

GAHC020003082019



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

Case No. : FA/2/2019

VEKHOLE KEZO
S/O LT. VEHUZHU KEZO,
R/O KIKRUMA VILLAGE, P.S AND P.O PFUTSERO, PHEK, N/L

2: VEVOTO KEZO
S/O LATE SANE0 KEZO
R/O CHIKRI NASA COLONY
PFUTSERO
PHEK DISTRICT
NAGALAND.

3: PUHOVO KEZO
S/O LATE SANE0 KEZO
R/O CHIKRI NASA COLONY
PFUTSERO
PHEK DISTRICT
NAGALAND.

4: ZHOKHOTSO KEZO
S/O LATE SANE0 KEZO
R/O CHIKRI NASA COLONY
PFUTSERO
PHEK DISTRICT
NAGALAND.

5: NESAPRA KEZO
S/O LATE SANE0 KEZO
R/O CHIKRI NASA COLONY
PFUTSERO
PHEK DISTRICT
NAGALAND

VERSUS

KERETHI VERO
S/O LT. MUTSUNYO,
R/O KIKRUMA VILLAGE, P.S AND P.O. PFUTSRO, PHEK, N/L

Advocate for the Petitioner : R. IRALU, SR. ADV

Advocate for the Respondent : C. T. JAMIR, SR. ADV

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the appellants : Mr. R. Iralu, Sr. Adv.

: Mr. Elivil Zao, Adv.

For the Respondent :Mr. C. T. Jamir, Sr. Adv.

: Mr. N. Longkumer, Adv.

Date of Judgment : 15.03.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. R. Iralu, learned senior counsel, assisted by Mr. Elivil Zao, learned counsel for the appellants. Also heard Mr. C. T. Jamir, learned senior counsel, assisted by Mr. N. Longkumer, learned counsel for the respondent.

2. This appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred by the predecessor in interest of the present appellants, who have been substituted after the death of the original appellant, namely, Late Saneo Kezo impugning the judgment and decree passed on 17.05.2019 by the Court of learned District Judge, Phek in Civil Revision No. 1/2001. There appears to be some ambiguity regarding the nomenclature of the case in which the impugned judgment has been

passed as apparently it appears that the District Judge, Phek has no jurisdiction to entertain any civil revision under the Code of Civil Procedure, 1908, hence, an obvious question arises as to why the said case was registered a civil revision case. The said question shall be dealt with in this judgment herein after.

3. The impugned judgment was passed by the trial court i.e., the Court of District Judge, Phek, Nagaland when the case i.e., Civil Revision No. 1/2001 was remanded back to the trial court by the judgment and order dated 10.07.2017 passed in First Appeal No. 1(K)/2006 by this Court.

4. It is pertinent to mention herein that the judgment dated 10.07.2017 passed by this Court in First Appeal No. 1(K)/2006 was passed in an appeal filed under Rule 29 of the Rules of Administration of Justice and Police in Nagaland, 1984 against the judgment and order dated 28.11.2005 passed in Civil Revision No. 1/2001 by the learned Additional Deputy Commissioner, (Judicial), Kohima. The operative part of the aforesaid order is quoted herein below:-

“In view of what has been stated above, I am of the view that to do full justice, the parties must be given a chance of proving their respective case properly. I am aware that this dispute has dragged on for a long time but it would be better for both the parties and for the ends of justice to have the case tried properly as per law so that the litigation finally comes to an end. Therefore, the impugned judgment and order is set aside and the District

Judge, Phek is directed to try the case afresh by giving the parties a chance to exhibit and prove all the documents on which they want to rely on for their respective case. To do that further examination of witnesses already examined may be required, and if so the witnesses already examined may be allowed to give further evidence in respect of the documents. Needless to say but as stated above the case has been dragging for a long time, therefore, the District Judge, Phek shall make all endeavours to try the case and dispose of the same as per law and at the earliest but not later than six months from the date of receipt of the case. The parties shall appear before the District Judge, Phek on or before 28.07.2017. The Registry shall send records to reach the Court of District Judge, Phek well before 28.07.2017. With this the appeal is disposed."

5. Upon receipt of the aforesaid judgment of this court dated 28.11.2017, the trial court issued processes to the parties. After appearance of both the parties through their respective counsel, the trial proceeded from the stage of evidence. It is pertinent to mention herein that none of the parties submitted any fresh documents or introduced any new witnesses but the further examination of the witnesses, whose evidence was recorded earlier was conducted. It is pertinent to mention herein that in Civil Revision No. 1/2001, which apparently is a wrong nomenclature, the present respondent Kerethi Vero has been shown as plaintiff and Saneo Kezo has been shown as respondent (*here also the*

nomenclature ought to have been defendant instead of respondent). The respondent Saneo Kezo further examined his witness No. 2 i.e., RW-2, namely, Sri Satahu Tuyi and Mr. Saneo Kezo himself deposed as RW-3 who were cross-examined by learned counsel for the plaintiff. Whereas, the plaintiff Kerethi Vero examined himself as PW-1 and also examined the PW-2 Shri Khutsoye Vero who were cross-examined by the defendants. The judgment was ultimately given in favor of the present respondent, namely, Kerethi Vero. The operative portion of the impugned judgment is quoted herein below:-

“In the result, the suit is here by decreed that Mr. Kerethi Vero has valid claim over this suit land. Accordingly, this court hereby declared the title of the land in dispute measuring 24 ft. X 12 ft. located opposite SBI Pfutsero Branch, Pfutsero Town in favor of Kerethi Vero. And as far as the building constructed on the land in dispute, the party shall abide by judgment and order dated 29.06.1993 of Hon’ble High Court in Civil Revision No. 13(K)/1992 and Civil Revision No. 104(K)/92”.

6. The facts of the case, as narrated in the impugned judgment, in brief, are as follows. That, the subject matter of the dispute in the instant case, between the parties is a small plot of land measuring 12 ft. X 24 ft., which is located in the heart of Pfutsero Town. In the year 1975, dispute arose between the respondent Kerethi Vero, and one Shri Hutsozu regarding the ownership of the disputed plot of land. The dispute reached

the office of the Political Assistant to Deputy Commissioner, Zuketsa. The parties resolved the dispute through a compromise settlement before the Political Assistant to Deputy Commissioner, Zuketsa and the land in dispute was given to Kerethi Vero.

7. Thereafter, one Annie, younger brother of Shri Dachone and Shri Vechone filed a civil suit before the Judicial Magistrate, 2nd Class, Pfutsero claiming that the disputed land belongs to him as he had purchased the same from one Pungoru, the elder brother of Kerethi Vero. The said case was registered as Civil Suit No. 27/1976. The Judicial Magistrate, 2nd Class Pfutsero, on 27.09.1977 disposed of the said case by holding that Shri Kerethi Vero is the owner of the land and imposed a fine of Rs.500/- on the on Shri Pungoru for selling the land of his brother which did not belong to him. He was further directed to return a sum of Rs.1200/- to Shri Annie. Thereafter, one Shri Muzatso and Shri Annie approached the SDO(Civil), Pfutsero on appeal claiming the ownership of the disputed land. The appeal was registered as No. PF/JUD-7/77-78/40 and same was disposed of by the Judicial Magistrate, 2nd Class Pfutsero on 03.04.1979 dismissing the claim.

8. Thereafter, in the year 1984, Shri Dachone and Shri Vechone Vero filed application before SDO(Civil), Pfutsero challenging the ownership of Shri Kerethi Vero over the disputed land and the same was registered as No. PF/JUD-1/83-84/82. The SDO(Civil) disposed of the matter on 12.06.1984, rejecting the claim of Shri Dachone and Shri Vechone Vero on the ground that the matter has been settled four to five years ago, therefore, it cannot be reopened again.

9. Against the aforesaid order of SDO(Civil), Pfutsero, Shri Dachone and Shri Vechone Vero filed an appeal before ADC/ADM, Phek 1984 which was registered as case No.25/1984(ADM). On 13.11.1984, the ADM, Phek passed an order directing the SDO(Civil), Pfutsero to retry the case with a direction that no party should cut the land in dispute till the case is settled. The SDO(Civil), Pfutsero by his order dated 13.03.1985 disposed of the same by rejecting it on the ground that same was filed long after the time given for appeal was over.

10. It was at this time, the original appellant of this case, Shri Saneo Kezo came to the picture and filed an appeal before ADC/ADM, Phek claiming ownership of the disputed land. The appeal was registered as Civil Case No. 48/1985(ADM) wherein Shri Saneo Kezo prayed for declaring the order dated 13.3.1985 of SDO(Civil), Pfutsero as void and also prayed for declaring him as rightful owner of the land in dispute. The ADC/ADM, Phek by his order dated 31.01.1986 disposed of the appeal allowing the prayer of the appellant and thereby declaring the order of the SDO(Civil), Pfutsero as void and further declaring Shri Saneo Kezo as rightful owner of the disputed land.

11. Being aggrieved by the said judgment of ADC/ADM, Phek, Shri Kerethi Vero came to the High Court by filing a Revision Petition No. 1(K)/1986. On 22.06.1990, the High Court set aside the order dated 31.01.1986 of ADC/ADM, Phek in Case No. 48/1985 and remanded the case back to ADC/ADM for disposal after giving opportunity of being heard to the parties. However, ADC(Judicial), Phek disposed of the case after hearing both the parties on 28.11.1990 directing Shri Kerethi Vero to file a

plaint against Shri Dachone and Saneo Kezo stating the facts, claims and reliefs within a reasonable time.

12. Being aggrieved by the order dated 28.11.1990 of the ADC(Judicial), Phek, the respondent herein, namely, Shri Kerethi Vero once again filed a revision petition before this court contending that he has no reason to file a suit against Shri Saneo Kezo i.e., the present appellant. The said revision petition was registered as Civil Revision No. 2(K)/1991. On 03.12.1991 the High Court disposed of the said civil revision petition setting aside the order dated 28.11.1990 of ADC(Judicial), Phek and gave liberty to Shri Saneo Kezo, the present appellant to sue anyone again whom the right to sue exist.

13. However, in spite of the said order of the High Court, the appellant, Saneo Kezo did not sue anyone and instead he started constructing a building in the suit land, which the respondent herein has alleged that he did so by taking advantage of his official position as Officer-in-charge of Pfutsero Police Station.

14. Being aggrieved by such action of the appellant Saneo Kezo, the respondent Shri Kerethi Vero again filed one civil revision petition before this court praying for intervention to stop construction and also filed a writ petition praying for appropriate action against the appellant for misuse of his official position. The two petitions were registered as Civil Revision Petition No. 13(K)/1992 and Civil Rule No. 104(K)/1992 respectively. While these two cases were pending before the court, the appellant, Shri Saneo Kezo filed an application before the ADC(Judicial), Phek praying for an early disposal of Civil Case No. 48/1985 pending before it.

15. The High Court on 29.06.1993 disposed of both the Civil Revision Petition No. 13(K)/1992 and Civil Rule No. 104(K)/1992 by a common order directing the learned ADC(Judicial), Phek to treat the petition dated 27.08.1992 filed by the appellant Shri Saneo Kezo in his court praying for disposal of Case No. 48/1985 as plaint and to issue notice to the respondent to file written statement and thereafter to frame issues and call upon the parties to adduce evidence in support of their respective claims and thereafter disposed of the case after hearing the parties by a speaking order. The operative portion of the said judgment and order is given herein below:-

“10. In the facts and circumstances which I have narrated above and in the light of my finding there on, the Civil Revision No. 13(K)/1992 and Civil Rule No. 104(K)/1992 are allowed with cost of Rs.2000/-. The learned Additional Deputy Commissioner (Judicial), Phek shall treat the petition Annexure-W filed by the respondent No. 1 on 27.08.1992 as plaint. The learned Additional Deputy Commissioner shall issue notice to the petitioner for filing written statement. After written statement is filed the learned Additional Deputy Commissioner shall frame necessary issues. Thereafter the parties shall call upon and adduce evidence to prove the issues in support of their respective claims of right of ownership over the land. After completion of recording of statement and after hearing arguments of the parties, the learned Deputy Commissioner shall

pass a final order by speaking order discussing each issue. It is made clear that in view of my findings above in respect of the actions of respondent No. 1, construction of building shall be deemed to have been made at the risks of respondent No. 1. Therefore, if he fails in the suit the respondent No. 1, Shri Saneo Kezo shall not be entitled to claim any compensation for vacating and removing of any construction that has been erected on the suit land. I would also state here that I do not propose to take any further action against respondent No. 1 for not carrying this court's directions dated 03.12.1991 in view of the fact that matter could be dealt with by DGP by taking appropriate action. Since the matter has been delayed for a long time the Additional Deputy Commissioner (Judicial) shall see that it is disposed of as expeditiously as possible and that at any rate not later than eight months from the date of receipt of this order. With the above observation and direction these two petitions are disposed of. Copies of the order to be sent to SP, Phek and DGP, Nagaland for necessary action."

16. Aggrieved by the aforesaid order, the appellant late Saneo Kezo preferred a review application before this Court which was registered as Civil Review No. 8(K)/1993, however, said review was rejected by order dated 10.01.1994 by this Court and a direction was given for expeditious disposal

of the matter not later than eight months from the date of receipt of the said order.

17. After the aforesaid judgment of this court, the parties appeared before ADC (Judicial), Phek. However, from order dated 11.06.2002 and 09.07.2003 of the ADC (Judicial), Phek, it appears that the entire case record of Case No. 48/1985 was untraceable. Therefore, both the learned counsel representing the parties filed the brief stories of their respective cases along with suggested issues. Based on those brief stories and suggested issues, learned ADC (Judicial), Phek framed 13 issues and thereafter the parties produced their respective witnesses and their depositions were recorded. The 13 issues framed by ADC (Judicial), Phek in the said case which was again registered as Civil Revision No. 1/2001, are as follows:-

“1. Whether the present suit is maintainable against the present respondent/petitioner.

2. Whether there is non joinder-mis joinder in the suit?

3. Whether the disputed plot of land was actually sold to the present respondent/petitioner? If so why was he not impleaded as party to the proceeding?

4. Whether the plaintiff/respondent filed a case against Pire GB, Dachone and Vachone prior to 1969?

5. Whether the present respondent/petitioner was disturbed by the other party?

6. Why the plaintiff/respondent had not initiate action when the disputed plot remained in possession of respondent/petitioner after having purchased the same from Pire GB?

7. Prior to sale of the disputed land, Shri Dachone & Vachone were the real owner of the land. As such does the present plaintiff respondent has any locus -standi?

8. Whether the plot of land prior to impediment of the present respondent as a party is distinct from the present plot in dispute.

9. Whether the present respondent/petitioner is entitled to a declaration of title to the disputed land.

10. Who is the real owner of the plot in the present dispute?

11. Whether the construction of an RCC building by Saneo Kezo is in his so called purchased plot or is it within the share of plot belonging to Kerethi Vero.

12. Whether Kerethi Vero is common ancestor with Dachone Vero and Vachone Vero of the Vero clan of Kikruma Village.

13. Whether division of the ancestral property including the disputed land was effected availably amongst the inheritors."

18. In the meanwhile, the case was transferred from the ADC (Judicial), Phek to the Court of learned ADC (Judicial) Kohima, who on

28.11.2005 passed the judgment in favor of Shri Kerethi Vero. The operative portion of the judgment dated 28.11.2005 is quoted herein below:-

“From all the above foregoing discussions, the court finds the issues raised all to go in favor of Shri Kerethi Vero, the plaintiff/respondent. The sale purchase of 1969 from Shri Dachone and Shri Vechone by the petitioner has discrepancies and no document is supported. Shri Vechone, one of the original owners of the land in question, who survives Dachone, is not a trustworthy witness himself. Documents rendered by Dachone in his lifetime negates his fallacious statement. Non-prosecution of his rights by petitioner for 10 long years which was in litigation over a plot just adjacent to his building seriously jeopardize any testimony of purchase of 1969. No mention of the same was ever made by Shri Dachone or Shri Vechone Vero in the previous proceeding over the same plot till 1985 when the present petitioner is introduced to the dispute. Purchase of land may have taken place but the date is distorted. The law also does not permit resale of same plot of land to different person. Shri Vechone Vero must bear all its consequences.

ORDER

The scrutiny of all documents and records reveals that the plaintiff/respondent Shri Kerethi Vero has a valid legal claim over the land in dispute. This court hereby declares the title of land in dispute measuring 24 ft. X 12 ft. at Pfutsero Town in

favor of Shri Kerethi Vero. Construction of building in the land in dispute side has the pre-emptive order of Hon'ble High Court in Civil Revision No. 13(K)/1992 and Civil Rule No. 104(K)/1992. Parties to abide by same order on the outcome of this petition. With this judgment and order, the present civil suit is disposed of here with cases records to be transmitted to learned ADC (Judicial), Phek for post litigation steps.

19. As already stated herein before being aggrieved by the aforesaid order, the appellant Saneo Kezo preferred the First Appeal No. 1(K)/2006 which was disposed of by order dated 10.07.2017 remanding the case to District Judge, Phek with a direction to try the case afresh by giving the parties a chance to exhibit and prove all the documents on which they rely for their respective cases.

20. Accordingly, learned District Judge, Phek, as already stated in paragraph No. 5 herein before, issued processes to parties and proceeded with the trial of the case(*Civil revision No 1/2001*) from the stage of evidence. Learned District Judge, Phek did not frame any new issue but reproduced the 13 issues which were framed by learned ADC (Judicial), Phek, Kohima in the earlier proceeding and decided the said issues afresh and ultimately decreed this suit in favor of Shri Kerethi Vero. The operative portion of the impugned judgment is quoted herein below:-

“In the result the suit is hereby decreed that Mr. Kerethi Vero has valid claim over the suit land. Accordingly, this court hereby declares the title of land in dispute measuring 24 ft. X 12 ft. located opposite SBI, Pfutsero

Branch, Pfutsero Town in favor of Shri Kerethi Vero. And as far as the building constructed on the land in dispute, the parties shall abide by the judgment and order dated 29.06.1993 of the Hon'ble high court in Civil Revision No. 13(K)/1992 and Civil Rule No. 104(K)1992."

21. Now, the present appeal has been preferred by the appellant, Saneo Kezo who has been substituted by his legal heirs after his death, namely, Vekhole Kezo and others mainly on following grounds: -

i. The trial court has erred in giving reliance to Exhibit-A which is only a photocopy without production of original document as no witness has been examined for proving the contents of the said document.

ii. The trial court has erred in passing the judgment and order without discussing the evidence led by the parties. The trial court committed grave illegality in holding that the evidence of RW-1, Vechone is doubtful and unreliable merely on the basis of assumption and conjectures.

iii. The Trial Court miserably failed to understand that the land in dispute is not the suit land as no spot verification was made to identify of plot of land given to Shri Kerethi Vero

by PA to Deputy Commissioner, Zuketsa in 1975.

iv. The trial court miserably failed to fathom the fact that the present appellant was not a party in any dispute during the period from 1975 to 1984 and, therefore, the orders passed by various authorities during this period would not bind him.

v. The trial court failed to take notice of the fact that in spite of the specific directions, the respondent Shri Kerethi Vero failed to submit any written statement in the case.

vi. That the trial court *prima facie* permitted and adopted a procedure contrary to law and arrived at a perverse finding.

vii. That the trial court erred in law and facts in arriving at conclusion without discussing the evidence in all its proper perspective and, therefore, the impugned judgment and order dated 17.05.2019 is liable to be set aside.

22. The point for determination in this appeal, are as follows:-

i. Whether the trial court, *prima facie*, permitted and adopted a procedure which is contrary

to law and was wrong in decreeing the suit in favor of the respondent Kerethi Vero in spite of the fact that he did not file any plaint or written statement or for that matter any pleadings in this case.

ii. Whether the trial court had erred in relying on Exhibit-A and Exhibit-b which are only a photocopy without production of the original documents and the content of the said documents being proved.

iii. Whether the trial court has erred in deciding the issues without discussing the evidence led by the parties and decreeing the suit in favour of the respondent Kerethi Vero.

iv. Whether the trial court was wrong in arriving at the conclusion that the Kerethi Vero is having the title of the disputed land measuring 24 ft. X 12 ft. located opposite SBI Pfutsero Branch in Pfutsero Town and thereafter decreeing the suit in his favour in spite of the fact that he did not file any pleadings in this case.

23. Mr. R. Iralu, learned senior counsel for the appellants has submitted that the respondent Kerethi Vero in whose favour the suit has been decreed was never a plaintiff in Civil Case No. 48/85 and though he was implanted as defendant in the case, he never filed any written statement and, therefore, there was no pleading on record for the

respondent Kerethi Vero and in absence of pleading, he could not have led evidence as by allowing him to adduce evidence, the trial court has erred and has allowed the respondent Kerethi Vero to adduce evidence beyond pleading.

24. It is submitted by the learned senior counsel for the appellants that no evidence is permissible to be taken on record in absence of the pleadings to that respect and no party may be permitted to travel beyond the pleadings and in support of his submissions learned senior counsel has cited a ruling of the Supreme Court of India in the case of “**Union of India –Vs- Ibrahim Uddin and Anr.** reported in “**(2012) 8 SCC 148**” wherein it was observed as follows:-

"77. This Court while dealing with an issue in Kalyan Singh Chouhan v. C.P. Joshi [(2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127] , after placing reliance on a very large number of its earlier judgments including Trojan & Co. v. Nagappa Chettiar [AIR 1953 SC 235] , Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256 : AIR 2002 SC 665] , Ishwar Dutt v. Collector (LA) [(2005) 7 SCC 190 : AIR 2005 SC 3165] and State of Maharashtra v. Hindustan Construction Co. Ltd. [(2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299] , held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon."

25. Learned senior counsel for the appellants has also submitted that on perusal of the record of this case, it appears that on 11.06.2002, learned ADC (Judicial), Phek passed an order to the effect that the case record of Civil Suit No. 48/85 was not traceable and parties agreed to file respective brief stories of the case and issues. However, it is submitted by learned senior counsel for the appellants that if the record of Case No. 48/85 was not found, it was incumbent on the part of the trial court to direct reconstruction of the case record instead of allowing the parties to submit brief story of the case. It is also submitted by the learned Senior counsel for the appellants that the pleadings like plaint and written statement cannot be substituted by the brief story as the averment made in the plaint has to be either denied or admitted by the other side and if no averment is made, the averments made in the plaint are stood to be admitted by the defendant.

26. Learned senior counsel for the appellants has also submitted that the issues in this case are not framed on the basis of the pleadings of the parties but were arbitrarily framed without pleadings, which is not a procedure to be followed in a civil suit. It is submitted by learned Senior Counsel that some of the issues are arbitrarily framed, which are not required for deciding the real dispute between the parties. It is submitted that the issues were decided on the basis of assumptions and no discussions on the evidence by the parties was made by the learned Trial Judge while deciding the issues in the case.

27. Learned senior counsel for the appellants has stated that the present respondent Kerethi Vero had exhibited Exhibit-A and Exhibit-b,

which were relied upon by the learned trial court in coming to the finding in favor of the respondent were only photocopies of purported certificate (Exhibit-A) and deed of agreement (Exhibit-b), which is not admissible as evidence as the original was not produced. Learned senior counsel has also submitted that a document which is otherwise inadmissible cannot be taken into evidence only because no objection as regards the admissibility thereof was taken by one of the party. It is also submitted by the learned senior counsel for the appellants that when a document which is sought to be proved is itself inadmissible in evidence, any acquiescence would be no bar to raising the objection in a superior court. In support of his submission, learned Senior Counsel for the appellants has cited a ruling of the Supreme Court of India in the case of "**Malay Kumar Ganguly –Vs- Sukumar Mukherjee & Ors**" reported in "**(2009) 9 SCC 221**". It is also submitted by the learned senior counsel for the appellants that mere marking of a document itself is not sufficient to treat the document to be proved and such a marking does not dispense with its proof which is required to be done in accordance with law.

28. Learned senior counsel for the appellants has also submitted that the exhibited document i.e., the Exhibit-A and Exhibit-b which are photocopies in any view of the matters are not the document of title and it does not confer any title of the disputed land on the respondent Kerethi Vero.

29. Learned senior counsel for the appellants has also submitted that the learned trial court has wrongfully not taken into consideration the deposition of the appellant and his two witnesses. It is submitted by

learned senior counsel for the appellants that learned trial court never considered and discussed the statement of the appellants as well as his two witnesses apart from only drawing an adverse inference on the basis of conjectures and surmises and, therefore, the impugned judgment is liable to be set aside.

30. Learned senior counsel for the appellants has also submitted that though the predecessor in interest of the present appellants, namely, late Saneo Kezo had purchased the disputed land in the year 1969 from Pire GB, however, it is only in the year 1984 that the respondent started digging the land when he was compelled to approach the ADC (Judicial), Phek. It is also submitted by learned senior counsel for the appellants that the learned trial court's observation in the impugned judgment to the effect that Saneo Kezo slept over the matter for 10 years and his plea that he was not aware about the dispute over the land adjacent to his own plot was felt by the trial court as not inspiring much confidence and worth relying upon is nothing but an inference drawn on the basis of conjectures and surmises as none of the witnesses for any party had stated so.

31. Learned Senior Counsel for the appellants has also submitted that the appellant has been able to establish that the disputed plot was bought by the predecessor in interest of the present appellants, namely, Saneo Kezo, from GB Pire on 15.12.1969 and learned Trial Court failed to appreciate the evidence adduced to this effect by the appellant, and therefore the finding of the learned trial court to the effect that the respondent Kerethi Vero is the owner of the disputed land is liable to be set aside.

32. On the other hand, Mr. C. T. Jamir, learned senior counsel for the respondent has submitted that the disputed land was settled in favour of the respondent Kerethi Vero way back in the year 1975 when the dispute between the present respondent Kerethi Vero and one Hutsozu over the present plot of land was amicably settled as per the terms of compromise letter dated, 19.06.1975, and the settlement was agreed upon by both Hutsozu and Kerethi Vero as none of them preferred any appeal against the said settlement order. It is further submitted by learned senior counsel for the respondent that the predecessor in interest of the present appellants, namely Saneo Kezo, came into picture only in the year 1985 when he filed the civil case No. 48/85 before the ADC/ADM, Phek. However, it is submitted by learned senior counsel for the respondent that if Saneo Kezo purchased the disputed land in the year 1969, there was no reason for him sitting silent till 1985 when during this period there were a spate of litigation between Kerethi Vero and others in respect of the said land. It is submitted by the learned senior counsel for the respondent that it is only in the year 1984 when the disputed land was cleared by Kerethi Vero with the help of others. Late Saneo Kezo started constructing a house on the said land and the present respondent preferred a civil revision which was numbered as Civil Revision No. 13 (K)/1992 and Civil Rule No. 104(K)/1992 which was disposed of by this Court by a common judgment dated 29.06.1993 wherein it was observed that *“it is made clear that in view of my findings above in respect of actions of respondent No. 1 (Saneo Kezo), construction of the building shall be deemed to have been made at the risk of respondent No. 1. Therefore, if he fails in the suit, respondent No. 1 (Saneo Kezo) shall not be entitled to claim any compensation for vacating and removal of the construction that has been erected on the suit land”*.

33. Learned senior counsel for the respondent has also submitted that the predecessors in interest of the present appellants, namely, Saneo Kezo, has admitted before the trial court that he constructed a building over the suit land, therefore, the question of construction of building over another plot of land does not arise. It is also submitted by the learned senior counsel for the respondent that in spite of this court giving specific directions in F.A. No. 1(K)/2006 to afford both the parties all opportunities of examination of witnesses and to give further evidence in respect of documents, the appellants have miserably failed to adduce any fresh document or introduce any new witness to substantiate his claim over the disputed land and, therefore, the appellants have failed to substantiate their claim over the disputed land.

34. Learned senior counsel for the appellants has also submitted that the dispute over the present plot of land is lingering in various courts since 1975 and it is now for more than 48 years the said plot of land is involved in litigation. It is also submitted by the learned senior counsel for the respondent that in all the cases in various courts except in one case, which was an *ex-parte* order, and which was subsequently quashed by the High Court, all the orders passed by various authorities/courts were in favor of the respondent Kerethi Vero and this aspect of the matter should be taken into consideration while deciding the present appeal.

35. Learned senior counsel for the respondent has also submitted that though the respondent Kerethi Vero has not filed any written statement or plaint in this case, however, he has submitted a brief story of the case along with suggested issues and the same may be considered as

pleading of the respondent. Learned senior counsel for the respondent has also submitted that the land in dispute in the present case was in possession of government till the year 1972 and it was vacated by the government only in that year and, therefore, question of buying of the land by the predecessor in interest of the appellants, namely, Saneo Kezo from Pire GB in 1969 does not arise.

36. Learned senior counsel for the respondent has submitted that the predecessor in interest of the present appellants has failed to produce any document of title over the suit land before the learned trial court. It is further submitted that even during the pendency of the present appeal one interlocutory application was filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for allowing the appellants to adduce additional evidence for bringing on record the documents which were marked as S-1 and S-2. However, by order dated 18.10.2023 passed in I.A.(C) No. 84/2019, the said prayer was rejected by this Court and, therefore, the appellants have failed to adduce any documentary evidence to show their title over the disputed plot of land.

37. Learned senior counsel for the respondent has also submitted that merely on technical grounds the case should not be remanded back to the trial court as the litigation in this case has been pending for a long time and it is also submitted that the learned trial court has arrived at the findings against all the issues in the impugned judgment after giving sufficient opportunity to both the parties. It is further submitted that the learned District Judge, Phek only complied with the directions of the High Court and has applied his judicial mind while passing the impugned

judgment and, therefore, the appeal is liable to be set aside.

38. I have considered the rival submissions made by learned senior counsel for both the sides and have perused the materials available on record.

39. Though, this appeal has been pending for long, however, during hearing of this case it came to light that the case record of the trial court was not called for and, therefore, by order dated 23.08.2023 passed in this appeal, the trial court record of Civil Revision Case No. 1/2001, against which the present appeal has been preferred, was called for from the court of learned District Judge, Phek. The aforesaid record was received by the Registry on 29.08.2023.

40. On perusal of the record of the trial court, it appears that same has not been properly maintained as per the provisions of High Court Civil Rules and Order. Though, by order dated 10.07.2017 passed in First Appeal No. 1(K)/2006 [*wherein the judgment dated 28.11.2005 passed in Civil Revision No. 1/2001 by the learned ADC(Judicial), Kohima was challenged*] the Civil Revision No. 1/2001 was remanded back for fresh trial, however, it appears that the record of the said case (Civil Revision Case No. 1/2001) contained only 10 pages of order-sheets starting from 27.07.2017 till 17.05.2019. No order-sheet was found prior to 27.07.2017 i.e., before the date of remanding of the said case for fresh trial. Apart from the aforementioned order-sheets, the case record contained a copy of judgment dated 10.07.2017 passed in First Appeal No. 1(K)/2006 by this court. It also contained the depositions of PWs and RWs recorded after remand of the case to the trial court. While perusing the available

depositions on record, it appears that the case number in the forms for deposition where the statements of PW-1 and PW-2 are recorded, on 29.03.2018, has been mentioned as 01/2017 whereas, in the type copies of the said depositions the case number has been mentioned as Civil Revision Case No. 1/2001. Apart from the aforesaid documents, the written arguments submitted by the learned counsel for the both sides as well as photocopies of some documents containing depositions, writ petitions and orders and annexures without any index are found on record. Though, learned counsel for both the parties in this case have submitted that the case record of Civil Case No. 48/1985 was untraceable from the court of learned ADC(Judicial), Phek and both the parties submitted brief stories of their cases along with suggested issues, same was not found on record. It appears that the part of case record of Civil Revision No. 1/2001 before it was remanded back by order dated 10.07.2017 is also not available on record. There is no order on record to show that the untraceable record of Civil Case No. 48/1985 was reconstructed. The manner in which the case records are maintained by the trial court, in this case is not at all appreciable. The provisions of Gauhati High Court Civil Rules and Orders are not at all followed in maintaining the records of the case.

41. While trying to answer the first point for determination in this appeal as to whether the trial court permitted and adopted a procedure which is contrary to law and was wrong in decreeing the suit in favour of the respondent Shri Kerethi Vero in spite of the fact that he did not file any plaint or written statement, this court is constrained to observe that a civil suit is to be tried as per the provisions of Code of Civil Procedure,

1908. It is pertinent to mention herein that in the State of Nagaland before establishment of the regular civil courts like Court of District Judge, Court of Civil Judge (Senior Division) as well as Court of Civil Judge (Junior Division)/Munsiff, the civil justice was administered by the Deputy Commissioners, his assistance, Mouzadar, Gaonburah, chiefs, Headman of Khel and other village authorities as per the provisions of the Rules for administration for Justice and Police in Naga Hill District, 1937. As per Rule-35 of the aforesaid Rules, the High Court and the Court of Deputy Commissioners and his assistance shall be guided by the spirit but not bound by the letter of Code of Civil Procedure, 1908. Thus, even before the establishment of regular civil courts, the spirit of Code of Civil Procedure, 1908 was to be followed for dispensing civil justice.

42. In the case of “**Registrar General, Gauhati High Court -Vs- Union of India and Ors**” reported in “**2013 (4) GLT 1109**”, a division bench of this Court has held that the Code of Civil Procedure and Code of Criminal Procedure are applicable to regularly constituted civil and criminal courts without any manner affecting the operation of Article 371A or the functioning of village, customary or any other courts other than the regularly constituted civil and criminal courts in the State of Nagaland, manned by the members of judicial service. In the instant case, the impugned judgment has been passed by the Court of Learned District Judge, Phek, which is a regularly constituted civil court and manned by the member of judicial service, therefore, it was incumbent on the learned District Judge, Phek to apply the provisions of Code of Civil Procedure, 1908, while adjudicating a civil case before it. However, it appears that same has not been done while adjudicating the case in hand, which we

shall discuss hereinafter in this judgment.

43. It appears that the predecessor in interest of the present appellants, namely, Shri Saneo Kezo filed an application dated 27.08.1992 in Civil Case No. 48/1985 (ADM), which is the precursor of the Civil Revision Case No. 1/2001, wherein Late Saneo Kezo had stated he has no grievance against Dachone and Vechone and prayed for disposing of the suit i.e., Civil Suit No. 48/1985 accordingly. Though, by the common order dated 29.06.1993 passed in Civil Revision Petition No. 13(K)/1992 and Civil Rule No. 104/1992, the ADC(Judicial), Phek was directed to treat the aforesaid petition as plaint, however, there was no directive to treat Shri Kerethi Vero, who has not filed any pleading in the case as plaintiff, rather he was directed to file written statement. There are also no materials on record to verify as to why the Civil Suit No. 48/1985 was registered as Civil Revision No. 1/2001. To a specific query posed to the bar regarding this matter, learned senior counsel for both the sides failed to give any satisfactory reply to the same and they also pleaded their ignorance. Be that as it may, when petition dated 27.08.1992 filed by the late Saneo Kezo was directed to be treated as plaint there was no reason for treating him as the defendant and Shri Kerethi Vero as plaintiff though he never filed any pleadings. In fact, Shri Kerethi Vero had earlier approached this court by filing Civil Revision No. 2(K)/1991 contending that he has no reason to file any suit against late Saneo Kezo and that civil revision was disposed of by the High Court by order dated 03.12.1991 giving liberty to late Saneo Kezo to sue anyone against whom right to sue exist. When Shri Kerethi Vero has not filed any plaint, he could not have been designated as plaintiff and suit could not have been decreed in his favour on the basis

of a deemed plaint which was actually a petition filed by the predecessor in interest of the present appellants late Saneo Kezo. Learned trial court seems to have neither adhered to the letter of the Code of Civil Procedure, nor followed the spirit of the Code of Civil Procedure in the case which was wrongly registered as Civil Revision No. 1/2001. When Shri Kerethi Vero was himself reluctant to sue late Saneo Kezo and has not filed any plaint or written statement in Civil Case No. 48/1985 or Civil Revision No. 1/2001 treating him as plaintiff is a clear case of misjoinder of parties. This court is of considered opinion that by treating Shri Kerethi Vero as plaintiff and decreeing the suit in his favour in spite of the fact that he did not file any plaint or written statement is a clear case when the trial court, prima facie, adopted a procedure contrary to law and neither followed the letter nor spirit of the Code of Civil Procedure, 1908 during the proceeding of the case. The first point for determination is accordingly answered. For the aforesaid reason, the issue No. 1 framed by the learned trial court is also answered in negative. In the considered opinion of this court, the trial court has erred in holding the present suit as maintainable only because of the reason that the suit proceeded on the basis of a judgment of this court as Kerethi Vero had not complied with the direction of the court by filing written statement. Merely because this case is pending for a very long period, cannot itself be a reason for justifying wrong procedure and proceeding with a suit which is not maintainable.

44. Though, trial court relied on Exhibit-A and Exhibit-b, however, in view of the ruling of the Apex Court in the case of "**Malay Kumar Ganguly –Vs- Sukumar Mukherjee & Ors**" (supra), it is trite that a document becomes inadmissible in evidence unless the author thereof is

examined or unless the evidence is laid to show to the court as to why the author could not be examined. The document which is otherwise inadmissible cannot be treated as admissible merely because no objection as regards the admissibility was taken.

45. It is true that the disputed property in this case is the subject matter of a spate of litigation since 1985, however, in this appeal, this court is concerned only about the correctness or otherwise of the finding arrived at by the learned trial court in the impugned judgment passed in Civil Revision No. 1/2001. In this case, issues were framed on the basis of draft issues submitted by the parties without there being any counter pleadings from which it could have been ascertained as to what material propositions of fact or law are affirmed by one party and denied by another. Even in framing the issues neither the letter nor the spirit of the Code of Civil Procedure was followed. The learned trial court has discarded the claim of late Saneo Kezo on the ground that he failed to exhibit any sale deed to substantiate his claim, however, even Shri Kerethi Vero has not exhibited any deed of sale. He has exhibited only photocopies of purported certificate (Exhibit-A) and deed of agreement (Exhibit-b), which is not admissible as evidence as the original was not produced and same is not a deed of title.

46. This court is of considered opinion that the trial court, without there being pleadings of the parties on record and evidence which is adduced in pursuant to the pleadings, has erred in arriving at the conclusions against each issue framed in the case and decreeing the suit in favour of Shri Kerethi Vero who had not filed any pleadings in the case.

Both late Saneo Kezo and Shri Kerethi Vero were reluctant to file suit against each other. They have been made to contest civil suit against each other without anyone of them filing any pleading against each other merely because this court by order dated 29.06.1993 passed in Civil Revision Petition No. 13(K)/1992 and Civil Rule No. 104(K)/1992 directed the petition dated 27.08.1992 filed by late Saneo Kezo in Civil Case No. 48/1985 to be treated as plaint. Due to the wrong procedure adopted by the court, the conclusion arrived at by the trial court in the impugned judgment may not be regarded as correct conclusion. As an erroneous procedure was adopted in allowing the parties to adduce evidence without any pleadings and thereafter decreeing the suit in favour of a party which could not have been joined as plaintiff in the suit in absence of any pleading, it is apparent that the issues were decided by the trial court on the basis of evidence led by the parties which they could not have led in absence of pleadings in the present civil suit. The findings arrived at by the trial court against each issue in the impugned judgment, therefore, may not be regarded as correct findings. The point Nos. iii and iv for determination in this appeal are accordingly decided.

47. For the reasons mentioned herein above, the impugned judgment and decree is hereby set aside.

48. However, it is hereby made clear that the principle of "*Actus Curiae neminem gravabit*", which means that the act of the Court shall prejudice no-one, becomes applicable to the facts and circumstances of this case and the parties shall be at liberty to seek appropriate remedy in appropriate proceeding before appropriate forum. Under the facts and

circumstances of this case, the benefit of Article 14 of the Indian Limitation Act, 1963 may be availed by the party seeking to pursue appropriate relief.

49. Send back the record of trial court along with a copy of this judgment.

JUDGE

Comparing Assistant