



Serial No.
01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

SA No. 2 of 2022

Date of Decision: 11.11.2024

Smti. Santimai Muthliang Bhoi
D/o (L) Atilma Muthliang Bhoi
of Mawiong Mawlai, Shillong
East Khasi Hills District, Meghalaya

:::Appellant

-Vs-

Smti. Judy Muthliang Bhoi
D/o(L) Alma Muthliang Bhoi
of Damsite, Umiam P.S,
Ri-Bhoi District, Meghalaya

:::Respondent

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. A.S. Siddiqui, Sr. Adv. with
Ms. A. Kharmyndai, Adv.
Mr. D. Hynniewta, Adv.

For the Respondent(s) : Mr. K. S. Kharshiing, 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 Second Appeal has been preferred against an order of the Lower Appellate Court dated 30.06.2021, whereby judgment and decree passed by the Learned Trial Court dated 03.11.2015, passed in Title Suit No. 3 of 2004, has been upheld. The brief facts are that the appellant's grandmother one (L) Anaperial Bhoi (Muthliang), had purchased the suit property at Mawiong Umjapung, Shillong, which on her demise became the subject matter of dispute between the appellant's mother (L) Atilma Muthliang Bhoi and her siblings namely (L) Alma Muthliang, Martilda Muthliang and Manly Muthliang. A suit was instituted in 2004, by Smti. Alma Muthliang, against the mother of the appellant and the same was decreed by judgment and decree dated 03.11.2015, in favour of the plaintiffs, wherein amongst 18 other issues, the Trial Court held that the mother of the appellant was liable to be evicted from the suit property. While the suit was pending, the Plaintiffs No. 1 and 2 expired, and during this period the Trial Court by judgment and decree dated 03.11.2015, decreed the suit in favour of the plaintiffs. Against the judgment decree, the appellant who is the daughter of (L) Atilma Muthliang Bhoi, preferred an Appeal before the Court of the Judge, District Council Court, which was numbered as Title Civil Appeal No. 10 of 2015. During the course of the



said appeal, the present respondent i.e. daughter of Judy Muthliang Bhoi, substituted herself in place of her late mother. The Lower Appellate Court then upheld the Trial Court judgment and findings, and dismissed the appeal. The decree was ultimately executed on 25th April, 2022, and the appellant was evicted from the said property.

2. When the matter had come up for admission and on the submissions of the learned counsel, the following substantial questions of law were framed on the inputs received from the parties.

- 1) Whether under the Khasi customary law a sister of the youngest daughter and her daughter is entitled to use and occupy the ancestral property?
- 2) Whether under the Khasi customary law a sister and/or her daughter who are in use and occupation of the ancestral property and have no other property can be evicted by the youngest daughter?
- 3) Whether the youngest daughter is a mere custodian and not the absolute owner of the ancestral property?
- 4) Whether the youngest daughter is entitled for a decree of eviction of the other sister/and or their daughter, specialty when they are in occupation of the ancestral property and not the youngest daughter?



- 5) Whether an un-codified Custom is a question of fact which requires to be proved by cogent evidence?
- 6) If not codified, whether the concurrent findings of the Learned Trial Court and that of the First Appellate Court below on the questions of fact can be interfered with in the second appeal?

3. Before advertng to the submissions made by the learned counsel, the Court is to examine whether issues had been framed, which would have covered the grounds as sought to be made out in the Appeal before the Lower Appellate Court and the instant Appeal before this Court. The Trial Court as seen from the records, had framed 18 issues, which are reproduced herein below.

1. Whether the suit is maintainable in its present form?
2. Whether the plaintiffs has any cause of action to file the instant suit?
3. Whether the plaintiffs has any locus standi to file the instant suit?
4. Whether the suit is barred by the principles of estoppel, waiver and acquiescence?
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?
6. Whether the suit is properly valued and requisite court fee has been paid?
7. Who are the children of **(L) Ka Anaperial Muthliang Bhoi**?
8. Whether **(L) Ka Anaperial Muthliang Bhoi** was the owner of a plot of land situated at? What are its boundaries?



9. To whom did **(L) Ka Anaperial Muthliang Bhoi** has handed over the original sale deed dated **21.04.1984** and **patta deed dated 24.03.1980** relating to the suit property to look after and manage the same? Whether the same was done with the knowledge and consent of all her children?
10. When and where did **(L) Ka Anaperial Muthliang Bhoi** died? Who took care of her during of her lifetime and who performed her last rites and ceremonies?
11. Whether **(L) Ka Anaperial Muthliang Bhoi** had during her lifetime given the suit property to **(L) Ka Atilma Muthliang Bhoi**?
12. When and where did **(L) Ka Atilma Bhoi** died?
13. Whether **(L) U Manly Muthliang Bhoi** died a sudden death? Who looked after him during his lifetime and who performed his last rites and ceremonies?
14. Whether the Defendant can mortgage the suit property without the knowledge and consent of all the children of **(L) Ka Anaperial Bhoi**? If not, whether the same is liable to be cancelled?
15. Whether the **deed of Declaration** dated **31/07/2002** is liable to be cancelled and declared as null and void?
16. Who is entitled to inherit the suit property according to Khasi Custom?
17. Whether the defendant is liable to be evicted from the suit property?
18. To what relief/reliefs are parties entitle to?



4. From a perusal of the above-mentioned issues, it can be seen that with regard to inheritance and eviction from the suit property on which the substantial questions appear to emanate from, the same are contained in issues No. 16 and 17 thereof. Accordingly, these two issues set against the questions as framed will have to be examined as to whether any substantial question of law has arisen. At this juncture it is to be noted that while adjudicating second appeals, it is important to keep in mind that for a question of law to be substantial, the same must be debatable, not previously settled by law or precedent, and must have a bearing on a decision of the case and on the rights of the parties. Further, to be a question of law, a foundation for the same must exist in the pleadings and the question should emerge from the findings of fact arrived at by the Courts below, and that the same be necessary to be decided for a just and proper adjudication.

5. The instant appeal has been preferred from the concurrent findings of the Courts below, wherein on the findings of fact, both the Courts below had decided the matter in favour of the respondent, first, in issue No. 16, whereby it is held that as per Khasi custom, ancestral property should be inherited by the youngest daughter of the family and inheritance be only from the line of the youngest daughter, the same to which has also been admitted by the defendant No. 3(mother of the appellant) in her cross-



examination. Secondly, on issue No. 17, the Lower Appellate Court had upheld the findings of the learned Trial Court and had also digested issues No. 7, 8, 9, 11, 14, 15 and 16 in coming to the said findings, wherein the Trial Court while deciding this issue had come to a finding that the suit property was neither gifted or alienated to the defendant No. 3(mother of the appellant), and further, the suit property was entitled to be inherited only by the direct descendants of the original deceased owner, who was the plaintiff.

6. From an examination of the issues as framed by the Trial Court, and the findings which have been rendered on appreciation of facts and evidence, without revisiting the same, inasmuch as, the jurisdiction of this Court being confined only to substantial questions of law, wherein findings of fact are not open to challenge in the second appeal, this Court will now proceed to address the arguments and grounds raised by the appellant in the Second Appeal.

7. Mr. A. S. Siddiqui, learned Senior counsel assisted by Ms. A. Kharmyndai, learned counsel on behalf of the appellant has submitted that under the Khasi customary law, a sister of the youngest daughter and her daughter is entitled to use and occupy ancestral property, and that under the Khasi customary law, a sister and/or her daughter who are in use and occupation of the ancestral property cannot be evicted by the youngest



daughter. The learned Senior counsel has submitted that the learned Courts had erred in not considering the fact that a sister of the youngest daughter is not liable to be evicted from the ancestral property, and that the daughter or grand-daughter of the owner of the property is entitled to peaceful enjoyment of the property especially when she is in possession of the same, and the youngest daughter is not.

8. Mr. K. S. Kharshiing, learned counsel for the respondent has submitted that Khasi customary law especially on inheritance is already cemented and the laws of inheritance governing the same are very clear, as ancestral property goes to, is in the custody of, or inherited by the youngest daughter of the family, or womb, or clan and by custom occupies the ancestral house, and that generally it is the maternal uncles or brothers or senior members of the family or clan who manage such property or properties on behalf of the '*Ka khadduh*'. He further submits that being the '*khadduh*' she cannot transfer or alienate such property without the consent of the members of the family. He therefore submits the Courts below having arrived at a correct decision as per Khasi customary law, no question of law had arisen to be decided.

9. Having heard the learned counsel for the parties, and having considered the concurrent findings arrived at by the Courts below, on the



hard facts of the case which are contained at issues No. 9, 10, 11, 13, 14 and 15, it is seen that the findings of the Trial Court setting aside the mortgage created by the appellant's mother and also the Deed of Declaration, have been arrived at after a thorough examination of the facts while keeping the principles of Khasi customary law in mind and does not need further discussion. The eviction as decreed also was based on the peculiar facts of the case itself, and as such, in the considered view of this Court, no general question of law has arisen therefrom that requires any adjudication. Further, the substantial questions as framed, not being on the basis of the pleadings and issues of the suit, this Court finds that there are no substantial questions of law to be decided in the instant Appeal, and the same is dismissed.

10. Lower Court records to be transmitted back.

Judge

Meghalaya
11.11.2024
"D.Thabah-PS"