

GAHC040015142023



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

Case No. : RFA/11/2023

Kamu Miji and 17 Ors.
S/o Late Sawu Miji,
permanent resident of village Kampa,
Lada Circle,
P.O Lada,
P.S Khenewa,
East Kameng District,
Arunachal Pradesh.

2: Kalang Miji
Age:
Occupation :
S/o Late Dairu Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

3: Solung Miji
Age:
Occupation :
S/o Late Dongling Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

4: Kamchi Sangchoju
Age:

Occupation :
S/o Late Dainu Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

5: Sangchey Sangchoju
Age:
Occupation :
S/o Late Dainu Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

6: Metung Miji
Age:
Occupation :
S/o Late Dongli Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

7: Lupa Sangchoju
Age:
Occupation :
S/o Late Besai Sangchoju
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

8: Apang Miji
Age:
Occupation :
S/o Late Van Miji
permanent resident of village Kampa
Lada Circle

P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

9: Rome Miji
Age:
Occupation :
S/o Metung Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

10: Dolo Miji
Age:
Occupation :
S/o Late Vam Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

11: Tamar Puroik
Age:
Occupation :
S/o Late Chai Puroik
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

12: Neroj Sangchoju
Age:
Occupation :
S/o Late Diji Sangchoju
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

13: Changtung Miji

Age:

Occupation :

S/o Metung Miji

permanent resident of village Kampa

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

14: Medi Miji

Age:

Occupation :

S/o Late Vam Miji

permanent resident of village Kampa

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

15: Apik Miji

Age:

Occupation :

S/o Shri Metung Miji

permanent resident of village Kampa

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

16: Rajiv Sanchoju

Age:

Occupation :

S/o Shri Kamchi Sangchoju

permanent resident of village Kampa

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

17: Roshan Sangchoju

Age:

Occupation :

S/o Shri Kalong Miji
permanent resident of village Kampa
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh

VERSUS

Segi Sangchoju Miji and 20 Ors.
S/o Late Nishang Miji,
permanent resident of village Kampa,
Lada Circle,
P.O Lada,
P.S Khenewa,
East Kameng District,
Arunachal Pradesh.

2:Tapuk Sangchoju
Age: 0
Occupation :
S/o Late Phujung Sangchoju
permanent resident of village Nabolang
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

3:Laigu Sangchoju
Age: 0
Occupation :
S/o Late Khandu Sangchoju
permanent resident of village Nabolang
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

4:Tongla Sangchoju
Age: 0
Occupation :
S/o Late Sasu Sangchoju
permanent resident of village Nabolang
Lada Circle
P.O Lada

P.S Khenewa
East Kameng District
Arunachal Pradesh.

5:Solung Sangchoju
Age: 0
Occupation :
S/o Late Aplong Sangchoju
permanent resident of village Lada Town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

6:Kaman Miji (Khaduju)
Age: 0
Occupation :
S/o Late Wuli Miji
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

7:Sangio Naloiju
Age: 0
Occupation :
S/o Late Lhupa Naloiju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

8:Kalo Sangchoju
Age: 0
Occupation :
S/o Late Khiongcho Sangchoju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

9:Dirang Naloiju

Age: 0

Occupation :

S/o Late Lhupa Naloiju

permanent resident of village Chongkabam

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

10:Lungmai Miji

Age: 0

Occupation :

S/o Late Rajen Miji

permanent resident of village Lada town

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

11:Apang Khaduju

Age: 0

Occupation :

S/o Shri Dongrong Khaduju

permanent resident of village Lada town

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

12:Gyamtang Miji

Age: 0

Occupation :

S/o Late Lungloi Miji

permanent resident of village Salang

Lada Circle

P.O Lada

P.S Khenewa

East Kameng District

Arunachal Pradesh.

13:Nichang Miji

Age: 0

Occupation :

S/o Late Changtung Miji

permanent resident of village Nabolang
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

14:Lam Miji
Age: 0
Occupation :
S/o Late Ruju Miji
permanent resident of village Nabolang
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

15:Deka Miji
Age: 0
Occupation :
S/o Late Kagyang Miji
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

16:Buli (Anand) Sangchoju
Age: 0
Occupation :
S/o Late Rai Sangchoju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

17:Enu Naloiju
Age: 0
Occupation :
S/o Late Sibiyo Naloiju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa

East Kameng District
Arunachal Pradesh.

18:Sonari Naloiju
Age: 0
Occupation :
S/o Late Sibiyo Naloiju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

19:Jumsang Naloiju
Age: 0
Occupation :
S/o Late Lhupa Naloiju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

20:Doriang Sangchoju
Age: 0
Occupation :
S/o Late Kojo Sangchoju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh.

21:Tafi Naloiju
Age: 0
Occupation :
S/o Late Rinchin Naloiju
permanent resident of village Lada town
Lada Circle
P.O Lada
P.S Khenewa
East Kameng District
Arunachal Pradesh

Advocate for the Respondent : T Tsering, Tayom Gamoh, Logsang Yountan, Dejum Tally, Tsering Gyatso

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 07-11-2024

Heard Mr. S. Chhetri, learned counsel for the appellants and Mr. T. Gyatso, learned counsel appearing on behalf of the respondents No. 1 to 7, 14 and 16.

2. As the rest of the respondents did not appear, despite service of notice upon, the case proceeded *ex-parte* against them.

3. This is an appeal filed under Section 96 read with order 41 of the CPC for quashing and setting aside of the impugned order dated 15.09.2023, passed by the Court of Civil Judge (Senior Division), Seppa whereby and by which the learned Court, according to the appellant has erroneously dismissed the Title Suit No. 01/2023 by holding that the suit is not maintainable on account of stopple by heavily relying on the written statement and its document filed by the defendants.

4. The case in brief is that the appellants, 17 in numbers, have jointly own and possess a private land measuring One Crore Three Lakh Square Meters (Area 10.30 Km) located at Lada Circle which is bounded by in the North: Sachung village/Pachuk River, in the South: Wakke and Grangjing village, in the East: Lada Headquarter/Waki Nalah and in the West: Sachung village/Walley Nalah (herein after referred to as Suit Land).

5. In the said suit land, the Government of India proposed to construct a

High-Altitude Hill Road from Lada to Besai and accordingly, land acquisitions notifications were issued by the Department of Land Management, Government of Arunachal Pradesh as well as by the Deputy Commissioner, Seppa. During the process of survey and public hearing for disbursement of compensation, the respondents surprisingly for the first time have raised objection by filing representation dated 09.11.2021 before the DLRSO, Seppa disputing the said suit land. After exhausting all the available means of remedy, the appellants have filed the Title Suit No. 01/2023 before the Court of Civil Judge (Senior Division), Seppa, praying for decree of right, title, ownership, interest and possession over the suit land.

6. The said suit was contested by the respondent by filing written statement and raised preliminary objection on the maintainability of the Suit No. 01/2023 inter alia on the ground that, "*on dated 08.05.2024, the plaintiffs along with the defendants have executed a Deed of Agreement before the Executive Magistrate, Seppa, East Kameng District, Arunachal Pradesh declaring their ancestral land as common land...*" And since the land in question were made common by executing a deed of agreement between the plaintiffs and the defendants, the suit is not maintainable.

7. On consideration of the written statement filed by the respondent and hearing the parties on preliminary issues, the learned Civil Judge (Senior Division), Seppa by the impugned order/decreed, dated 15.09.2023, has rejected the Title Suit. It is submitted that while rejecting the suit, the learned Civil Judge (Senior Division), Seppa has heavily relied upon the written statement filed by the respondents and the documents annexed thereto, more particularly, the agreement dated 08.05.2007, stating therein that some of the plaintiffs were also the signatories to the said agreement dated 08.05.2007 and the

plaintiffs have suppressed the material facts while filing the suit.

8. Mr. Chhetri, learned counsel for the appellants further submits that while considering the case under order 7 Rule 11(d), only the averments made in the plaint will have to be referred; the written statement and the annexures appended therein cannot be taken into consideration. However, in the instant case, the learned Civil Judge (Senior Division), Seppa have heavily relied upon the written statement filed by the defendants/respondents and the annexures, more particularly, the agreement dated 08.05.2007 which is not permitted under the law.

9. In support of his submissions, the learned counsel for the appellants has relied upon the decision of the Hon'ble Supreme Court in the case of ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Others*** reported in ***(2021) 9 SSC 99***. The relevant paragraph 25 is reproduced herein below:

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

***25.1.** To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;*

***25.2.** The defense made by the defendant in the suit must not be considered while deciding the merits of the application;*

***25.3.** To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and*

25.4. *Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.*

10. For the reasons stated above and in view of the decision of the Hon'ble Supreme Court in the above cited case of *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Others* (supra), the learned counsel for the appellants prays for setting aside and quashing of the impugned order/decreed dated 15.09.2023.

11. Mr. Gyatso, learned counsel for the respondents No. 1 to 7, 14 and 16 fairly submits that Order 7 Rule 11(d) of the CPC provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Further, the order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed and it is not open to decide the issue on the basis of any other materials including the written statement in the case. However, in the instant case, the learned Civil Judge (Senior Division), Seppa while rejecting the suit has not only considered the written statement but has also relied upon the annexures thereto, i.e. the agreement dated 08.05.2007 which is specifically barred. Hence, Mr. Gyatso, learned counsel while conceding the submissions made by the learned counsel for the appellants prays that the matter may be remanded back to the learned Civil Judge (Senior Division), Seppa for proper adjudication of the suit.

12. Upon hearing and consideration of the submissions made by the learned counsels for the parties and also, as agreed upon by them, this Court is of the opinion that the matter can be remanded back to the trial court for proper adjudication. Accordingly, this matter is remanded back to the learned Court of

the Civil Judge (Senior Division), Seppa with a direction for proper adjudication of the case in accordance with law.

13. As a result, the impugned order dated 15.09.2023 passed by the Court of Civil Judge (Senior Division), Seppa in Title Suit No. 01/2023 is hereby set aside and quashed.

14. With the above observations, this appeal stands disposed of.

15. The TCR, if any be returned immediately.

JUDGE

Comparing Assistant