

GAHC040000992016

2024:GAU-AP:957



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

Case No. : RFA/1/2016

KALIRAM REGON
RESIDENT OF TIGRA MIRBUK VILLAGE, PO PASIGHAT, EAST SIANG
DISTRICT, AP

VERSUS

SMTI ANIMA TAYING and Anr.
W/O LATE TALOM TAYEYING, RESIDENT OF MIRBUK VILLAGE, PO
PASIGHAT, EAST SIANG DISTRICT, AP

2:SMTI OSAN @ YASAN ROME
Age: 0
Occupation :
W/O LATE OPAK ROME
R/O MONGKU BALEK VILLAGE
PO PASIGHAT
EAST SIANG DISTRICT
AP

Advocate for the Petitioner : Mr.S Taye, B Baruah, T T Tara, Jungam Jini, Gamken Bam, Terji
Kamchi, Khoda Apa

Advocate for the Respondent : Vijay Jamoh, Tony Pertin, Kamal Saxena, Rinchin Ledo Thungon, I U
Bori, H K Jamoh, Mingkong Pertin, Dicky Panging, Duge Soki, D Tamuk, Elina Perme, M Doji, K
Perme, M Tamut, M Gibi, H Kadu

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

Date of hearing : 25.09.2024

Date of judgment : 25.10.2024.

JUDGEMENT AND ORDER (CAV)

Heard Mr. T. T. Tara, learned counsel for the appellant. Also heard Mr. D. Panging, learned counsel for the respondent No. 1. None appeared for the respondent No. 2.

2. This first appeal filed under Section 96 of CPC, 1908 read with Order XLI of CPC, 1908, is directed against the judgment and decree dated 07.12.2015, passed by Additional District Judge, Pasighat, in PSG Title Suit No. 07/2012, by which, the suit of the plaintiff/respondent No. 1 has been allowed and decreed in favour of the plaintiff/respondent No. 1.

3. The father-in-law (since deceased) of plaintiff/respondent No. 1 has initially filed Title suit on 07.05.1993 for declaration of title, ownership and interest in favour of the plaintiff of the land measuring 1(one) pura and 30 feet situated at village Tigra (Mirmir), Pasighat, Arunachal Pradesh, bounded by in the East- Land of the Tani Ering; in the West-Main Road; in the North- Land of Shri Kaliram Regon (appellant herein) and in the South- Road.

4. Pledged case of the plaintiff is that the father-in-law of the plaintiff Lt.

Tasing Taying on dated 29.07.1984 purchased a plot of land measuring 1(one) pura situated at Tigra (Mirmir) Pasighat at the consideration of Rs 6000/- from the defendant No. 1, Sri Opak Rome (since deceased). And subsequently the father-in-law of the plaintiff again on dated 23.06.1986 purchased another 30 feet of land adjacent to previously purchased land at the consideration of Rs 1000/-.

5. The case of the appellant/defendant No-2 is that sometime in the year 1975 he purchased the present suit land from his deceased father-in-law Lt. Kodang Rome at the consideration of Rs 500/- but on good faith he did not execute any sale deed and same was later on acknowledged by the sons of Lt. Kodang Rome namely- Sri Opak Rome, Sri Oni Rome and Sri Oyi Rome. The appellant/defendant No. 2 further stated that while the defendant No. 1 was staying in the same land, his wife Lt. Yarak Rome died in the year 1977. Since the year 1978, the appellant/defendant No. 2, who was serving in Fishery Department Govt. of A.P was transferred and posted out to various places like Mariyang, Yingkiong and Ziro and therefore he spent thirteen years of his service life in those posting places. The appellant/Defendant No. 2 further stated that in those period of thirteen years from 1978-1991, the defendant No.1 Sri Opak Rome (since deceased) who happens to be his brother-in-law illegally sold out the present disputed land to the plaintiff's father-in-Law Late Tasing Taying and the appellant/defendant No. 2 having come to know about the sale transaction lodged the complaint on 30.10.1991 before the Deputy commissioner Pasighat. Accordingly, Kebang was held on two occasions on dated 19.12.1991 and 23.05.1992 wherein the Kebang authorities decided the matter in favor of Appellant/defendant No. 2 – Shri Kaliram Regon -holding that

the defendant No.1 Sri Opak Rome Son of Late Kodang Rome had no right to sale the suit land. The said Kebang Decision dated 23.05.1992 was confirmed by the learned Deputy Commissioner on dated 04.02.1993. Therefore, claims that since Kebang has already decided the title of the disputed land in his favour which has attained its finality and no adjudication remains to be made by the court.

6. On the complaint by the appellant/ defendant No.2, two Kebangs were conducted on dated 19.12.1991 and dated 23.05.1992. The Kebang authorities having found the sale transactions made in between the Defendant No.1 Sri Opak Rome and plaintiff late Tasing Taying illegal and decided the title of the disputed land in favour appellant/defendant No.2.

7. Being aggrieved of the said Kebang decisions, the plaintiff Tasing Taying (since deceased) filed a fresh suit before the Deputy Commissioner, East Siang, Pasighat for declaration of title over his purchased land, however he was later on substituted by his son Dr.Talom Taying (since deceased) and amended the plaint wherein the present appellant Sri Kaliram Regon was impleaded as party to suit. And after the death of Late Dr. Talom Taying, plaintiff/respondent No. 1 herein, the wife of the deceased substituted him as plaintiff.

8. Based on the pleadings, the learned Deputy Commissioner, East Siang, Pasighat, framed as many as 29 issues for determination of the suit.

9. The suit was transferred to the court of Additional District Judge (Fast Track Court), Basar, and re-registered as BSR/No.-TS- 41/06 and vide Judgment and

order dated 30.04.2007 disposed of the suit and declared the title in favour of the plaintiff/respondent No. 1 which was taken to appeal and the High Court, vide Judgment and Order dated 01.08.2008 passed in MFA No.02 (AP)/2007 quashed and set aside the Judgment and order dated 30.04.2007 of the Additional District Judge (Fast Track Court), Basar.

10. The plaintiff/respondent No. 1, being aggrieved of the aforesaid Judgment and Order dated 01.08.2008 of the High Court, approached the Hon'ble Supreme Court being Civil Appeal No.10222 of 2010. The Hon'ble Supreme Court vide order dated 02.12.2010 set aside the Judgment and order dated 01.08.2008 passed in MFA No.02 (AP)/2007, Judgment and order dated 30.04.2007 passed in Title Suit No.41 of 2006 by the Fast Track Court, Basar, order dated 24.03.1995 and 04.02.1993 passed by the Deputy Commissioner, Pasighat and Kebang decisions dated 19.12.1991 and 23.05.1992 passed in HT 159/91 and HT 1/92 respectively and remanded back the suit for de novo trial. The Hon'ble Supreme court allowed the parties to adduce additional evidence, if any, and held that the appellant/defendant no. 2, Kaliram Regon shall not be entitled to take the plea of Res Judicata in the de novo trial.

11. The plaintiff in terms of the order dated 02.12.2010 passed by the Hon'ble Supreme court, examined 2 witnesses by way of Additional PWs in addition to 3 PWs and the appellant/defendant examined 4 witnesses as Additional DWs in addition to 4 DWs. The plaintiff in order to establish the case examined total 5 (five) PWS and exhibited sale deeds dated 29.7.1984 and dated 23.6.1986 as P/Ext-1 and P/Ext No.2. The defendant No 1 Sri Opak Rome (since deceased) examined himself as DW-1. The appellant/defendant No-2, recorded as

many as eight (8) DWs. He exhibited copy of Kebang decision dated 19.12.1991 as P/Ext-2, copy of Kebang decision dated 23.05.1992 as P/Ext-3, copy of order passed by the Deputy Commissioner on dated 09.03.1993 as P/Ext-4, copy of order passed by Deputy Commissioner on dated 04.02.1995 as P/Ext-5 and affidavit signed by the defendant No.1 before the magistrate as P/Ext-6.

12. The learned Addl. District Judge, Pasighat, after consideration of the pleadings in the suit and also keeping in view of the Hon'ble Supreme court's order whereby the Hon'ble court after setting aside the Judgement and order of this Court, FTC, both the aforementioned Kebang decisions and orders of the Deputy Commissioner, held the appellant/defendant No.2 not entitled to take the plea of Res-judicata, taken up 5 issues (issues No. 1, 6, 7, 10 and 11) out of 29 issues framed by the Deputy Commissioner, for determination of the suit which are as follows.

1. Whether the case is maintainable in present form and as per law?
2. Whether the father of the defendant No.1 sold out the entire disputed land or part which was/is in his possession of the defendant No.2?
3. Whether the disputed land was sold to plaintiff rightly, legally and lawfully by the defendant No.1?
4. Whether the plaintiff deserves relief as prayed for?
5. Any other relief to the plaintiff?

13. On completion of the trial and after careful consideration of the materials on record and evidences, the learned Addl. District Judge, Pasighat, vide impugned judgement and decree dated 07.12.2015 has allowed and decreed

the suit in favour of the plaintiff/respondent no.1. Hence, this appeal.

14. The thrust of argument canvassed on behalf of the appellant by Mr. T. T. Tara, learned counsel for the appellant, is on alleged manifest procedural error committed by the learned Additional District Judge. He submits that the Code of Civil Procedure 1908 is substantive and procedural law. The observance of the rules of procedure is fundamental to the course of litigation for they provide the necessary framework for the achievement of justice between the parties. In the instant case, the impugned judgment and decree dated 07.12.2015 passed by the learned Additional District Judge, prima facie discloses that there is an absolute non-compliance of Order VI Rule 17 of the Code of Civil Procedure. The Learned Judge recorded that the appellant, who was pro-forma defendant in title suit no.3 of 1993 was impleaded as party to the suit. A reading into the impugned judgment and decree dated 07.12.2015, according to him, prima facie, shows that no amendment application was filed to implead the appellant, who is a pro-forma defendant, nor any order was passed by the learned court in this regard. To fortify the arguments on this count, he referred to the Judgment and Order of learned FTC, dated 30.04.2007 in BSR Title Suit No-41/2006, wherein the learned judge has recorded that, "But the Deputy Commissioner instead of passing any decree ordered the impleadment of present pro-forma defendant in the suit and, as such, was so impleaded". Therefore, he submits that one can safely concluded that the appellant was pro-forma defendant in the entire lis and no order was passed by the learned trial court and thus, no relief can be claimed by the plaintiff, whatsoever. In support of his submission, he relied on the judgement of this Court in the case of **Gonendra Das Laskar Vs. Manoranjan Das**, reported in **2016 (3) GLT 780- 4**.

15. He submits that what has emerged from the facts of the case, it is the case of the appellant that the learned trial court has not adhered to with the objective of Order VI Rule 17 which, according to him, is a clear violation of the procedural rules laid down by the Indian Judiciary. He submits that the power to allow or disallow the amendment of pleadings lies with the court, but non-compliance with the provisions of Order VI Rule 17 is otiose the procedure prescribed by the law as the learned trial court without passing any appropriate order has erred in the case of appellant who was pro-forma defendant as defendant and by the impugned judgment and decree dated 07.12.2015, learned court below has erred seriously to preserve and safeguard the rights of parties and to subserve the ends of justice. Therefore, he prayed for remand of the matter for de novo trial in accordance with law and procedure established by law.

16. Mr. Tara, learned counsel, further referring to the Judgment and Order dated 30.04.2007 passed in BSR Title Suit No-41/2006 by the learned trial court (Fast Track Court) which has been set aside by the Hon'ble Supreme Court, submits that it is categorically recorded by learned trial judge that, "And the Deputy Commissioner, as such, later on after hearing the parties framed as many as 29 issues in the whole vide his order dated 28.06.1996". "After Framing of the issues the plaintiff examined three PWS and after closure of the plaintiff's evidence the defendant and pro-forma defendant examined four DWS in totality". Similarly in the impugned judgment and decree dated 07.12.2015 passed in Title Suit No.07/2012 passed by the learned trial judge recorded that, "And therefore, this court out of 29 issues framed by the learned Deputy

Commissioner pick up only 5 issues for determination of the suit. Further in paragraph 15, the learned trial judge has only picked up 5 issues out of 29 issues which already framed by the Deputy Commissioner. Thus, he submits that it is safely concluded that the learned trial court have acted de hors the objective of Orders XIV Rules 2 and 5 and the settled position of law that once the issues stand framed by the court by consent of the parties, such issues are not to be struck off by court. In support of his submission, he has relied upon judgement of the Jammu & Kashmir and Ladakh High Court in CM(M)No. 62/2023 dated 26.04.2023.

17. Mr. Tara, learned counsel submits that Late Kodang Rome is the original owner of the land. Late Opak Rome is the son of Late Kodang Rome and brother-in-law of appellant. The appellant claims that he purchased the land from his father-in-law Late Kodang Rome and the said land has been fraudulently sold away by his brother-in-law (Late Opak Rome) to Late Tasing Taying, the original plaintiff and on his death Late Dr. Talom Taying was substituted and on his death substituted by plaintiff/respondent No. 1- Smti Anima Taying, in the title suit. Prior to the title suit, Kebang decided the land in favour of the appellant twice on dated 19/12/1991 and 23/05/92. During the lifetime of Late Kodang Rome, the appellant purchased the land and after the death of Late Kodang Rome and in absence and without consent of appellant, Late Opak Rome (Respondent No. 2) illegally sold the land to Late Tasing Taying. The plaint dated 22.11.1993 wherein the appellant's name is written as Performa-defendant No. 2 was the basis of the impugned judgment dated 07/12/2015, but since the said plaint itself is illegal, the impugned judgment cannot stand on such illegal plaint. The first T.S. No. 3/93 dated 07.05.1993 the

original plaint was in between the plaintiff and Late Opak Rome, but subsequently the plaintiff most illegally without resorting to the essential requirement of law of amendment of pleadings filed a second plaint making Sri Kaliram Regon the present appellant as Pro-forma defendant No. 2.

18. He submits that the Judgment is erroneous and perverse as the reasons given by the learned Court below for passing the impugned judgment are unjustified as because in Para- 40 of the impugned judgment, observation was given that both the defendant does not deny the sale agreement dated 29/07/1984 and 23/06/1986 exhibited by the plaintiff. He submits that from the very beginning in all the proceedings below in all the forum the appellant has been vehemently denying that there was invalid sale between Opak Rome and the plaintiff. Such denials are found categorically in Para- No. 2, 3 and 4 of the written statement.

19. Mr. Tara, learned counsel, submits that there are clear admission made by the defendant (Late Opak Rome) by swearing an affidavit dated 28.04.1995 before the Judicial Magistrate First Class, Pasighat and exhibited as P/Exhibit-6 wherein Late Opak Rome admitted to have illegally sold the land of Shri Kaliram Regon to Tasing Taying. He submits that Late Opak Rome also filed four contradictory written statements wherein the written statement dated 20.04.1995, categorically admitted that he has no dispute about the ownership of the land with the proforma-defendant (Shri Kaliram Regon) and he is the bonafide owner of the land and the plaintiff forcefully entered into his land. Again, in the written statement dated 30.06.1995, he admitted that he mistakenly sold the land of his brother-in-law (Shri Kaliram Regon) and would like to return the money paid to him by Taying family. This statement is

corroborated by the statement of DW-3 Shri Tako Singh Jamoh in his examination in-chief wherein he stated that he was a witness of the said written statement drafted by Late Opak Rome in his own handwriting and his signature was also identified by the DW-3. Therefore, according to Mr. Tara, learned counsel, these admitted facts requires no proof. He submits that the appellant has from the very beginning denied the said sale agreements dated 29.07.1984 and sale agreement dated 23.06.1986 to be illegal by conducting Kebangs and also by refuting the same in the written statements and by adducing evidences.

20. On possession of land, Mr. Tara, learned counsel, submits that though the appellant (DW-2) has admitted that the plaintiff is in possession of the land from 1984 in the cross examination, but has also stated that from 1991 his family started possessing the land continuously till date. DW-3 also stated in his examination in-chief that illegal encroacher should be evicted immediately and, in the cross-examination, denied that the plaintiff is in possession of the disputed land. DW-4 in his examination-in-chief stated that after the Kebang decision Taying ,though constructed the house, but vacated the house and he suggested Shri Kaliram Regon to dismantle the house. He told Shri Kaliram Regon to keep the house materials in a proper manner. In the cross-examination he stated that the area of the land under the possession of Shri Kaliram Regon is about 1 and half pura. However, till date the disputed land is under the possession of the appellant. He submits that in such circumstances the court ought to have discussed the issue framed as No. 7, i.e. whether the disputed land was sold to plaintiff rightly, legally and lawfully by the defendant No. 1. The learned Court below without properly discussing the most important issue has mechanically decided the case in favour of the respondent No. 1 by

observing that the appellant/defendant has admitted the so-called sale agreements. Moreover, when both the so-called sale-deeds are apparently an unregistered sale-deeds, the learned Court below ought not to have relied upon the same and no right, title and interest can be conferred by an unregistered sale-deed (Kutchra sale-deed), when the respondent No. 1/plaintiff is also not in possession of the land. Therefore, such unregistered sale-deeds are invalid under the Registration Act and Transfer of Property Act, shall not confer title on the purchaser. The learned Court below under the aforesaid facts and circumstances has wrongly observed that the appellant did not deny the claim of the plaintiff and the defendant No. 1 and very erroneously used the word admitted sale agreements in the Para-42 of the Judgment. In Para-45 of the Judgment learned Court below wrongly observed that since the Hon'ble Apex court has already set-aside the Kebang decisions, it is not legally permissible to rely upon any evidences that was said to have come up in such Kebang proceedings. He submits that even if a final decision was set aside, the evidences and other documents adduced by any party in the proceedings may be relevant depending upon the case and there is no legal bar on the court of law to act upon such evidences and documents, if the same is found to be relevant. In the present case, there are clear admissions of the respondent No. 1/defendant that the land actually belongs to the appellant. The learned Court below most erroneously discarded such vital and decisive materials.

21. Mr. Tara, learned counsel, finally submits that the learned trial court while appreciating the plaintiff evidence more particularly in para 19 of the impugned judgment and decree dated 07.12.2015 in respect of additional PW- 1 Smti. Yaken Rome in her cross have stated that the part of disputed land was given to

shri Kaliram Regon and another part was given to late Onyok Rome. She further stated that she does not know whether the land parted to late Onyok Rome was sold out by Shri Oyi Rome to Shri Kunyo Siram. A bare perusal of the same, it is prima facie that the land in dispute is imaginary as the physical form of the land is not known to anyone. In such circumstances, the learned trial Court could have recourse to section 75 read with Order 26 of Code of Civil Procedure, 1908 could have appointed commission by the Court to conduct a local investigation, to record evidences in order to decide the suit. In the instant case, the learned trial Court has erred thereby resulting into miscarriage of justice. In the light of aforesaid facts and circumstances of the case, he submits, the appellant has made out a prima facie case for kind indulgence of this Hon'ble Court to quash and set aside the impugned judgment and decree dated 07.12.2015 passed in PSG. Title Suit No. 07/2012 by the learned Additional District Judge, Pasighat to secure the ends of justice.

22. In support of his submission, Mr. T. T. Tara, learned counsel has placed reliance on the judgments of the Hon'ble Supreme Court, which are as under:

- (i) Hindustan Poles Corpn. Vs Commissioner of Central Excise, Calcutta** reported in **(2006) 4 SCC 85.**
- (ii) Pandit Malhari Mahale vs. Monika Pandit Mahale & Ors.,** reported in **(2020) 11 SCC 549.**
- (iii) Sathyanath & Anr., vs. Sarojamani** reported in **(2022) 7 SCC 644.**
- (iv) Venkataraja & Ors., vs. Vidyane Doureradjaperumal & Ors.,** reported in **(2014) 14 SCC 502.**

23. On the other hand, Mr. D. Panging, learned counsel for the respondent No. 1/plaintiff, submits that when the matter was taken up for hearing on 25.09.2024 and 26.09.2024, instead of arguing the matter on merits only the three following oral arguments were advanced: (a) That the appellant /pro-forma respondent was impleaded as a party respondent in the original title suit without filing any application for amendment of the plaint and as such is in violation Order VI, Rule 17 of the Code of Civil Procedure, 1908. (b) That the learned Deputy Commissioner had framed 29 (twenty-nine) issues but only 5 (five) issues were determined by the Additional District Judge, Pasighat, which is not permissible in law and (c) That the appellant was arrayed as a proforma respondent as such no decree could have been drawn against him.

24. Mr. D. Panging, learned counsel, submits that the first submission urged on behalf of the appellant that the appellant/pro-forma respondent was impleaded as a party respondent in the original title suit without filing any application for amendment of the plaint and as such is in violation of the Code of Civil Procedure, 1908 is factually incorrect and is beyond the records. He submits that initially a title suit was instituted by the original plaintiff namely, Late Tasing Taying against the late husband of the respondent no.2 herein only, namely, Opak Rome. However, an application under Order XXIII Rule 1 of the CPC was filed for withdrawal of the suit and the same was allowed by the Deputy Commissioner, Pasighat vide order dated 25.11.1993 and on 25.11.1993 itself a fresh plaint filed by the husband of the respondent no.1 herein, wherein the present appellant was impleaded as pro- forma respondent no.2, was taken cognizance by the learned Deputy Commissioner, Pasighat and summons were issued to the defendants. Be that as it may, he has submitted, as a matter of abundant caution, though the first ground urged by the appellant is totally

factually incorrect, it is submitted that pursuant to the issuance of notice dated 25.11.1993, the appellant contested the suit by filing written statement and the ground of not filing any application for impleadment of the appellant was not raised in the written statement and no issues were framed by the learned trial court on the same. It is further submitted that after the suit was transferred to the Fast Track Court at Basar wherein it was renumbered as Title Suit No. 41/06, the learned FTC, Basar decreed the suit vide judgment and decree dated 30.04.2007 in favour of the respondent no.1 (plaintiff) and against that the appellant filed MFA 02/2007 before this Hon'ble Court and in MFA 02/2007 also the ground regarding not filing of any application under Order VI, Rule 17 was not raised before this Hon'ble Court and MFA 02/2007 was filed on the ground that the Village Authority (Kebang) had already decided in favour of the appellant on 19.12.1991 and 23.05.1992 and therefore no suit could have been instituted on the same subject matter being hit by the principles of Res-Judicata. After, this Hon'ble Court allowed the MFA 02/2007 vide judgment and order dated 01.08.2008 on the ground of Res- Judicata, the respondent no.1 (Plaintiff) approached the Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) No. 27346/2008 challenging the judgment and order dated 01.08.2008. The Hon'ble Supreme Court vide order dated set aside the 02.12.2010 set aside the decisions of all earlier proceedings, i.e., the decisions of the two kebangs dated 19.12.1991 and 23.05.1992, the order dated 04.02.1993 passed by the Deputy Commissioner, Pasighat confirming the Kebang decisions dated 19.12.1991 and 23.05.1992, the judgment and decree dated 30.04.2007 passed by the FTC, Basar in TS No. 41/2006 as well as the judgment and order dated 01.08.2008 passed by this Hon'ble Court in MFA 02/2007 and accordingly the Hon'ble Supreme Court directed that Title Suit

41/2006 be revived and it was further directed that the appellant shall not be entitled to raise the plea of res-judicata. He submits that even before the Hon'ble Supreme Court, the first ground urged by the appellant was never raised and most importantly the issue is not even a ground raised in the instant appeal, and as such, considering the fact that Hon'ble Supreme Court has even restraint the appellant to raise the plea of res-judicata, the appellant cannot be at this stage allowed to urge any technical pleas, more so, when the same is factually incorrect and beyond the records. It is further submitted that the suit was initially instituted before the learned Deputy Commissioner, Pasighat and the Deputy Commissioners were conferred civil jurisdiction in terms of the Assam Frontier (Administration of Justice) Regulation, 1945 and in terms of the said regulation, the Court of Deputy Commissioner shall be guided by the spirit and not bound by the letter of the Code of Civil Procedure, 1908.

25. As regard to the second submission urged by the appellant that out of the 29 (twenty nine) issues framed by the Deputy Commissioner, Pasighat, only 5 (five) issues were determined by the Additional District Judge, Pasighat which is not permissible in law, Mr. D. Panging, learned counsel, submits that consequent to the order of the Hon'ble Supreme Court dated 02.12.2010 in Special Leave to Appeal (Civil) No. 27346/2008 setting aside the two kebang decisions dated 19.12.1991 and 23.05.1992, the issue nos. 2, 3, 5, 14, 15, 16, 17, 18 & 20 had become redundant and as such there was no question of deciding the aforementioned issues. The rest of the issues framed by the learned Deputy Commissioner, Pasighat are similar and repetitions of the 5 (five) that were picked up by the learned Additional District Judge, Pasighat for determining the suit. In any case, Order XIV, Rule 5 (2) empowers the learned trial court at any time to strike out any issues that appear to it to be wrongly framed or

introduced. Therefore, the second ground urged on behalf of the appellant has absolutely no merit and liable to be rejected. Moreover, one could have understood if the learned Trial Court had framed additional issues, however it was not the case and in fact only those issues which had become redundant consequent to the Hon'ble Supreme Court's order were strike off and the appellant was allowed to examine additional witnesses and no prejudice has been caused to the appellant.

26. As regard to the third ground, Mr. D. Panging, learned counsel, has submitted that the appellant contested the title suit by filing written statement and at no point of time the said ground was raised before the learned trial court or before this Hon'ble Court which the appellant had approached by filing MFA No.02(AP)/2007 nor before the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.27346/2008 filed by the respondent no.1/plaintiff against the appellant, and once the Hon'ble Supreme Court vide order dated 02.12.2010 had set aside all earlier determinations by the village authority, FTC, Basar and the order dated 01.08.2008 had recognized that there was lis between the appellant and the respondent no.1 and had remanded the matter back for de-novo trial, the appellant now cannot turn around and say no decree could have been passed against him. He relied on the judgement of a full bench of the Punjab & Haryana High Court in the case of **Gita Ram Kalsi Vs. Prithvi Singh & Others** reported in **AIR (Punjab) 129**.

27. Mr. D. Panging, learned counsel, by referring to the depositions of the witnesses submits that from the deposition of witnesses, it is evident that the disputed land and the land of the appellant are two distinct and different land which has been admitted by the appellant in his cross examination and coupled

with the fact that the appellant has refused to argue on the factual merits of the case, he prayed that RFA 01/2016 may be dismissed.

28. I have considered the submissions advanced by the learned counsel for the parties and perused the materials placed on record including the impugned judgement and decree dated 07.12.2015.

29. The case in hand has its chequered history, the civil litigation having been started in the year 1992 from village authority under the Assam Frontier (Administration of Justice), 1945 up to the Hon'ble Supreme Court and remanded back to Court of Additional District Judge, Pasighat, with certain observations, which is noted herein above.

30. Before advertng to the factual merit of the appeal, this court deem it apposite to consider the primary contentions of the learned counsel for the appellant as the learned counsel for the appellant has laid greater emphasis and strenuously urged on these contentions.

31. Having regard to the contention that the appellant /pro-forma Defendant was impleaded as a party respondent in the original title suit without filing any application for amendment of the plaint in violation of Order VI, Rule 17 of the Code of Civil Procedure, 1908, it is seen from the record that initially a title suit was instituted by the original plaintiff namely, Late Tasing Taying against the late husband of the respondent no.2 herein, namely, Opak Rome. Thereafter, an application was filed for withdrawal of the suit and the same was allowed by the Deputy Commissioner, Pasighat vide order dated 25.11.1993 and

on 25.11.1993 a fresh plaint filed by the husband of the respondent no.1 herein, wherein the present appellant was impleaded as pro- forma Defendant/respondent no.2. Having been taken cognizance by the learned Deputy Commissioner, Pasighat, summons were issued to the defendants. Pursuant to the notice dated 25.11.1993, the appellant contested the suit by filing written statement. On scrutiny of the written statement filed by the appellant, it is seen that no ground of not filing any application for impleadment of the appellant has been raised in the written statement. The suit was transferred to the Fast Track Court, the learned FTC, decreed the suit vide judgment and decree dated 30.04.2007 in favour of the respondent no.1 (plaintiff) and against that the appellant filed MFA 02/2007 before this Court and in MFA 02/2007 also the ground regarding not filing of any application under Order VI, Rule 17 has not been raised before this Hon'ble Court and MFA 02/2007 was filed on the ground that the Village Authority had already decided in favour of the appellant on 19.12.1991 and 23.05.1992 and therefore no suit could have been instituted on the same subject matter being hit by the principles of Res-Judicata. This Court allowed the MFA 02/2007 vide judgment and order dated 01.08.2008 being hit by the principle of Res- Judicata. Being aggrieved the respondent no.1 approached the Hon'ble Supreme Court being Civil Appeal No. 10222/2010 challenging the judgment and order dated 01.08.2008. The Hon'ble Supreme Court vide order dated 02.12.2010 set aside the decisions of all earlier proceedings, i.e., the decisions of the two kebangs dated 19.12.1991 and 23.05.1992, the order dated 04.02.1993 passed by the Deputy Commissioner, Pasighat confirming the Kebang decisions dated 19.12.1991 and 23.05.1992, the judgment and decree dated 30.04.2007 passed by the FTC, Basar in TS No. 41/2006 as well as the judgment and order dated

01.08.2008 passed by this Court in MFA 02/2007 and accordingly the Hon'ble Supreme Court directed that Title Suit 41/2006 be revived and it has further held that the appellant shall not be entitled to raise the plea of res-judicata. The appellant has not raised this contention at any stage of proceedings of the case and even in the present appeal. Therefore, in my view, such a plea cannot be allowed at the appellate stage, more so when the appellant had contested the suit by filing written statement and adduced evidence. Thus, the contention is rejected.

32. Regard being had to contention that out of the 29 (twenty nine) issues framed by the Deputy Commissioner, Pasighat, only 5 (five) issues were determined by the Additional District Judge, Pasighat which is not permissible in law, I am of the view and in agreement with the learned counsel for the respondent No. 1, that in view of the order of the Hon'ble Supreme Court dated 02.12.2010 in Special Leave to Appeal (Civil) No. 27346/2008 setting aside the two kebang decisions dated 19.12.1991 and 23.05.1992, the issue nos. 2, 3, 5, 14, 15, 16, 17, 18 & 20 had become redundant. Perusal of the other issues framed by the learned Deputy Commissioner, reveals that same are similar and mere repetitions of the 5 (five) issues taken up by the learned Additional District Judge, for determination of the suit. In this regard reference may be made to the provisions of Order XIV, Rule 5 (2), which empowers the learned trial court at any time to strike out any issues that appear to it to be wrongly framed or introduced. Thus, this contention also stands rejected as only those issues which had become redundant consequent to the Hon'ble Supreme Court's order were struck off and the appellant was allowed to examine additional witnesses which he had availed and no prejudice appears have caused.

33. Having regard to the contention that no decree could have been passed against the appellant as pro forma respondent, record reveals that the appellant contested the title suit by filing written statement and at no point of time the said ground was raised before the learned trial court or before this Court which the appellant had approached by filing MFA No.02(AP)/2007 nor before the Hon'ble Supreme Court filed by the respondent no.1/plaintiff and once the Hon'ble Supreme Court set aside all earlier determinations by the village authority, Deputy Commissioner, FTC, and the order dated 01.08.2008, had recognized that there was lis between the appellant and the respondent no.1 and had remanded the matter for de-novo trial, the appellant cannot be allowed to contend that no decree could have been passed against him. The decree is binding even on the proforma respondent except when he can show that no relief was claimed against the proforma Defendant. In the present case, relief has been claimed against the appellant and the appellant had contested the case at every stage right from the trial in the court of first instance up to the Hon'ble Supreme Court.

34. Regard being had to the other contentions for appointment of commission for local investigation and reliability and validity of so called unregistered sale deeds, such contentions appears to be totally misconceived. The appellant contested the title suit by filing written statement and at no point of time any such issues were raised before the learned trial court or before this Court nor before the Hon'ble Supreme Court. The Hon'ble Supreme Court had set aside all earlier determinations/decisions by the village authority, Deputy Commissioner, FTC as well as the judgement and order of this court and had recognized that

there was lis between the appellant and the respondent no.1 and had remanded the matter back for de-novo trial. The parties including the appellant had adduced additional evidences and the learned trial court has appropriately appreciated the evidences, therefore, the above contentions of the learned counsel for the appellant are also rejected.

35. Now, this court would analyse and the appreciate the depositions of the witnesses as recorded.

36. The PW-1 Dr Talom Taying, plaintiff (since deceased) had deposed that the case was first initiated by his father Lt. Tasing Taying and accordingly after the death of his father he being the eldest son of Lt. Tasing Taying substituted him as a plaintiff. He deposed that on 29.07.1984 his deceased father purchased the suit land measuring one (1) Pura from the defendant No 1 Sri Opak Rome at the consideration of Rs 6000/-. He exhibited the sale deed dated 29.07.1984 as P/Ext-1. He further deposed that after having purchased the suit land took over the possession of the same, cleared the jungles and also erected fencing and Kutcha House over the said purchased land. The PW-1 further deposed that his deceased father on dated 23.06.1986 again purchased an additional area of 30 Feet which was adjacent to previously purchased land from the same defendant No 1 at the consideration of Rs 1000/-. He exhibited the sale deed dated 23.06.1986 as P/Ext-2. He had stated that the plaintiff before purchasing the suit land made enquiry and found the purchased land free from any encumbrance. The boundary of purchased land was shown to them by defendant No 1 Sri Opak Rome. The purchased land is bounded on east by the land of Sri Tani Ering, on the west by the main road, on the north by the land of Sri Kaliram Regon (appellant herein) and on the south by road. And as there

was no disturbance from any corner till the year 1991, the plaintiff planted trees like Bamboo etc on their purchased land. However, in the year 1991, he being a purchaser of suit land got a summon from Kebang in regard to dispute in between Sri Opak Rome and Sri Kaliram Regon. During the year 1989, he was transferred to Daporijo and his father at that point of time was suffering from cancer and after some time, the plaintiff was again transferred back to Pasighat in the year 1993. During his absence from Pasighat, a kutcha house was erected on the suit land. The defendant No 2, Sri Kaliram Regon before the Kebang claimed to have purchased a portion of his purchased land from his father-in-law Lt. Kodang Rome. The defendant No 2 never claimed right over his purchased land between 1984 to the last part of 1991. Though there were two Kebangs, the Kebang did not asked him and his deceased father to attend the Kebang. He attended the second Kebang wherein the Kebang decided to verify the disputed land but the same was not done by the Kebang Authority and decided in favor of defendant No 2 Sri Kaliram Regon. The defendant No 1 Sri Opak Rome being aggrieved of the said Kebang decision filed an application before the learned Deputy Commissioner for holding a fresh Kebang and accordingly learned Deputy Commissioner directed for holding a fresh Kebang fixing the date 28.01.1993 and 02.02.1993 which was attended by the plaintiff but defendant No 2 Sri Kalirma Regon remained absent and as such no decision could be passed by the Kebang Authority. The plaintiff developed the land by planting trees, bamboo grooves and erected kutcha house by incurring huge expenses of Rs 30,835/-. He exhibited the expenditure P/Ext-3. The land in question is still in his possession. The PW-1 further stated that the defendant No 2 Sri Kaliram Regon in support of his case has not produced any documentary evidence either in Kebang proceeding or before the court. The PW-1 admitted

that the land adjacent to his purchased land belongs to defendant no 2 Sri Kaliram Regon which he got from his father-in-law. He further exhibited the summons issued to Sri Kaliram Regon and Sri Opak Rome as P/Ext-4 & 5. The sale deed as stated above was prepared by one Sri Olom Dai who also had subscribed his signature as one of the witnesses.

In his cross by Shri Kaliram Regon, defendant No-2, PW-1 stated that at the time of proposal made for the disputed land though he was in college, he on being informed came back to Pasighat for that purpose. During the sale transaction, Sri Kaliram Regon was not available at Pasighat. He denied that his deceased father received any letter from Sri Kaliram Regon after they purchased the land. He also denied that his occupied land was purchased by a man from Tabing clan. He also denied that a Tabing man who purchased the land left the same on the impression of having purchased the land illegally. He also denied that his deceased father upon hearing his occupied land to be of others surrendered the same. He further deposed that in the meeting when Kaliram Regon claimed the land, he and Lt. Opak Rome were the only persons who objected the same. He also stated that the suit was initially filed by his father in the year 1993 wherein his deceased father having lost the Kebang claim for alternative plot from Sri Opak Rome however same was amended by him later on. He received a copy of written statement filed by Opak Rome on dated 30.06.1995 wherein Opak Rome admitted to have wrongly sold out the land of Kaliram Regon and as per that WS he had no stand on the disputed land. Though the Deputy Commissioner and Circle Officer, Pasighat had passed an order directing to vacate the land, he might have got stay order. He denied that the land where he is staying is the land of Kaliram Regon. Kaliram Regon did not

object the sale transaction as he might have been out of station on being transfer. He denied to have purchased the disputed the land without making any enquiry.

37. PW-2 Sri Tadang Tabing, who knows Dr Talom Taying, Sri Opak Rome and Sri Kaliram Regon deposed that he heard that the plaintiff Dr Taying purchased a plot of land located at Mirbuk Village from one Sri Opak Rome. He also purchased a plot of land from Sri Oyi Rome which was adjacent to upper side of plaintiff's land and there was clear demarcation by bamboo fencing between these two plots of land. The land purchased by him was wrongly sold out to him as same belongs to Sri Kaliram Regon. A Kebang was held wherein he got his money back and accordingly the land was handed over to Sri Kaliram Regon. The land of plaintiff which was having a clear-cut demarcation was under the possession of plaintiff and as such there was no dispute over the land possessed by the plaintiff.

In his cross, he deposed that he purchased the land from both the brothers namely Sri Mai Rome and Mani Rome. During the sale transaction, they said the land to be of their own. During the sale transaction he had no idea about Kaliram Regon. In the meeting he was not aware that his purchased plot was given to Kaliram Regon by father-in-law. He purchased the upper plot of land after the plaintiff purchased his plot of land. He doesn't remember as to whether Dr. Taying attended the Kebang which was conducted in between him and Kaliram Regon. He has no idea whether it was the trick of three brothers to grab the land given to Sri Kaliram Regon by their father. Had he had knowledge, he would not have purchased the land from Oyi Rome and Opak Rome. The

southern part of his purchased land was belongs to plaintiff Dr Taying. He cannot say whether Sri Opak Rome was the real owner of the land which was sold to plaintiff.

38. PW-3 Sri Olom Dai, who also knows Dr Talom Taying, Sri Opak Rome and Sri Kaliram Regon had deposed that before purchasing the land by father of the plaintiff, he along with Dr Talom Taying, his father and one Sri Nani Tamin visited the suit land. The land in dispute belongs to Lt. Odang Rome, father Sri Opak Rome. On their visit to disputed land, they found the land free from encumbrance and also boundary of the land was shown to them and accordingly they decided to purchase the land. Sale agreement (P/Ext-1) was prepared by him in his own handwriting and was signed by parties before the witnesses. On payment of the money, the possession of land was handed over to Tasing Taying, father of the plaintiff and accordingly a fencing was erected thereof. The land in question at the time of sale was full of jungle. After taking possession of the same, a small Adi hut was erected on the same. The land on the upper side i.e Northern side of the purchased land of Tasing Taying belongs to Sri Kaliram Regon which was given to him by his father-in-law as told to them by Sri Opak Rome. There was no dispute over the purchased land up to five years. He came to know about this dispute from Dr Taying.

In his cross he had stated that Mr Kaliram Regon at the time of purchasing of the land was not available at Pasighat. He knows that the land which was sold by Sri Opak Rome to Dr Taying is exclusively belongs to the father of Sri Opak Rome. During his youth time, once he came to know that a portion of land was given to Sri Kaliram Regon by his father-in-law for residential purpose but

entire area was not given to him. He cannot say the boundaries of entire land of Lt. Odang Rome. He had an impression that the portion of land which was sold out by Opak Rome was absolutely belongs to him. During the execution of sale agreement and verification of the purchased land, they did not obtain any witnesses from the surrounding area. They prepared the sale deed on the words given by Sri Opak Rome. During their spot verification of the land one Rakjing Megu was also there who confirmed the purchased land to be of Sri Opak Rome. He do not know the boundaries of the land which was given to Sri Kaliram Regon by his father-in-law. He also cannot say the land purchased by Dr Taying was belongs to Sri Kaliram Regon. He denied that the land purchased by Dr Taying does not belong to Sri Opak Rome. He also denied that he being the brother-in law of Taying clan is supporting the case of plaintiff.

39. Additional PW-1 Smti Yaken Rome, had deposed that she is the wife of Lt. Onyok Rome son of Lt. Kobang Rome who was the brother of Lt. Kodang Rome. She had stated that once during the life time of her deceased husband, she along with her deceased husband Lt. Kodang Rome visited Mongku Village, Pasighat and on their visit Lt. Kodang Rome took them to Mirbuk Village and by showing a land told them that he had given a portion of land located thereof to his son-in-law Sri Kaliram Region for his residential purpose so that his son-in law and his daughter can stay there. The plot of land which was shown to have been given to Sri Kaliram Regon was already cleared and rest portion of land was covered by the jungle. The Lt. Kodang Rome also told them that he had retained the rest part of the land which was under jungle for his settlement at Pasighat. She further stated that the whole portion of land which was belongs to Lt. Kodang Rome located at Mirbuk Village was not given to Sri Kaliram

Regon and further stated that the disputed land was not shown as being gifted to Sri Kaliram Regon.

In her cross, she had stated that she did not attend any Kebang in connection with this case. She further stated that the part of disputed land was given to Sri Kaliram Regon and another part was given to Lt. Onyok Rome. She does not know whether the land parted to Lt. Onyok Rome was sold out by Sri Oyi Rome to Sri Kunyo Siram. She does not know the same land was later on sold by Sri Kunyo Siram to Sri Tabin Lego. She did not permitted Sri Oyi Rome to sell out the portion of land which they got from Lt. Kodang Rome. She did not object the sell made by Oyi Rome as she was not aware of any sell transaction. She had an impression that the land was sold out by Mepak Rome. When the land was parted to Lt. Onyok Rome, Lt. Odang told them that the other part belongs to Kaliram Regon. There was no land available in between Lt. Onyok Rome and Kaliram Regon, and their lands were adjacent to each other with a common boundary. She never permitted Mepak Rome to sell out her land. And further she does not know whether the same has been sold out or not. Sri Mepak Rome has no right to sell any part of land given to them. They initially opposed but subsequently concurred the sell made by Opak Rome and decided to remain at the left bank and not to allow Mepak Rome to enter into any land located at left bank. She stated that Mepak Rome sold out their plot. She was not at all aware of sale transaction entered into by Sri Oyi Rome. Though the boundary in between was not physically demarcated, there was a 'POYUP' (Farm Hut). Though Sri Mepak Rome did not tell them the definite boundary, she was aware that the plot sold by Mepak Rome belongs to them.

40. Additional PW-2 Sri Tanyong Rome had deposed that when he was a young boy, he being a nephew of Lt. Kodang Rome stayed with him for about two years and used to help him in field and other works. And while he was staying with Lt. Kodang Rome, Lt. Kodang Rome once told him that he gifted a portion of his land located at Mirbuk Village to his son-in-law Sri Kaliram Regon as he did not wanted his son-in-law Sri Kaliram Regon to take away his daughter Yarak to his native village. Lt. Kodang Rome during his life time had shown him the plot of land that was gifted to Sri Kaliram Regon. There was jack fruit and mango tree in between the land gifted and retained by Lt. Kodang Rome. Lt. Kodang Rome further told him that the rest of the land was kept for his nephew Lt. Onyok Rome son of his brother Lt..Kobang Rome. The land in question was the land which was kept for Lt. Onyok Rome as shown to him by Lt. Kodang Rome.

In his cross he stated that he is Menyong Rome@Tanyong Rome and there is no any other person by this name. A Kebang was held on 19.12.1991 at Pasighat during the time of Orik Tagi, Political Assistant wherein he also participated but left the Kebang proceeding before the Kebang arrive in to any conclusive findings. He denied to have put his sign/LT.I on the copy of Kebang decision. The land in question locates on the left side of Dibu Road. The mango and jack fruit tree stands exactly on the boundary in between the land of Kaliram Regon and Tasing Sitang. During the partition of land by Lt. Kodang Rome, there was no jack fruit and mango tree on the boundary of Lt..Onyok Rome and Kaliram Regon. There was no "No Man's Land" in between the land of Kaliram Regon and Lt. Onyok Rome. He has no knowledge about any sale transaction that has taken place over the land of Lt. Onyok Rome after it

was being given to him by Lt. Kodang Rome. He knows that Sri Kaliram Regon was also given a plot of land which is still in his possession and cultivated as orchard. The portion of land which is presently occupied by Sri Kaliram Regon belongs to Lt. Onyok Rome.

41. DW-1 Sri Opak Rome had deposed that disputed land measuring about 1 pura was belongs to him. He inherited the same from his deceased father Lt. Kodang Rome after his death. He sold the land to Tasing Taying at the consideration of Rs 7000/-. The plot of land adjacent to his land was given to Sri Kaliram Regon by his deceased father but he has no idea as to whether his father received any money from Sri Kaliram Regon.

In his cross by the plaintiff, he stated that at the time of selling of the land there was no dispute over the land and sold land was full of jungle. During the sale transaction there was no objection from Sri Kaliram Regon. Lt. Tasing Taying having purchased the land erected fencing and kutchra house (OBT) over the disputed land. Sri Kaliram Regon did not raise any objections to this effect till the year 1991. The Kebang decision of the year 1991 and 1992 were not accepted by him and he claimed for spot verification of the disputed land. And therefore, he prepared a petition before the Deputy Commissioner, Pasighat for reviewing the Kebang decision and also to pass an order directing the Kebang Authority for spot verification of the disputed land. Both himself and Sri Kaliram Regon were served with officials summon for attending the Kebang and accordingly he attended the same but Sri Kaliram Regon did not. And as such the Kebang could not have arrived at any decisions. His deceased father told him that a small plot adjacent to his plot was given to his son-in-law Sri Kaliram

Regon for his residential purpose. His father also told him that apart from the portion of land given to Sri Kaliram Regon rest of the land was retained for himself. Though Sri Kaliram Regon before the Kebang stated to have purchased the land from his deceased father, he did not produce any sale deed and money receipt in the Kebang. He did not sell out the disputed land to one Sri Tadang Tabing. His brothers sold out the land occupied by Sri Kaliram Regon. He has no idea as to why the plot of land was sold to Sri Tadang Tabing. When he came to know about the sale transaction entered into by his brothers over the land of Sri Kaliram Regon, he asked his brothers to refund the money to one Sri Tadang Tabing and accordingly money was refunded and Tadang Tabing vacated the land in favor of Sri Kaliram Regon. The approval of Kebang decisions dated 04.02.1993 by the Deputy Commissioner; Pasighat was accepted by him as the third Kebang on the same issue was ordered by Deputy Commissioner. Though the date for holding third Kebang was fixed on 28.01.1993 and 02.02.1993, Sri Kaliram Regon did not attend the same. The disputed land was free from any encumbrance. The boundary between plot of Sri Kaliram Regon and Sri Tasing Taying was properly demarcated by stone pillar and bamboo bushes. He laid the stone pillar on the boundary and Tasing Taying also planted bamboo bushes on the same. When one Tadang Tabing vacated the land of Sri Kaliram Regon, Sri Kaliram Regon erected OBT house on the same. Though Sri Kaliram Regon had knowledge about the sale transaction enter into with Sri Tasing Taying, he never objected the same till December 1990. He denied to have sold out the land of Sri Kaliram Regon to Sri Tasing Taying. He first sold one pura at the consideration of Rs 6000/- and thereafter again sold another 30 Ft. of land at the consideration of Rs 1000/- to Tasing Taying. One of the written statements was drafted by Advocate Sri Muk Pertin and he was invited to the house of Sri

Kaliram Regon were put his signature without knowing the contents thereof. Another written statement was drafted by one Sri Tako Singh Jamoh who invited him to his house and accordingly he put his signature on the written statement without knowing the contents thereof on good faith as Sri Tako Singh Jamoh is one of his relative. He in the court itself came to know that he unknowingly filed contradictory written statement before the court. He and his son went to the house of Advocate Mr Bhattachrjee to get his last written statement drafted and accordingly on being read over the contents of last written statement, he put his signature thereon. The plaintiff having purchased the land erected fencing over the same and also planted tree and bamboo bushes etc. He confirmed that he has sold out his ancestral property which is presently disputed to Tasing Taying. Though he is illiterate, he can sign. His deceased father categorically told him that except the portion of land under the possession of Kaliram Regon, rest of the land was retained as family property.

In his cross by defendant No.2 (appellant herein), he denied to remember if any question was put to him by the Deputy Commissioner at the time of filing written statement. He remembers that his last written statement which was in English was rejected by presiding Judge. He did not read up to class VI. He further admitted that he was appointed as Chairman in the Department of RWD in the year 1974. That the first written statement which was filed in English was withdrawn as same was not as per his wording. He doesn't remember whether he was directed to draft written statement in Adi. He doesn't remember whether Kaliram Regon was available at Pasighat at the time of selling of his land. He denied to have sold the land of Kaliram Regon and claimed the sold land as his own given by his deceased father. He further denied that the plot which is lying

on the southern side of Kaliram Regon was given to Lt. Onyok Rome by his father. He further denied to have mistakenly sold the disputed land to father of Dr. Taying. On being suggested he denied that Kaliram Regon did not make any objection at the time of selling of his land because of his remote posting. He denied the suggestion that the entire plot was bifurcated and western portion of land was kept by his father and eastern side of plot was given to Kaliram Regon. He also denied the suggestion that he cannot sell out and own the land which was given to Kaliram Regon by his father. He admitted that he had not taken the signature of any of the owners of the adjacent land. He made an appeal against the Kebang decision for further verification but he doesn't have the copy of the same and also, he does not approach the high court against the approval of the Kebang decision by the Deputy Commissioner. He did not prepare any appeal against the Kebang decision.

42. DW-2 Sri Kaliram Regon,(appellant herein) had deposed that in the year 1975 he purchased the disputed land from his father-in-law, Lt. Kodang Rome at the consideration of Rs 500/-. The disputed land is bounded in the North by the land of Tasing Sitang, by the West by link road, in the south by the Link Road and in the East by the land of Lt. Raktem Jamoh which is presently possess by one Tingkolong Borang and One Tani Ering. At the time of delivery of the possession of the disputed land his deceased father-in-law had shown him the boundary of the same. Though the land which is located in the western side was also belongs to his father-in-law Lt. Kodang Rome, portion of the same land has been now sold to different persons. He exactly cannot say which portion of the land was bigger in size but the boundary of the land in between his father-in-law and himself was demarcated by a link road which is now a metal road. In

the year 1976 he constructs a house over the disputed land and stayed there up to 1979 and thereafter went out on being posted at Mariyang. He due to demise of his wife and his transfer to different places could not maintain the house that was constructed over that land. During the life time of his father-in-law, there was a dispute over the present disputed land. Once he visited his father-in-law who was admitted in Hospital wherein his father-in-law told him that the land given to him was illegally sold out by Sri. Opak Rome to one Sri Rukpir Rukbo as the Eastern side of the plot belongs to him and for that his father-in-law exchanged a plot of land with Sri Rukpir Rukbo on the Western side of his plot. He in the year 1986 got to know that his land was sold out by Sri Opak Rome to Sri Tasing Taying, father of the plaintiff and Sri Oyi Rome and Sri Oni Rome also sold-out part of his land. And accordingly, he wrote a letter to one Sri Tanyi Siram and Sri Tasing Taying to get back their money from the seller of his land but same was not accepted. Since those sellers are his own brother-in-laws, he tried to settle the matter amicably wherein his brother-in-laws also admitted that their father sold out the land to him. As the defendants and his brother-in-laws, despite of having knowledge about the sale transaction always used to disturbed him from time to time by selling the same land to others, he in presence of witnesses namely one Sri Taling Tali, one Sri Tajing Tali, one Sri Malung Jamoh, one Sri Raktem Jamoh and one Sri Andeng Regon obtained the signature of two of them on a receipt connecting to selling of the land. And thereafter as the matter could not be settled, he made a complaint in the year 1991 for holding a Kebang on the disputed site but instead of holding the Kebang at the disputed site, same was held at Pasighat Kebang office wherein the Kebang Authorities having found the sale transaction made by defendant and his brother as illegal decided the Kebang in favor of him. P/Ext-2 is the

Kebang decision held on 19.12.1991 at Pasighat Kebang office. After settlement of the matter in the Kebang, a second Kebang was held in the year 1992. P/Ext-3 is the Kebang decision dated 23.05.1992. In that Kebang Sri Opak Rome had agreed to give another plot to Tasing Taying and accordingly Kebang decided the ownership of the land in favor of him. In terms of the Kebang decision dated 19.12.1991, the other purchasers surrendered their land but despite of two Kebang decisions, the present land in question was not surrendered. The father of the plaintiff during his life time though had surrendered the plot; they again started construction over the disputed plot during the election. And accordingly, he made complaint before the Deputy Commissioner, Pasighat. The Deputy Commissioner, Pasighat passed an order on dated 09.12.1993 directing the plaintiff to vacate the land. P/Ext-4 is the order passed by the Deputy Commissioner, Pasighat. The Deputy Commissioner, Pasighat also passed an order on Kebang decision. P/Ext-5 is the order passed by the Deputy Commissioner, Pasighat on dated 04.02.1993. Once Sri Opak Rome came to his house and stated to have committed mistake and wanted to consult with a lawyer and accordingly, he took Sri Opak Rome to Advocate Mr Muk Pertin. Advocate himself requested him to draft an affidavit and accordingly affidavit was sworn by Sri Opak Rome before Magistrate First Class. And thereafter same was handed over to him. The contents of affidavit were read over to Sri Opak Rome in Assamese and thereafter only he put his signature. The present plot of land where the plaintiff has constructed a house belongs to him. The plaintiff is illegally and forcefully occupied the land. The statements of Sri Opak Rome wherein he stated himself to be an illiterate are completely false but he has no idea about the educational qualification. Sri Opak Rome can read as he was serving as Chairman in RWD. The statement made by Sri Opak Rome in this

case is completely false. He claimed the entire land as his own.

In his cross, he stated to have read up to class X. He has no idea whether the present case is De-Novo trial or appeal. He also admitted that he has not mentioned the total area of his claimed land. He has no sale deed, money receipt, agreement etc. in respect of the disputed land. P/Ext-1 is the carbon copy original of which is not with him. He cannot say whether he has furnished the original copy of the P/Ext-1 to the court. He sent the P/Ext-1 through ordinary post. He came to know about the sale transaction of the disputed land in the year 1985-86 and till 1991 he did not initiated any action against the said sale transaction. He admitted that one Sri Tadang Tabing was in possession of part of the land where his house was standing but stated that Tadang Tabing was never in possession of disputed land. At the time when Lt. Kodang Rome was narrating him about his landed property, no one was there. The boundary of the land described by him includes the disputed land. The undertaking which he has taken from Rome brothers are not furnished to the court and also, he has not produced any witness before whom the undertaking was obtained. Though he allowed Mr Toning Pertin to stay on the disputed land, it was not sold to Mr Toning Pertin. He denied that the Magistrate has not read out the affidavit to Opak Rome. Sri Opak Rome put his signature in the judicial office but not in the presence of Magistrate. The plaintiff erected his house in the year 1992. He has no idea if the plaintiff had erected house on the disputed land prior to 1992. The plaintiff in the year 1986 erected fencing and also planted bamboo bushes and small trees. He denied the suggestion that the disputed land was not sold to him by his father-in-law. He did not initiate any action till 1991 on the impression that the plaintiff had accepted his letter. He denied that

he only after getting the undertaking in the year 1990 saw the scope for demanding the land in question and accordingly referred the matter to Kebang. He admitted that he despite of getting summon remain absent in Kebang scheduled on 28.01.1993 and 22.02.1993 as he did not wanted to attend the third Kebang. He belongs to Missing community. The approval of the second Kebang was given on 04.02.1993 by Deputy Commissioner, Pasighat after the date fixed for Kebang on 28.01.1993 and 22.02.1993. He was apprehending that if he attends the Kebang on 28.01.1993 and 22.02.1993 for spot verification of the disputed land, he might lose the case. He denied that the disputed land was legally purchased by the plaintiff. He admitted that he has no idea about the area of the disputed land. And further stated that non availability of documents with him shows that he had not purchased the disputed land. The plaintiff is in possession of the land since 1984. The trees standing on the boundaries of disputed land and his land was planted by him. Since 1979-95 he occasionally used to come to Pasighat in vacation etc. His family has been continuously staying in portion of the land since 1991. He once took the defendant Sri Opak Rome in the house of Mr Muk Pertin for preparation of affidavit. The Jack fruit and Mango trees etc are standing in his portion of land and there are no trees on the disputed land. Bamboo bushes are standing on the disputed land.

43. DW-3 Sri Takosingh Jamoh deposed that the disputed land whereon Dr Talom Taying has constructed a house belongs to Sri Kaliram Regon as he knows the boundary of land of Sri Kaliram Regon. The Southern boundary of land of Kaliram Regon starts from link road, the Eastern boundary of Sri Kaliram Regon is bounded with his sold land, the Northern land of Sri Kaliram Regon is

bounded with the land of Tasing Sitang and the Western part of the land is bounded with the sold-out land of Rome. He knows the land of Sri Kaliram Regon since 1975. In connection with this case there were several Kebangs in between Tasing Taying and Kaliram Regon wherein I also participated. The Kebang was decided in favor of Sri Kaliram Regon. Dr Talom Taying had mistakenly purchased the plot of land from Sri Opak Rome as Opak Rome has no right in the said disputed land. The signature shown in the written statement of Opak Rome which was drafted by himself in his own handwriting is signature of DW-3. Sri Opak Rome after drafting the written statement requested him to put his signature as witness and accordingly, he has given his signature. He before giving his signature had gone through the contents of the affidavit. Sri Opak Rome drafted his written statement on 30.6.1995. He accompanied Sri Opak Rome when Opak Rome filed his written statement before the Deputy Commissioner. Sri Opak Rome before the Deputy Commissioner admitted to have drafted the written statement by himself. As per the contents of written statement filed by Sri Opak Rome, it was seen that Sri Opak Rome had admitted his guilt. In the written statement filed by Sri Opak Rome, Sri Opak Rome clearly admitted that land was purchased by Sri Kaliram Regon from father of Opak Rome. As per his knowledge and contents of the written statement of Sri Opak Rome, Dr Talom Taying has no right to claim the suit land. In connection with this land dispute Sri Opak Rome came to his house for two-three times and agreed to refund the amount taken from Taying family and sought for his help for the same, which was refused by him.

In cross-examination he stated that in the year 1975-76 he was in the school. When he was told about the dispute, his family members were present.

No documents in respect of the landed property were prepared in between Sri Opak Rome and Sri Kaliram Regon. In the letter dated 30.06.1995 the name of land and its area and location was not mentioned wherein I also put my signature before the Deputy Commissioner. He also does not know where and how letter dated 30.6.1995 was drafted by Opak Rome. He doesn't know whether Sri Opak Rome has submitted any other written statement or not. On being suggested he denied that the disputed land was not sold to Kaliram Regon by his father-in-law. Though he knows that Sri Opak Rome can write Adi language, he cannot show any document written by him. He knows nothing about the prayer made by Sri Opak Rome for spot verification etc. On being suggested he denied that Sri Opak Rome has rightly sold out to Lt. Tasing Taying. He also denied that Sri Kaliram Regon is not the owner of disputed land. He also denied that the father of Sri Opak Rome had not told him about the selling of the land to Sri Kaliram Regon. He attended two Kebangs which were probably held in year 1992 and 1993 but he did not put his signature in those Kebang decisions. He cannot prove his presence in those Kebang decisions as he has not put his signature on the decisions thereof. Sri Opak Rome protested the Kebang Decisions.

44. DW-4 Sri Matlun Jamoh had deposed that he knows Sri Kaliram Regon, Sri Opak Rome and Dr Taying and their dispute over the present disputed land. The disputed land situated on the way to Dibo road and land of Sri Kaliram Regon located on the Eastern side of the road and the land of Rome located on the Western side of the road. One day when he was in the house of Lt. Kodang Rome who was temporarily residing at the present place where Kaliram Regon has constructed his house, one Lt. Battang Jamoh along with his son Sri

Takosing Jamoh also came to the house of Lt. Kodang Rome whereon Lt. Kodang Rome told them that he has given that area to his son-in-law Kaliram Regon. As per the boundary of the land shown by Lt. Kodang Rome, the Northern boundary of the land is of Tasing Sitang, Western side was for Rome, Eastern side of land was of Lt. Raktem Jamoh and the land of Daluk Ering and the Southern side is bounded with road. One day when he was passing through the site, he noticed some bamboos collected for construction of house and on enquiry he came to know the same to be of Taying. And accordingly, he suspecting the chance of sale of said land by sons of Lt. Kodang Rome reported the matter to Lt. Raktem Jamoh for conveying the same to Sri Kaliram Regon, on the next day wife of Sri Kaliram Regon arrived at Pasighat. In connection with this case, there were two Kebangs wherein he also participated and given his statement. The Kebangs have decided in favor of Sri Kaliram Regon. Though he had attended the Kebang, he did not put his signature on the Kebang decision. Though Taying after Kebang decision had constructed a house, same was vacated later on. After some time when Taying again came back to the disputed land, he along with one Tanup Taloh of 5th Mile went to the house of Sri Kaliram Regon and also met Sri Opak Rome in the house of Taying and advised Sri Opak Rome not to violate the words of his father. Lt. Kodang Rome is his clan brother and Opak his son. The plot which was sold to Dr Taying is not the land of Sri Opak Rome but it is the land of Kaliram Regon. Sri Opak Rome has mistakenly sold out the land to others.

In his cross he stated that he cannot say the year, month and date on which Kebangs were held, his name does not appear in the Kebang decision as he was not an important member of the Kebang. He attended the Kebang on

being informed by Sri Kaliram Regon. He cannot say when the land was given to Sri Kaliram Regon by Lt. Kodang Rome. He doesn't remember the date, month and year when Lt. Kodang Rome told him about the present land in the house of Sri Kaliram Regon but on that day one Takosing Jamoh who was a school student at that time and his father, Sri Kaliram Regon and himself were present. At the time when he was told about the land given to Sri Kaliram Regon, the disputed land was full of jungle. He has no idea if any document pertains to disputed land was prepared in favor of Sri Kaliram Regon. He remembers that Sri Opak Rome opposed the Kebang decisions. Beside two Kebang decisions held on the spot, two Kebang decisions were held in the office. He doesn't know the area of the land given to Sri Kaliram Regon as Lt. Kodang Rome simply told them that he has given the land to Sri Kaliram Regon. The disputed area includes the land where Kaliram Regon was staying. He cannot say since when Sri Kaliram Regon is staying in the present where he has constructed his house. He has no idea whether the place where Sri Kaliram Regon has constructed his house was sold to any person. He had forgotten since when he knows Sri Kaliram Regon. One Sissar tree which is naturally grown is standing on the boundary in between the land of Taying and Kaliram Regon. He cannot say apart from the Sissar tree whether any other tree is standing on the boundary in between the land of Taying and Kaliram Regon. He does not know if any papers were prepared in between Taying and Kaliram Regon in respect of the disputed land. The area of the land under possession of Mr Kaliram Regon is about one and half pura. He simply knows that the land was given to Kaliram Regon. He has not seen the payment of cost of the land. He comes to court to depose his evidence on behalf Kaliram Regon without being summoned by the court as Kaliram Regon has brought him to the court.

He denied that the disputed land belongs to Taying.

45. Additional DW-1 Sri Barling Yomso deposed that he knows Lt. Kodang Rome and his three deceased sons namely Lt. Opak Rome, Lt. Oyi Rome and Lt. Oni Rome and also knew Yarak Rome, deceased wife of Sri Kaliram Regon. The present disputed land located at Mirbuk village belongs to Lt. Kodang Rome, the father of deceased Lt. Opak Rome, Lt. Oyi Rome and Lt. Oni Rome. Lt. Kodang Rome told him that he sold out the disputed land to Sri Kaliram Regon at the consideration of Rs 500/- only in the year 1975. And thereafter both Sri Kaliram Regon and deceased wife Lt. Yarak Rome were staying on the disputed land but unfortunately Lt. Yarak Rome died sometime in the year 1977 while staying on the said plot of land. Sri Kaliram Regon being a Govt. Servant posted out from Pasighat and later on it was learnt that the land of Sri Kaliram Regon was sold to different persons by his brothers-in-law without knowledge and consent of Sri Kaliram Regon. That in regards of illegal sell of land of Sri Kaliram Regon by Lt. Opak Rome and Lt. Oni Rome to Lt. Tasing Taying and to Sri Tadang Tabing, a Kebang was held on 19.12.1991 at Kebang hall wherein he being aware of the fact that disputed land was given to Lt. Yarak Rome and Sri Kaliram Regon for residential purpose by Lt. Kodang Rome participated in the Kebang proceeding. Both Sri Kaliram Regon and Lt. Yarak Rome constructed an OBT house and residing with their children but unfortunately Lt. Yarak Rome died due to her illness in the said plot of land. He treated Lt. Kodang Rome as his elder when he was alive. Whenever he accompanied Lt. Kodang Rome to his cultivation field passing through present disputed land, he along with Lt. Kodang Rome used to visit the house of Sri Kaliram Regon and Lt. Yarak Rome. After the death of Lt. Yarak Rome,

Sri Kaliram, Regon posted out from Pasighat and thus he discontinued to visits their house. He was told by Lt. Kodang Rome that the land adjacent to disputed land was given to Lt. Onyok Rome for his residential purpose but later on it was made known to him that Lt. Oyi Rome sold it out to one Sri Kunyo Siram of Mirbuk Village which was subsequently sold to Lt. Tabing Lego and as such the widow and two sons of Lt. Tabing Lego are now in possession of the portion of land given to Lt. Onyok Rome. In the Kebang held on 1991, Lt. Raktem Jamoh of Mirbuk village who was owner of the adjacent *plot* vehemently opposed the selling of land to Tasing Taying. Sri Okit Rome who happened to be a cousin of Lt. Kodang Rome clearly stated that the land in question was given to Sri Kaliram Regon and Lt. Yarak Rome for their residential purpose. Sri Okit Rome further stated that the land adjacent to Sri Kaliram Regon was given to Lt. Onyok Rome for residential purpose. In the Kebang decision 19.12.1991, the matter was decided in favor of Sri Kaliram Regon and sale transaction in between Lt. Opak Rome and Lt. Tasing Taying and Lt. Oni Rome and Tadang Tabing were invalidated by the Kebang Authority. In the Kebang decision held on 19.12.1991 Lt. Opak Rome also admitted to have mistakenly sold out the land of Sri Kaliram Regon and accordingly Kebang decided in favor of Sri Kaliram Regon. The disputed land belongs to Sri. Kaliram Regon as he purchased the land at the consideration of Rs 500/- and as same being admitted by Lt. Opak Rome, Lt. Oyi Rome and Lt. Oni Rome before the Kebang decisions of 19.12.1991 under the supervision of Political Assistant and Political Interpreter.

In his cross he stated that he has not personally seen the sale transaction made over the present disputed land in between Lt. Kodang Rome and Sri Kaliram Regon. The Kebang dated 19.12.1991 and 23.05.1992 was conducted at

Kebang office not in the disputed site. Kebang authority before passing the aforesaid decisions have not visited the disputed land. The land reserve for Lt. Opak Rome was never discussed and determine in the said Kebang proceedings. He has not seen Smti Yaken Rome widow of Lt. Onyok Rome in the Kebang proceedings. In Re-Examination he stated that though he has not seen the sale transaction personally, he heard it from Lt. Kodang Rome.

46. Additional DW-2 Sri Boger Apum who stated to have known Lt. Kodang Rome and his three sons Lt. Opak Rome, Lt. Oyi Rome and Lt. Oni Rome and also Lt. Yarak Rome and his husband Sri Kaliram Regon who were staying with Lt. Kodang Rome at Mongku village. He further stated that sometime in the year 1976-77 one Sri Otik Dai son of Lt. Kalom Dai of Balek Village purchased a plot of land which was adjacent to present disputed land from Lt. Kodang Rome. He further stated to have witnessed the sale deed executed in between Sri Otik Dai and Lt. Kodang Rome. At that point of time Lt. Kodang Rome stated to have given the adjacent plot to Sri Kaliram Regon at the consideration of Rs 500/-. And also stated that the land adjacent to Kaliram Regon was given to Lt. Onyok Rome for his residential purpose. Sri Kaliram Regon in the last part of the year 1991 informed him that the pot of land which Sri Kaliram had purchased was sold out by Lt. Opak Rome and Lt. Oni Rome to Tasing Taying and Tadang Tabing. Though Kaliram Regon requested him to participate in the Kebang, he could not have attended the same. However, he from the members who attended the Kebang learnt that Lt. Opak Rome admitted to have illegally sold out the land of Sri Kaliram Regon. And accordingly, Kebang passed a decision in favor of Sri Kaliram Regon. He on the request of Lt. Opak Rome attended the Kebang held on 23.5.1992 wherein

Lt. Opak Rome before the Kebang Authority admitted to have illegally sold out his brother-in-law's land to Tasing Taying and also proposed to refund the consideration amount to Lt. Tasing Taying. However, when it was agitated by Lt. Tasing Taying, Lt. Opak Rome agreed to give alternative plot to Lt. Tasing Taying. And accordingly, Kebang directed Lt. Opak Rome to give alternative plot on or before 30.05.1992.

In his cross he admitted to have given his thumb impression on the affidavit. In the year 1976-77, when he witnessed the sale transaction made in between Sri Otik Dai and Lt. Kodang Rome, Lt. Kodang Rome did not mention the exact area of the land that was given to Sri Kaliram Regon. He has no idea about the payment of any consideration amount by Sri Kaliram Regon. He attended the Kebang in the year 1991. He has no idea about the outcome of the said Kebang decision.

47. Additional DW-3 Sri Lode Dai stated that he is a retired political interpreter. He knew Lt. Kodang Rome father of Lt. Opak Rome, Lt. Oni Rome and Lt. Oyi Rome and also father-in-law of Sri Kaliram Regon as he and Lt. Kodang Rome hailed from same village called Siluk in the district of East Siang. Lt. Kodang Rome during his young age settled at Mongku village and was looking after one of his relative who had no male issue. Lt. Kodang Rome once told him that he had given a plot of land located at Mirbuk to Sri Kaliram Regon and Lt. Yarak Rome for their residential purpose. While he was serving as Political interpreter, Sri Kaliram Regon sometime in the year 1991 lodged a complaint stating that Lt. Opak Rome, Lt. Oni Rome and Lt. Oyi Rome had sold out the disputed land to Sri Tasing Taying and Tadang Tabing and accordingly Kebang was held on

19.12.1991 under his supervision. In the said Kebang proceeding one Lt. Raktem Jamoh of Mirbuk Village who was having a plot of land adjacent to disputed land vehemently opposed the selling of land of Kaliram Regon by Lt. Opak Rome to Tasing Taying. One Sri Okit Rome who happened to be a cousin of Lt. Kodang Rome clearly stated that the dispute plot of land was given to Sri Kaliram Regon and Lt. Yarak Rome for their residential purposed. Sri Okit Rome further stated that the land adjacent to the land of Kaliram Regon was given to Lt. Onyok Rome. In the Kebang held on 19.12.1991, Lt. Opak Rome admitted to have illegally sold out the land of Sri Kaliram Regon. And accordingly, Kebang passed a decision in favor of Sri Kaliram Regon as per the custom and tradition of Adi. The present disputed land belongs to Sri Kaliram Regon as the consideration amount of Rs 500/- received by Lt. Kodang Rome had been accepted by three sons of Lt. Kodang Rome in the Kebang proceeding. Sri Kaliram Regon, Lt. Opak Rome, Lt. Oni Rome, Lt. Oyi Rome and Lt. Tasing Taying were present in the Kebang proceeding. According to that Kebang decision Smti Anima Taying shall not have any right over the present disputed land.

In his cross he stated that though he signed the affidavit before the Deputy Commissioner, Pasighat he doesn't know English. He doesn't remember the content of affidavit as same was not read over to him. He instructed the Advocate to draft what he has stated. He was told by Lt. Kodang Rome that the land falling on the left side was parted to Sri Kaliram Regon at the consideration of Rs 500/- but he did not saw the sale transaction. Lt..Kodang Rome did not tell him the dimension of the land parted to Sri Kaliram Regon. The Kebang of 1991 was held in office not on the spot and no verification of the site was done.

Sri Okit Rome did not describe the area of the land. It was also heard in the Kebang that some portion of the land was parted to Lt. Onyok Rome however Kebang did not demarcated the boundary of Lt. Onyok Rome and Sri Kaliram Regon. He has no idea about any Kebang other than the Kebang held in the year 1991.

In Re-Examination he stated that his statement made in local dialect was translated by his counsel in affidavit. Lt. Onyok Rome has no land at the present disputed land. All the Kebang members accepted that the disputed land solely belongs to Sri Kaliram Regon.

48. Additional DW-4 Sri Otik Dai who said to have known Lt. Kodang Rome and his three sons Lt. Opak Rome, Lt.. Oni Rome and Lt. Oyi Rome further stated that Lt. Opak Rome was his friend. He in the year 1982-83, purchased a plot of land adjacent to present disputed land. On the day when he purchased the said land, Lt. Kodang Rome told him that the land adjacent and located on the Eastern side of road was given to Sri Kaliram Regon husband of Lt. Yarak Rome. The said sale deed executed in between himself and Lt. Kodang Rome was witnessed by one Sri Boger Apum, the Gaon Burah of Balek Village. He in the year 1984-85, again sold out his purchased plot of land to one Sri Gegong Pertin which is still under his possession. As per the word of Lt. Kodang Rome the present disputed land belongs to Sri Kaliram Regon and as such Lt. Opak Rome and his brothers had no right to sell the land of Sri Kaliram Regon to any other person. He being a friend of Lt. Opak Rome used to visit the house of Lt. Yarak Rome and Kaliram Regon while they were staying in the disputed land in the year 1975-76. Sri Kaliram Regon who purchased the disputed land from Lt.

Kodang Rome is the owner of present disputed land.

In his cross he stated that the plot which was given to him by Lt. Kodang Rome was on the Eastern side of Sri Kaliram Regon. According to the word of Lt. Kodang Rome, the plot of land falling on the East was given to Sri Kaliram Regon but the exact area of the same was not mentioned. There were many other plots, other than the plot sold to him and Sri Kaliram Regon. He never attended any Kebang connected to present disputed land.

49. On careful analysis and scrutiny of the entire depositions, it transpires that there exists two distinct and separate lands situated in the area, one purchased by the father-in-law (original plaintiff) of the plaintiff/respondent No. 1 and other given to the appellant. The sale deeds which have been exhibited as P/Ext-1 and P/Ext-2 are proved. The sale deeds have not been disputed by both the defendants including the appellant by cogent evidence. The appellant could not prove any sale document in support of his claim except the evidence of some DWs which appears to be mere assertion. The sale agreements made in between the plaintiff and the defendant No.1 who was admittedly a legal heir of the owner of disputed land has been established and proved. There is no evidence to show that the land given to Appellant/defendant No.2 by his deceased father-in-law Late Kodang Rome includes the present disputed land which has been admittedly purchased by the plaintiff from the son of late Kodang Rome except the oral sale transaction allegedly made in between the Appellant/defendant No.2 and late Kodang Rome by DWS. Although the defendant No.1 Sri Opak Rome in Kebang proceeding dated 19.12.1991 and 23.05.92 and in his written statement had said to have mistakenly sold out the

disputed land to Tasing Taying, same cannot be declared to had been wrongly and illegally sold out the land of Appellant/defendant No.2 Sri Kaliram Regon to the plaintiff unless there are evidence to show that same had been sold illegally.

50. The PW-1 had deposed that his deceased father Late Tasing Tayeng on dated 29.07.1984 purchased the present suit land measuring about 1 (one) Pura from defendant No.1 Sri Opak Rome (since deceased) at the consideration of Rs.6000/- (Rupees six thousand) and subsequently his deceased father on dated 23.06.1986 again purchased another 30 feet of adjacent land from the defendant No.1 at the consideration of Rs.1000/ (Rupees one thousand). Having purchased the suit land constructed OBT house over the same and also planted some trees. In support of his claim he has exhibited sale agreements dated 29.07.1984 and 23.06.1986. However, both the dependants including the present appellant have not denied with cogent evidence , therefpre, learned Additional District Judge has rightly concluded that plaintiff Late Tasing Taying on dated 29.07.1984 and 23.06.1986 had purchased a land measuring area of 1 pura and 30 feet respectively from the defendant No.1 Mr. Opak Rome (since deceased). The sale agreements executed in between plaintiff and the defendant No.1 on dated 29.07.1984 (P/Ext-1) and 23.06.1986 (P/Ext-2) clearly describes the location and area of land in question.

51. The DW-1, Opak Rome (since deceased) had stated that the disputed land measuring about 1 Pura is inherited by him from his deceased father Late Kodang Rome and accordingly he being owner of the same sold the land to Tasing Taying (since deceased) at the consideration of Rs.6000/- (Rupees seven

thousand) and another 30 feet for consideration of Rs. 1000/- (Rupees one thousand). However, he had also stated that the land adjacent to his plot was given to appellant. In cross examination, he further stated that he first sold 1 pura of land at the consideration of Rs.6000/- and then sold another 30 feet of land to Tasing Taying and also laid stone pillar on the boundary. As rightly concluded by the learned trial court, therefore, since this testimony of the DW-1, who is seller of the disputed land remain unshaken in his cross examination by the appellant, it cannot be held that he has not sold out the disputed land to the plaintiff.

52. The appellant, who examined himself as DW-2 had deposed that in the year 1975, he purchased the disputed land from his deceased father-in-law Late Kodang Rome at the consideration of Rs.500/- (Rupees five hundred). He further stated that at the time of delivery of possession of the disputed land, his deceased father-in-law shown him the boundary of his purchased land. He had constructed his house over the land in the year 1976 and stayed there till 1979. However, he had stated that he has not mentioned the total area of disputed land and even he has no sale deed and money receipt etc in connection to this present disputed land. He also admitted that at the time when his deceased father-in-law shown him the land no witness was there. He further admitted that he has no idea about the area of disputed land. Further he admitted that the plaintiff is in possession of suit land since 1984. Therefore, the appellant has no documentary evidence and there was no witness to the oral sale agreement in support of his claim. Thus, this court is in agreement with the findings of the learned trial court that in the absence of documentary evidence, it would not be safe to hold that the appellant who does not have any idea about the area of his claimed land had purchased present disputed plot of

land from Late Kodang Rome. At the same time, in view of the admission by the DW-1, I find that the appellant was given a plot of land by the deceased father of the DW-1.

53. The DW-3 Shri Takosing Jamoh had deposed that he knew that the land belonged to the appellant since 1975 and stated that the western boundary of the land belonged to Rome which is contrary to deposition of the appellant, who had stated that the western boundary was bounded by link road which shows that the plot of land sold to the plaintiff was a different and distinct plot of land other than that of the appellant. It is seen that DW-3 was not a witness to sale transaction between the appellant and Lt. Kodang Rome nor he could stated the source of knowledge of the boundary. The DW-4 deposed that on a visit to Kodang Rome's house who was temporarily residing in the disputed land he was told by Kodang Rome that he had given the area to his son-in-law (appellant). He had also deposed that they were shown the boundary of the land and that the western boundary was that of Rome and not a link road. This testimony also goes to show there are two different plot in the area.

54. The depositions of Additional DW-1 and 2 are almost on the same breath. Additional DW-1 stated that he knew that the disputed plot of land was sold to the appellant by Lt. Kodang Rome for a consideration of Rs. 500. He deposed that during the kebang held on 19.12.91 Lt. Raktem Jamoh and one Okit Rome who was the cousin brother of Lt. Kodang Rome clearly stated that the disputed plot was given to the appellant. He further deposed that the DW-1 (It. Opak Rome) admitted in the Kebang that he has illegally sold the disputed plot of land to the Plaintiff. However, during his cross-examination, he stated that he has not

personally seen the sale transaction between Lt. Kodang Rome and the appellant. He further stated that the Kebang authorities did not visit the disputed land because they were aware of the boundary of the disputed land. The addl. DW-2 had stated that he was a witness in the sale transaction in the plot of land between Shri Otik Dai and Lt. Kodang Rome at which point of time Lt. Kodang Rome told him that the adjacent pot of land was given to the pro-forma defendant for a consideration of Rs.500/-. He also deposed that he was told by Lt. Kodang Rome that the adjacent plot of land of the pro-forma defendant was given to Lt. Onyok Rome for his residential purpose. He further deposed that though he could not attend the Kebang held on 19.12.1991 he was told by the members of the Kebang who attended that Lt. Opak Rome admitted the illegal sale of the land of the pro-forma defendant. In his cross-examination, he had admitted that Lt. Kodang Rome did not tell him the exact area of the land given to appellant. On appreciation of the depositions of above Additional DWs, there are contradictions to their depositions.

55. Additional DW-3 had deposed that once Lt. Kodang Rome told him that the plot of land located at Mirbuk village has been given to the appellant and his wife for residential purpose. He also stated that the land adjacent to the appellant was given to Lt. Onyok Rome for residential purpose. He deposed same version as that of the Additional DW-1. In the cross-examination, he has admitted that he was not told about the exact area of land given to the pro-forma defendant. He also admitted that Okit Rome also did not tell the exact area of land that was given to the pro-forma defendant. He also stated in the cross that the Kebang did not demarcate the boundary between the pro-forma defendant and Lt. Onyok Rome after the Kebang decision. AdditionalDW-4

stated that he bought a plot of land from Lt. Kodang Rome sometime in the year 1982-83 and while purchasing the said plot of land he was told by Lt. Kodang Rome that the opposite plot of land located at the eastern side of the road was given to the appellant and as per information given by Lt. Kodang Rome the present disputed plot belongs to the appellant. In the cross-examination, he had stated that he was not told the exact area given to the appellant and that there were many other plots other than the plot sold to him and the plot given to appellant.

56. Upon careful appreciation of the evidences on record, this court finds that the plaintiff (s) could establish the right and title over the land in question by adducing oral and documentary/material evidences. The sale agreements dated 29.07.1984 (P/Ext-1) and 23.06.1986 (P/Ext-2) executed in between the defendant No.1/respondent No. 2 and the plaintiff have been duly proved in the trial before the learned Additional District Judge, Pasighat. On the other hand, the appellant has failed to adduce supporting material evidence. The appellant failed to establish his right by showing the exact area and boundary of his purchased land by adducing oral or documentary evidence. The learned Additional District has not committed any error in taking up the 5 (five) issues out of 29 (twenty) issues framed by the Deputy Commissioner, and returned findings in favour of the plaintiff/respondent No. 1, thereby rightly decided the suit in favour of the plaintiff /respondent No. 1, in the facts and circumstances of the present case.

57. This court has carefully perused the case laws relied on by the learned counsel for the appellant and have found not at all relevant in the facts and

circumstances of the present appeal and thus, refrains from its discussion.

58. In view of the discussion and appreciation made herein above, this court finds no infirmity in the impugned Judgement and Decree dated 07.12.2015 passed by the learned Additional District Judge, Pasighat, in PSG. Title Suit No. 07/2012. Consequently, this present appeal fails and the Judgement and Decree dated 07.12.2015 passed by the learned Additional District Judge, Pasighat, in PSG. Title Suit No. 07/2012 is affirmed and upheld.

59. In the result, RFA stands dismissed.

Send down the Trial Court Records.

JUDGE

Comparing Assistant