appellate Court has erred in law in relying upon Section 16 of the CPC, inasmuch as, the said provision of law begins with ‘subject to the pecuniary or other limitations prescribed by law... shall be instituted in the court within the local limits of whose jurisdiction the property situated’. This he contends has limited the application of Section 16, due to the existence of Paragraph-4 of the Sixth Schedule to the Constitution of India and the law laid down by the Supreme Court. The issue he submits is no longer ‘res integra’ as this Court is bound to follow the law laid down by the Supreme Court, in terms of Article 141 of the Constitution, and the fact that the suit property is situated in Shillong, will not confer jurisdiction upon the District Council Courts

at Shillong, once it is established that either of the parties belong to another area, which is under jurisdiction of another District Council Court.

5. It has also been submitted that a perusal of the plaint will indicate that the appellant is a resident of East Jaintia Hills District, so also the respondent, meaning which, both the parties in the suit belong to the area under jurisdiction of the Jaintia Hills Autonomous District Council, and in view of the prohibition as contained in paragraph-4 of the Sixth Schedule to the Constitution of India, read together with the case of *Kyntiew Akor Suchiang(supra)*, it is the normal courts of East Khasi Hills, which can possibly have the jurisdiction to entertain the suit and not the District Council Courts, KHADC. With regard to the fact that, the challenge to jurisdiction has been made belatedly, he submits that it cannot be said that the appellants have waived their rights, inasmuch as, it is a settled principle of law that any order or decree passed without jurisdiction is nullity. He lastly submits that, the learned Lower Appellate Court in passing the impugned order has clearly ignored the law laid down by the Supreme Court, and as such, the impugned order is liable to be set aside.

6. Ms. B. Goyal, learned counsel for the respondent in reply while supporting the legality of the impugned order, has submitted that the appellant/defendant when filing the written statement, never took any plea with regard to jurisdiction and has submitted to the jurisdiction of the Trial Court, and only after a considerable period of time, after the institution of the suit, had raised the plea. The property in dispute she submits, falling within the territorial limits of the District Council Courts of Shillong, even assuming that both the parties belong to Jaintia Hills, the same shall have no bearing to the extent that they are both tribals from the State of Meghalaya. Rule 18 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules 1953, she submits covers the case of the parties as it provides that, a Sub-ordinate District Council Court shall be competent to try all civil suits not triable by a village court, in which all the parties reside or hold land within its jurisdiction and if any immovable property is in dispute, the said property is also situated within the same. She therefore submits that, if immovable property in dispute falls within the jurisdiction of the concerned District Council Court, it will have jurisdiction to try the suit and therefore, as the property in dispute in the present suit is located in Shillong, it is the court of the District Council Courts at Shillong that are competent to try the same.

7. It is further submitted that the two judgments relied upon by the appellant, i.e. *State of Meghalaya vs. Richard Lyngdoh* reported in *2006 2 GLR 328* and *Kyntiew Akor Suchiang(supra)* are not applicable in the facts of the present case. The learned counsel has placed reliance on the judgment in the case of *Dr. Shah Faesal & Ors. vs. Union of India* reported in *(2020) 4 SCC 1*, where she submits, it has been held that, judgments cannot be interpreted in a vacuum separate from the facts and context, and that observations made in a judgment cannot be selectively picked in order to give them a particular meaning. She therefore submits that, the appeals are misconceived, untenable in law, and are liable to be dismissed.

8. Heard the learned counsel for the parties. As can be culled out from the submissions, the only point in question to be determined in these instant appeals is whether the suit is maintainable before the District Council Courts at Shillong, in view of the assertion of the appellant that, as both the appellant and the respondent belong to Jaintia Hills, hence, the same should be relegated to the ordinary Civil Courts, inspite of suit property being located in a tribal area. The impugned order passed by the learned Judge, District Council Court, Shillong, has also been called into question, on the ground that the law

as laid down by the Supreme Court has not been followed, and that the mere situation of the suit land within the jurisdiction of the District Council Courts, Shillong, would not confer jurisdiction on the said courts, in view of the specific provisions of the Sixth Schedule to the Constitution of India.

9. At this juncture, it would therefore be apt to examine the law as laid down in the case of *Kyntiew Akor Suchiang(supra)*, wherein the Supreme Court has held that the District Council has jurisdiction only in respect of tribals, who belong to Scheduled Tribe within such area for which the said District Council is constituted and would have no jurisdiction where one of the parties belong to another area which is under the jurisdiction of another District Council. In the said case, the dispute was between a wife belonging to Pnar Tribe and a resident of Jowai, under the jurisdiction of the Jaintia Hills Autonomous District Council and husband belonging to East Khasi Hills District, under the jurisdiction of the Khasi Hills Autonomous District Council. The Supreme Court while quoting Paragraph – 4 of the Sixth Schedule, then remanded the matter to the Court of the District and Sessions Judge at Shillong, for disposal on the finding that the appellant and the respondent therein, belong to different districts. Reference may also be

made to the judgment of *State of Meghalaya vs. Richard Lyngdoh(supra)*, wherein the earlier jurisdictional High Court had on a similar question concluded that the jurisdiction of the District Council Courts, will extend in civil matters, if all the parties belong to Scheduled Tribes and all such persons must belong to the same district council, meaning if the two persons belonging to the Scheduled Tribe came from two different areas, the District Council Courts will have no jurisdiction.

10. Of the two above noted cases, the former i.e. *Kyntiew Akor Suchiang (supra)*, was with regard to the claim for maintenance with the acknowledged fact that, both the appellant and the respondent therein belonged to different districts. In the latter case, i.e. *State of Meghalaya vs. Richard Lyngdoh(supra)*, the judgment was rendered on the subject of jurisdiction with regard to criminal cases, though a finding was also rendered on jurisdiction with regard to civil matters, which was referred to in *Kyntiew Akor Suchiang (supra)*. The law laid down in the interpretation of Paragraph – 4 of the Sixth Schedule, is therefore clear and unambiguous, that if the Scheduled Tribe persons belong to different districts, then the District Council Courts would cease to have jurisdiction to try the matter.

11. In the instant case, the suits were instituted as far back as on June, 2015, and the applications as per Order 7 Rule 11 CPC, were filed in August 2019, after written statements had been filed and the matter had proceeded. As noted from the impugned judgment, the question regarding jurisdiction was never raised at an earlier point of time, but was agitated after much time had elapsed. It is also noted that, in the applications under Order 7 Rule 11 preferred by Shri. Amos Dkhar, in renumbered T.S. No. 53/2017 (Old T.S. No. 9/2015), as also the written statement of both the defendants therein, the addresses given in the written statement, as also in the Order 7 Rule 11 application of the appellant No. 1, is shown as Bhagyakul, Laitumkhrach, Shillong, East Khasi Hills District. Similarly, in renumbered T.S. No. 52/2017 (Old T.S. No. 10/2015), in the application under Order 7 Rule 11, which was preferred only by the appellant No. 2 and not by the appellant No. 1, the address shown therein was the same as in T.S. No. 53/2017, i.e. Bhagyakul, Laitumkhrach, Shillong, East Khasi Hills District. The plaintiff, respondent herein, is also a resident of East Khasi Hills, Shillong, as can be seen from the plaints and replies filed in the Order 7 Rule 11 applications. As such therefore, the appellants except for appellant No. 1 in MA(S)No. 2 of 2023, who however has not filed any application

challenging the jurisdiction of the District Council Courts in Shillong, are all residents of East Khasi Hills under the jurisdiction of the Khasi Hills Autonomous District Council.

12. Paragraph – 4 of the Sixth Schedule, has provided that the District Council would constitute Courts for a trial of suits and cases between the parties, all of whom belong to Scheduled Tribes within such areas, and the District Council in exercise of such powers conferred under Paragraph – 4(4) had enacted the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules 1953, which came into force on 7th January 1954. It is to be noted at this point, that for the Khasi and Jaintia Hills, a single District Council had been constituted and the same continued as such, till the creation of a new autonomous district comprising the Jowai Sub-division of the erstwhile the United Khasi-Jaintia Hills District w.e.f. 1st December, 1964. The Administration of Justice Rules therefore, as also other Acts, Rules and Regulations made by the United Khasi-Jaintia Hills District Council, continued to apply to the new autonomous district as provided by the Jowai Autonomous District (Administration) Act, 1967. Essentially therefore, the Khasis-Jaintias belong to the same race, by ethnicity, share a common origin and kinship ties and perhaps it was on

this consideration that a single district council was constituted initially by which they were governed by.

13. In coming to the jurisdiction aspect of the present case, the Administration of Justice Rules, 1953 at Rule 18 had provided as follows.

“18. Subordinate District Council Court to try civil suits and criminal cases- Subject to rules 19, 20 ad 21, a Subordinate District Council Court shall be competent to try (i) (a) all civil suits not triable by a Village Court in which all the parties reside or hold land within its jurisdiction and if any immovable property is in dispute and the said property is also situated within the same; (b) all criminal cases not triable by a Village Court in which the offence is committed within its jurisdiction; and (ii) to hear appeal from Village Courts.”

14. A perusal of the above quoted Rule shows that, it covers parties ‘who reside or hold land’ within the jurisdiction of any Subordinate District Council Court, which would therefore, be applicable in determining the issue in the instant case, as opposed to the cited case of *Kyntiew Akor Suchiang(supra)*, wherein origin and residence of the parties therein was not in question. The facts of the instant case being peculiar to itself therefore, demands that the application of prevalent law be applied taking these facts into

consideration. As observed earlier, the appellant who had preferred the application under Order 7 Rule 11, by his own admission, had shown himself to be a resident of East Khasi Hills, as also the plaintiff whose residence was also in East Khasi Hills. The suit property also being situated within East Khasi Hills, it can safely be held that, the Khasi Hills Autonomous District Council Courts will therefore possess jurisdiction to try the suits in question.

15. It may be noted here that, the State of Meghalaya by notification dated 20.09.2022, has applied the provisions of the Code of Civil Procedure 1908, to the Courts in the State of Meghalaya, with the provision however, that the District Council Courts shall continue to derive powers under Paragraphs – 4 and 5, of the Sixth Schedule to the Constitution of India. In the considered view of this Court, though the regular courts in Meghalaya, would be required to try the cases as per the procedure laid down in the CPC, and not under the Administration of Justice Rules, 1937, the District Council Courts would still continue to derive powers under Paragraphs – 4 and 5 of the Sixth Schedule, and as such, not bound by the letter of the CPC. As such, reliance or recourse to the application of Section 16 of the CPC in the instant case, will not be necessary, as the same would be only in spirit and the

effective provision for determination of place of institution of a suit would be Rule 18 of the Administration of Justice Rules, 1953.

16. As a footnote to clarify the position with regard to the specification 'all of whom belong to Scheduled Tribes within such areas' given in Paragraph – 4 of the Sixth Schedule, in the context of the present case, this expression, if viewed in the perspective of the location of the Khasi and Jaintia people, who though shown to be different tribes are essentially part of the people known as 'Hynniewtrep', no specific interpretation can be given, inasmuch as, they inhabit both the Khasi and Jaintia Hills, and as such, in the considered view of this Court, place of residence can be taken to be a reasonable and accurate yardstick, in such cases.

17. From what has been discussed above, in the considered view of this Court, the objection to jurisdiction as raised by the appellants is not sustainable due to the peculiar facts and circumstances of this case. As such, this Court deems it not necessary to relegate the parties to the regular Courts. Further it may be added this finding, has been arrived at keeping in mind the object and intent of the Sixth Schedule to the Constitution of India, in providing for such Courts under Paragraph – 4 thereof, and the purpose for which they have been established, which is

to adjudicate matters between tribals. These Appeals therefore fail and are accordingly dismissed.

18. As the Title Suits have been pending for long many years, the Trial Court is to immediately take up these matters on a war footing and ensure expeditious disposal.

19. Parties to put to notice to appear before the Trial Court on 10th June, 2024.

Judge

Meghalaya
20.05.2024
"D.Thabab-PS"