

GAHC040014152023



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

Case No. : CRP/61/2023

Yomto Jini
S/o Lt. Rayom Jini, R/o Sipu Colony, P/O-P/S Aalo, District West Siang, Pin 791001,
Arunachal Pradesh. Ph. 9508714510

VERSUS

Smti Dongam Jini
W/o Lt. Rayom Jini, R/o Old Market, P/O-P/S Aalo, District West Siang, Pin 791001,
Arunachal Pradesh. Ph. 9436290247

Advocate for the Petitioner : D. Soki

Advocate for the Respondent : V. Jamoh

BEFORE
HONBLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 29.04.2024

Heard Mr. D. Soki, learned counsel for the petitioner. Also heard Mr. V. Jamoh, learned counsel for the respondent.

2. The petitioner has filed an application under Section 115 read with Section

151 of the Code of Civil Procedure and Article 227 of the Constitution of India seeking quashing of the ex-parte order dated 09.10.2023 passed in I.A./02(AP)/2023 arising out of the L.A Case No. 06/2023 pending in the Court of the District Judge, Aalo, West Siang District, Arunachal Pradesh.

3. The facts of the case is that after the father of the petitioner passed away on 15.12.2023, a complaint was lodged before the Village authority by the petitioner. Accordingly, the Keba was held on 16.07.2023 by the Head Gaon Burah, whereby, the disputed property was divided between the petitioner and the respondent.

4. Pursuant to the aforesaid division/partition, the respondent filed L.A. case before the District Judge, Aalo on 26.07.2023 which has been registered as L.A. Case No. 06/2023 in respect of the same land.

5. In the meantime, since the petitioner was unable to collect rent from his partitioned portion of the property, he filed a complaint before the village authority on 13.08.2023. Pursuant to the aforesaid complaint, "Parwana" was issued on 20.08.2023 for conduct of Keba. Thereafter, fresh "Parwana" was issued by the village authority on 05.09.2023 to hold Keba.

6. The respondent on 09.10.2023 filed interlocutory application bearing I.A/02(AP)/2023 in the connected letter of administration proceedings i.e., L.A./06(AP)/2020 for staying the Keba proceedings. The trial Court by order

dated 09.10.2023 suspended further Keba by an ex-parte order dated 09.10.2023. The said order of the trial Court suspending further Keba proceedings is challenged in the instant revision petition.

7. Mr. D. Soki, learned counsel for the petitioner submits that relating to the same plot of land a Keba decision was held on 16.07.2023 and when the petitioner was not allowed to withdraw the rent of the shops and the respondent has forcefully taken the rent, the petitioner filed another complaint to call for Keba hearing wherein notices was issued on 20.08.2023 and 05.09.2023. He further submits that the respondent thereafter filed an application for letters of administration relating to the same disputed property. He further submits that the respondent filed an interlocutory application being I.A./02(AP)/2023, wherein, suspension of the further Keba proceedings was sought for. He accordingly submits that the ex-parte order is wholly without jurisdiction and manifestly illegal.

8. Mr. V. Jamoh, learned counsel for the respondent, on the other hand submits that the instant revision petition is not maintainable as revision petition under Section 115 shall not lie against interlocutory orders.

9. I have heard the submissions made at the bar and I have perused the materials available on record.

10. It appears that the L.A. Case has been filed for issuance of letter of

administration in respect of same plot of land which was already divided amongst the party by Keba decision held on 16.07.2023. Pertinent to mention that under the provision of Assam Frontier (Administration of Justice) Regulation Act, 1945 (herein after referred as Regulation, 1945 under Regulation 40), it is the village authority who shall try all suits without limit of value, in which both the parties are indigenous to the Arunachal Pradesh. Relevant provisions of the aforesaid Regulations are quoted herein under for ready reference:

*"**24.** Any party aggrieved by a decision of a village authority may appeal within Thirty days to the (Assistant Commissioner) who on receipt of such appeal, shall try the case **de novo**.*

***40.** The village authorities shall try all suits without limit of value, in which both the parties are indigenous to the (Union Territory of Arunachal Pradesh) and live within their jurisdiction and which are not submitted to arbitration under the provisions of section 38. All other suits which are not submitted to arbitration under the provisions of section 39 shall be tried by the (Deputy Commissioner) or an (Assistant Commissioner).*

***45.** (1) Unless any party having a right of appeal against a decision of a village authority gives notice, when such decision is pronounced, of his intention to appeal against it, the village authority shall carry out the decision forthwith, and for such purpose may proceed by distraint of any property belonging to any person liable to pay any sum under the decision, unless such person furnish security to the satisfaction of the*

village authority.

(2) If notice of intention to appeal is given, the village authority shall send the parties and witness to the (Deputy Commissioner) or an (Assistant Commissioner) forthwith, and one of the members of the village authority or one of the independent witness shall accompany them."

11. The perusal of the aforesaid Regulation shows that the village authorities is competent to decide a dispute between the parties being both indigenous to the State of Arunachal. Further, under the aforesaid regulation 24, a decision of the village authority is appealable. In the present case admittedly, no appeal has been filed against the decision of the village authority (Keba) dated 16.07.2023. The Keba decision dated 16.07.2023 having not appealed within the stipulated period has attained finality and therefore, cannot be re-opened. However, it appears that against the same plot of land the letters of administration has been sought for by filing the connected L.A. proceedings.

12. It further appears that since the petitioner has not been able to collect rent in relation to the shop falling under his portion of the land in terms of the aforesaid Keba decision held on 16.07.2023, he has filed an application for holding Keba meeting before the village authority. The summons to hold Keba further proceedings has been assailed before the trial Court in the connected L.A. proceedings vide an interlocutory application.

13. Pertinent to refer to the decision of Patna High Court in the case of ***Saroj Kumar vs. Manish Kumar & others***, wherein, the Hon'ble Patna High Court has held that the proceedings of the partitioned suit cannot be stayed under Section 10 of the Code of Civil Procedure during the pendency of the probate case inasmuch as the aforesaid two proceedings are in respect of the same matter and the issue.

14. As regards the submissions of the learned counsel for the respondent to the effect that revision petition is not maintainable against interlocutory application, the matter requires no further adjudication as it is well settled that the power of the High Court under Article 227 of the Constitution of India is always in addition to the revisional jurisdiction conferred on it. Therefore, when revision petition is filed under the provision of Article 227 of the Constitution of India, the bar under Section 115 of CPC is not there. The present case being also filed under Article 227 of the Constitution of India, the impugned order is subject to the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

15. A perusal of the impugned order dated 09.10.2023 passed by the trial Judge indicates that by an interim order, the Keba "Parwana" dated 05.09.2023 issued by the in-charge Head Gaon Burah of Aalo has been suspended until further order. The interim orders are not to be given merely for the asking. The order dated 09.10.2023 does not indicate any application of mind whatsoever for staying the subject Keba "Parwana". As discussed above, the subject plot of

land having already been settled by Keba proceedings dated 16.07.2023, the same is required to be carried out in full spirit. However, it appears that because the respondent did not allow the petitioner to collect rent from the shops falling under his partitioned portion, subject Keba "Parwana" was issued. Hence, the ex-parte order dated 09.10.2023 suspending the said Keba "Parwana" dated 05.09.2023 in the L.A proceedings in respect to the same land is manifestly erroneous and has occasioned grave injustice. Therefore, the impugned order is bad in Law, hence unsustainable.

16. In view of the above, this court is of the considered view that the petitioner has made out a case warranting interference from this Hon'ble Court.

17. Resultantly, the impugned ex-parte order dated 09.10.2023 passed in I.A./02/2023 (In L.A. Case No. 06/2023) passed by the Hon'ble District Judge of Court, West Siang is set aside and quashed.

With the aforesaid above, the civil revision petition stands allowed and disposed of.

JUDGE

Comparing Assistant