

GAHC040006522024



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

Case No. : RSA/1/2024

Adipson Mize

Son of Shri Tagung Mize, resident of Rani Village, PO and PS Sille Oyan, East Siang District, Arunachal Pradesh

VERSUS

Tahor Taggu

Son of Late Taling Taggu, resident of Rani Village, PO and PS Sille Oyan, East Siang District, Arunachal Pradesh

Advocate for the Petitioner : Vijay Jamoh

Advocate for the Respondent :

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.05.2024

Heard Mr. V. Jamoh, the learned counsel for the appellant.

2) This appeal under section 100 CPC has been filed to assail the first appellate final order dated 27.02.2024, passed by the learned Civil Judge (Senior Division), East Siang District, Passighat in Civil Appeal (Kebang) No. 129/2023. By the said appellate order, the appeal filed by the respondent was

allowed and the Kebang decision/ order dated 27.03.2023, passed by the Secretary, Sille- Oyan Gaon Bura- Buri Association, by which the Kebang had declared and decided that the land now belongs to Shri Adipson Mize (appellant herein), was set aside by holding that the said decision was hit by the principles of *res judicata* as well on the ground that the said order was not passed by a competent authority.

3) The respondent no.1 in the proceeding of Civil Appeal (Kebang) No. 129/2023 is the appellant in this instant appeal.

4) At the outset, it may be mentioned that "*Kebang*" is the Village Authority appointed by the Deputy Commissioner under section 5 of the Assam Frontier (Administration of Justice) Regulation, 1945 ("AFR, 1945" for short). The said Village Authority is empowered to exercise criminal and civil proceeding specified under the said AFR, 1945. "*Kebang*" is one of the Customary/ Traditional Court in the State of Arunachal Pradesh. Under the relevant provisions of Arunachal Pradesh Civil Courts Act, 2021, the Civil Court in the State of Arunachal Pradesh are vested with the power to decide the appeal against the order passed by the Village Authority/ *Kebang*. The said Act also recognizes Inter-Village Territorial Court as an appellate forum.

5) The facts of the case, in brief, as revealed from the first appellate judgment is follows:-

- a. In the year 1986, the *Rani Bane Kebang* held a *Kebang*, called *Kebang Luyin Nam Agom*, bearing no. RUK/F-1/1.86 dated 14.07.1985 in connection with land ownership dispute between Sri Tagung Mize, the father of the appellant and the respondent, namely, Sri Tahor Taggu. The appellant claims that his father had migrated from Jomo Village

under Rumgong Sub- Division, Siang District to their present place of residence at Rai Village in the year 1971 and initially stayed with his relatives. In the year 1974, his father had constructed a dwelling house on the disputed plot of land which was lying vacant and unused. In the year 1986, the respondent started claiming the land as his land and he forcefully constructed a dwelling house thereon.

- b. Hence, a *Kebang* was held and the *Kebang* decision dated 14.07.1986, was in favour of the respondent and the claim of the father of the appellant was rejected.
- c. The father of the appellant did not challenge the *Kebang* decision, but in terms of order dated 11.07.1996, passed by the Sub- Divisional Officer, Ruksin, a *Kebang* in respect of the same land was held once again on 18.07.1996. In the *Kebang* decision dated 18.07.1996, it was held that the disputed land was the community land of Rani Village and the respondent herein was directed to pay a cost of Rs.1,000/- (Rupees One thousand only) for the land in question to Rani Village Authority, but he was permitted to continue the possession of the land.
- d. The appellant or his father did not assail the *Kebang* decision dated 18.07.1996. However, representations were submitted before the Sub-Divisional Officer, Ruksin. Later on, the Deputy Commissioner, East Siang District by order dated 25.09.2000, upheld the *Kebang* decision dated 18.07.1996.
- e. The appellant and his father, namely, Tagung Mize did not file any appeal against the order dated 25.09.2000, passed by the Deputy Commissioner, East Siang District, but submitted representations before

the authorities. Ultimately, by order dated 12.01.2012, the Deputy Commissioner, East Siang District had issued a direction upon the Circle Officer, Sille Oyan for conducting a *Kebang* for settlement of the dispute. In this regard, the Circle Officer, Sille Oyan wrote to the Deputy Commissioner, East Siang District and informed him about settlement of the dispute by *Kebang* and that his office could not review a decided case on the complaint lodged by Tagung Mize (father of appellant).

- f. The respondent and *Rani Bane Kebang* were served with a summons dated 27.03.2023, issued by Sri Tayor Kamsi, Secretary, Sille- Oyan Gaon Bura- Buri Association, calling upon him to attend the *Kebang* on 27.03.2023 at Rani Village Community Hall. However, the *Rani Bane Kebang* declined to attend the said *Kebang* as the matter was already decided by *Kebang* on 14.07.1986, 18.07.1996 and order dated 25.09.2000, passed by the Deputy Commissioner, East Siang District.
- g. The Secretary, Sille- Oyan Gaon Bura- Buri Association, decided the matter *ex parte*, and altered the *Kebang* decision dated 14.07.1986 and 18.07.1996 as well as the order dated 25.09.2000, passed by the Deputy Commissioner, East Siang District on the ground that the *Kebang* were irrelevant and the administrative orders had no authority of law. Accordingly, the ownership right over the disputed land was conferred in the appellant, purportedly by overlooking that the respondent was residing on the land for last 49 years.

6) The learned First Appellate Court had formulated two following three points of determination:-

- i. *Whether the impugned ex parte Kebang decision of 27.03.2023 amounted to review of the earlier Kebang decision of 14.07.1986 and 18.07.1996 and is also hit by the principle of Res Judicata?*
- ii. *Whether the Secretary, Sille-Oyan Gaon Bura/Buri association is a traditional village council/customary Court which had the competency to pass the ex parte Kebang decision?*
- iii. *Whether the appellant is entitled to the reliefs claimed?*

7) In respect of point no.1, the learned First Appellate Court had held that in the *Kebang* decision dated 14.07.1986, it was held that respondent was the owner of the land and the claim of the father of the appellant was rejected. It was further held that in *Kebang* decision dated 18.07.1996, it was held that the land was community land of *Rani Village* and the respondent was ordered to pay cost of Rs.1,000/- to *Rani Village Authority* and he was allowed to continue to reside on the said land. The First Appellate Court had also referred to yet another *Kebang* decision dated 23.07.2004, between Takiam Mize (since deceased) and Rani Village Community, which was conducted by Political Interpreter of Office of Sub- Divisional Officer, Ruksin for selling of land by *Rani Bane* to respondent on the basis of *Kebang* decision dated 18.07.1986 and the transaction was declared to be illegal and land was declared to be of Takiam Mize (since deceased) and *Rani Bane* was directed to pay cost of Rs.1,000/- to the respondent and to also pay a sum of Rs.30,000/- to Takiam Mize (since deceased) in lieu of the disputed land and it was further held that the respondent should not be disturbed from the disputed land but it was subject to payment of Rs.30,000/- to Takiam Mize (since deceased). As payment was not made, Takiam Mize (since deceased) approached the Sub- Divisional Officer,

Ruksin for non-compliance of *Kebang* decision dated 23.07.2004. The Extra Assistant Commissioner, Ruksin, by order dated 15.09.2008, directed the HBs of Rani Village to comply with the decision. As the order was not complied with, the said Extra Assistant Commissioner, Ruksin, by order dated 19.11.2008, in view of disobedience of order dated 23.07.2004, directed Takiam Mize (since deceased) to take over the possession of the land from the respondent. Thereafter, in view of order dated 02.06.2009 passed by the Sub-Divisional Officer, Ruksin, the political interpreter of Silie Oyan had conducted a *Kebang* on 01.07.2009 wherein it was reaffirmed that the land belong to Takiam Mize (since deceased) and directed the *Rani Village* community to refund a sum of Rs.1,000/- to the respondent herein.

8) The appellant had projected that after coming to know about the *Kebang* decision dated 01.07.2009, Takung Mize submitted an appeal against the *Kebang* decision dated 01.07.2009. The said appeal was forwarded by the Deputy Commissioner, Pasighat to the Circle Officer, Silie Oyan. However, the said authority had refused to accept the said appeal without understanding the context of the *Kebang* decision dated 14.07.1986, 18.07.1996, 23.07.2004 and 01.07.2009. It was projected by the respondent that Tahup Mize, son of Late Takiam Mize had entered into an understanding with Sri Tagung Mize, whereby Sri Tahup Mize was duly compensated and it was projected that in view of the compensation paid, the said Tahup Mize had surrendered his right, title and interest over the land and that under such circumstances, Tagung Mize had approached the Silie Oyan, *Banggo* for conducting the *Kebang* and accordingly, the *Kebang* decision dated 27.03.2023 was passed in favour of the appellant.

9) The learned first appellate Court had examined the hereinbefore referred *Kebang* decisions as well as the administrative orders passed by the

Deputy Commissioner, Pasighat and the Extra Assistant Commissioner, Ruksin. After a thread bare discussion of all the orders passed from time to time, it was held that the entire conduct of the Executive Officers by holding the *Kebang* on 27.03.2004 till the passing of the order for taking back the land in the year 2008 was on account of the gross irregularity started by the Executive Magistrate by entertaining the plea of Late Takiam Mize by holding the *Kebang* on 27.03.2004. It was also held that interestingly, the Executive Magistrates had themselves done course correction in the year 2012 after submission of representation filed by Sri Tagung Mize by holding that the matter in issue was already decided by the *Kebang* held in the year 1986 and 1996. It was also held that the matter in issue was clearly decided in the year 1996 in favour of the respondent and therefore, Sri Tagung Mize ought to have file an appeal against the letter/communication dated 25.09.2000 of the Deputy Commissioner, East Siang District, but no appeal was filed and the said Tagung Mize took advantage of the *Kebang* decision dated 27.03.2008 by purchasing land from Late Takiam Mize. The learned first appellate Court also held that the initial plea of Tagung Mize was that the land belonged to him and it was not the community land of *Rani Village* when he filed representation against *Kebang* decision of 1996 and after *Kebang* decision of 2004, but he had purchased the said land from the Late Takiam Mize by paying compensation.

10) Under the said background, the point of determination no. 1 was answered in the affirmative and in favour of the respondent.

11) On point of determination no.2, it was held that the Arunachal Pradesh Civil Courts Act, 2021 had given due recognition to the Inter-Village Territorial Court (*Banggo Kebang*), but only as an appellate forum under section 15(4) thereof. It was further held that if the *Rani Village* had refused to conduct

a *Kebang*, the respondent should have approached the Deputy Commissioner, East Siang District for getting a *Kebang* held by Silile- Oyan Gaon Bura- Buri Association, which was not done. Accordingly, it was held that the Silile- Oyan Gaon Bura- Buri Association cannot be a Court of first instance, but it is an appellate forum under the Arunachal Pradesh Civil Courts Act, 2021. Thus, the point of determination no.(ii) was also decided in the negative and in favour of the respondent.

12) Resultantly, in light of the decision on the point of determination no.(i) and (ii), the *ex parte Kebang* decision dated 27.03.2023 by the *Silile- Oyan Gaon Bura- Buri Association* was set aside. It was further held that the decision was hit by the principles of *res judicata* and that it was not passed by the competent authority. Accordingly, the point of determination no. (iii) was also answered in the affirmative and in favour of the respondent.

13) Having heard the submissions made by the learned counsel for the appellant, it is seen that the appellant is not been able to dispel the correctness of the decision of the learned first appellate Court by establishing that the *Silile- Oyan Gaon Bura- Buri Association*, even if treated as *Banggo Kebang* could act as a Court of first instance. The appellant could not negate that under the Arunachal Pradesh Civil Courts Act, 2021, an Inter Village Council was only an appellate forum. Therefore, in light of the provisions of Section 15(4) of the Arunachal Pradesh Civil Courts Act, 2021, the *Kebang* decision dated 27.03.2003, passed by the *Silile- Oyan Gaon Bura- Buri Association* cannot be saved in any view of the matter. Accordingly, the Court is constrained to hold that the impugned final order dated 27.02.2004 and its finding on the three points of determination are not liable to be interfered with.

14) Moreover, we find that the learned first appellate Court had

correctly appreciated that the previous *Kebang* decisions of 14.07.1986 and 18.07.1996 was in a dispute between the appellant, who is the son of Tagung Mize, and Sri Tahor Taggu (respondent herein). We also note that the *Kebang* conducted by *Sille- Oyan Gaon Bura- Buri Association* on 27.03.2003, though titled as a matter between *Adipson Mize Vs. Rani Bane Kebang*, but in light of declaration made before the *Kebang* by Sri Tahup Mize, the *Kebang* decided that the land belongs to appellant.

15) We also take note of the fact that in the proceedings of Civil Appeal (Kebang) No. 129/2023, the respondent herein had arrayed four respondents, namely, Sri Adipson Mize (appellant herein) (respondent no.1), Sri Tagung Mize (respondent no.2), Sri Tahup Mize (respondent no.3), and Sri Toyor Kamsi (respondent no.4). Thus, the respondents herein had involved all the relevant parties who had any interest over the disputed land in question and that after due notice to all necessary parties, the proceedings of Civil Appeal (Kebang) No. 129/2023 was decided vide impugned final order dated 27.02.2024. However, in this appeal except for the appellant and the respondent, the respondent nos. 2, 3 and 4 of the said Civil Appeal (Kebang) No. 129/2023 are not arrayed as party. Therefore, this appeal is hit by the principles of non-joinder of necessary party.

16) Under such circumstances, the Court is inclined to hold that the finding of the learned first appellate Court on the issue of *res judicata* is a pure question of fact which was decided against the appellant, no substantial question of law arises for decision in the present appeal and therefore, this second appeal is devoid of any merit.

17) Moreover, as the present appeal is also hit by the principles of non-joinder of necessary parties, this would be an additional ground by holding

that this second appeal otherwise is also not maintainable on facts and in law.

18) This appeal stands dismissed accordingly.

JUDGE

Comparing Assistant